# EMPLOYMENT TRIBUNALS

**Claimant:** Mr John Murphy

**Respondents:** Altruistic Care Limited (1)
Ms Jiji Saju (2)
Ms Trudy Riley (3)
Ms Alyshba Jivraj Bata (4)
Ms Jaya Amaresh (5)

**Heard at:** Manchester **On:** 14, 15, 16 & 17 July 2025, and in chambers on 18 July and 5 August 2025

**Before:** Tribunal Judge Holt
Dr H Vahramian

**REPRESENTATION:**

**Claimant:** Represented himself
**Respondent:** Mr D Bunting (Counsel)

# RESERVED JUDGMENT

The unanimous judgment of the Tribunal is as follows:

1. The complaint of discrimination related to disability contrary to section 6 Equality Act 2010 fails and is dismissed.

2. The complaint of discrimination on the basis of sexual orientation, specified as being contrary to sections 13 Equality Act 2010 fails and is dismissed.

3. The complaint of indirect discrimination contrary to section 19 Equality Act 2010 fails and is dismissed.

4. The complaint of harassment contrary to section 26 Equality Act (protected characteristic sexual orientation) fails and is dismissed.

5. The complaint of whistleblowing detriment under section 43B of the Employment Rights Act ("ERA") 1996 fails and is dismissed.

6. The claims of unfair dismissal by way of dismissal contrary to sections 98 and 103A (automatic) of the ERA 1996 fails and are dismissed.

7. The claim of unlawful deduction of wages fails and is dismissed.

# REASONS

## Delay

1. I apologise to the parties for the delay in providing our reserved judgment and reasons. I appreciate that the Claimant in particular has been anxious to receive the decision and know that he has chased the Tribunal on several occasions. I have tried to keep him appraised via the Tribunal staff. Regrettably, the delay has been caused by a combination of family illness that I have had to deal with combined with work pressures. I also note that this case deals with several strands of complaint and grievance running in parallel and it has been important to deal with matters comprehensively so that the parties can understand the decisions herein and how we reached our conclusions. I am grateful to the parties for their patience.

## Panel

2. I record that the parties had agreed to a two-judge panel in advance of the final hearing. We were not party to the correspondence about the make-up of the panel.

## Representation

3. It was unclear at the beginning whether the Claimant's friend, Mr Hawas, was representing the Claimant as a "McKenzie friend" or whether the Claimant was representing himself as a "litigant in person". In principle we were content that Mr Hawas could represent the Claimant (noting that he had done so at case management hearings) but we found that the Claimant jumped in and commented and took over so frequently that, fairly quickly, I formed the view that the Claimant would not let Mr Hawas do the advocacy. Consequently, the Claimant became the advocate in his own case but Mr Hawas continued to provide helpful guidance and support to the Claimant. We were grateful for Mr Hawas's assistance generally. Mr Bunting represented all the Respondents, there being no conflict as between the Respondents' defences to the claims.

## Introduction

4. The first respondent ("R1") operated a care home, Plane Tree Court Nursing Home in Stockport, for elderly patients including individuals needing end of life care. At all material times the Claimant and Respondents R2 to R5 worked there. I will return to consider the company structure of R1 later. It seems that he was employed by the R1.

5. The Claimant was an experienced Registered General Nurse (RGN) working for R1 between October 2018 and 08.04.24 when he was dismissed. The Respondents' position is that the Claimant was dismissed for misconduct. In contrast, the Claimant makes various complaints about the dismissal, the way it was handled

by the Respondents and allegations relating to the unfair behaviours on the part of all the Respondents in the period shortly before his dismissal. His claims as originally presented are summarised as:

i. Discrimination on the basis of disability section 6 Equality Act 2010;

ii. Indirect discrimination section 19 Equality Act 2010;

iii. Sex discrimination under section 13 Equality Act 2010 (but noting that his was eventually withdrawn);

iv. Harassment – Section 26 Equality Act (protected characteristic sexual orientation)

v. Discrimination on the basis of sexual orientation, eventually specified as being contrary to sections 13 Equality Act 2010;

vi. Whistleblowing detriment under section 43B of the Employment Rights Act ("ERA") 1996;

vii. Automatic unfair dismissal sections 98 and 103A ERA;

viii. Unlawful deduction of wages.

Procedural background and list of issues

6. Throughout, there have been problems in this case demarking the ambit of the claims. The case came before Employment Judge Leach on 10 July 2024 for a case management hearing. Judge Leach summarised the claims [A251- 257]. He attempted to unravel the somewhat complicated background pointing out [§18] that the various complaints were (in summary) difficult to follow. Judge Leach expressed a view to the Claimant's friend Mr Hawas (who acted as a representative at that hearing) that the Claimant might be "overcomplicating" his claim by "*trying to raise as many complaints as possible that he might be able to squeeze into the factual circumstances without a careful analysis of the relevant legislation and application of that to the facts in this case.*" Judge Leach asked the Claimant to reconsider and effectively reorganise his claim and warned that he might need to make an application to amend his case. On 10 July 2024 Judge Leach also clarified who the correct Respondents were, and which were the correct ACAS certificates and claim forms regarding the individual Respondents. I do not propose to go through that exercise again, suffice it to say that [§24, A-254] Judge Leach identified Altruistic Care Limited as the first Respondent, as well as the other respondents R2 to R5.

7. Because the substance of the Claimant's claims was not clear, Judge Leach adjourned the Case Management Hearing of 10 July 2024 to 1 October 2024. In the interim, the parties were told to try to provide lists of issues and to try to agree what the (agreed) list of issues would be at the final hearing. At the end of the written Case Management Order emanating from the 10 July 2024 hearing, Judge Leach provided a draft list of issues which he annotated so that that the parties could see what further information was required for the adjourned hearing on 1 October 2024.

8. On 31 July 2024 Solicitors acting for all the Respondents provided a Grounds of Resistance document where all the defences of all Respondents were summarised in one document [A-290 to 310]. The Respondents denied all the Claimant's allegations.

9. On 1 October 2024 Judge Leach presided over the second case management hearing. Again, Mr Hawas acted as McKenzie friend for the Claimant. Judge Leach set a timetable for the final hearing and again tried to identify what the list of issues would be at the final hearing. Judge Leach also noted that the Claimant had provided an application to strike out the Respondents' defences on the basis that the Claimant argued that the Respondents' defences to the various allegations had no prospects of success. The hearing on 1 October 2024 over-ran and there was no time to deal with the strike out application, which we ended up dealing with at the beginning of the final hearing (14 July 2025 - see below).

10. The outcome of the case management hearing of 1 October 2024 was that Judge Leach could still not identify an agreed list of issues. Some issues were still outstanding. Consequently, Judge Leach completed the parts of the Case Management Order ("CMO") including the parts of the list of issues that were agreed, and he gave the Claimant a further 14 days from receipt of the CMO to provide a further list of issues which would form the basis of the structure of the final hearing before us. Judge Leach also gave other standard Case Management Directions for preparation towards the final hearing, including for the Claimant to provide a witness statement. At the end of the CMO, Judge Leach again provided a draft list of issues which included the allegations, but which was annotated by highlighting and comments in order to assist the Claimant in identifying the gaps in his case and to take steps to fill those gaps or abandon those elements of his case as he saw fit.

11. The Claimant tried to address Judge Leach's Order. Within the time limits that Judge Leach had set, the Claimant submitted a document headed "*Brief Overview*" by email dated 5 November 2024. The Brief Overview and the email are at [A330 – 349]. The Claimant also provided an example of a payslip (dated 5 February 2024) [A-350]. Around the same time, the Claimant also provide a document headed "*Skeleton argument for second striking out the Respondent's whole case*" [A-351-361].

12. Separately, the Claimant has provided a detailed schedule of loss [B1-20 and supporting payslip]. Nonetheless, one of the issues that we decided at the start of the final hearing was that we would not address any remedy matters because we simply did not have enough time. We told the parties that we would concentrate on liability issues and return to remedy issues later and that there would be a further remedy hearing if required.

13. Given what had transpired before the final hearing there was still no list of issues before us which had been agreed at the time of the final hearing. Consequently, in preparing for the final hearing itself, Mr Bunting had helpfully combined the draft list of issues at the end of Judge Leach's Case Management Order of 1 October 2024 with the Claimant's "*Brief Overview*" document emailed on 5 November 2024. At the beginning of the final hearing the Claimant initially objected to Mr Bunting's document and seemed to be of the view that Mr Bunting was trying to take advantage of him. However, when I explained what the document was and what Mr Bunting had done, and after the Claimant had had a short adjournment to study the document with Mr

Hawas who was again supporting him, he eventually accepted that the document was structured so as to present his case as per the 5 November 2024 "*Brief Overview*" document within the case management order structure set out previously by Judge Leach. I will set out this combined draft list of issues (Mr Bunting's document) in bold below.

14. On the first day of the final hearing, we were faced with 3 lever arch files of documents running to over 800 pages as well as witness statements, (none of which we had seen before), and we dealt with two strike out applications, which we dismissed by means of a short extempore judgment. Below I will set out the relevant details of the strike out decision because it is relevant to issues in the final hearing and particularly the topic of protected disclosures. It should be noted, however, that dealing with Mr Bunting's draft of the combined list of issues, the strike out applications and associated case management issues, took the whole of the first day and considerably ate into the time allocated to the case. It has contributed to the delay, not least because the case was heard just before the August holiday period.

15. For completeness, I record here that, after the final hearing had been completed the Claimant sent in further material and an email at 11:49 to me via the Manchester Employment Tribunal general email address (which was forwarded to me at 21:56 on 18 July 2025). The email is headed "ACAS Code and Impact Assessment". We cannot deal with any documents that the Respondent has not had opportunity to deal with at the hearing, although we noted that the ACAS code is in the public domain and was referred to at the hearing and particularly in final submissions.

**List of issues**

16. As set out above, clearly identifying the issues had proved challenging at the pre-final-hearing stages of this case. We emphasise to the Claimant, as Judge Leach did, that the list of issues is necessary to structure the Tribunal's deliberations after the hearing. The combined list of issues (set out in the document prepared by Mr Bunting and now agreed by the Claimant to structure our decision-making process) are:

**i. <u>Time limits</u>:**

**1.1 Given the date the claim form was presented and the effect of early conciliation, any complaint about something that happened before 11 January 2024 may not have been brought in time.**
**1.2 Were the discrimination and victimisation complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:**
**1.2.1 Was the claim made to the Tribunal within three months (allowing for any early conciliation extension) of the act to which the complaint relates?**
**1.2.2 If not, was there conduct extending over a period?**
**1.2.3 If so, was the claim made to the Tribunal within three months (allowing for any early conciliation extension) of the end of that period?**
**1.2.4 If not, were the claims made within such further period as the Tribunal thinks is just and equitable? The Tribunal will decide:**

**1.2.4.1 Why were the complaints not made to the Tribunal in time?**
**1.2.4.2 In any event, is it just and equitable in all the circumstances to extend time?**

**ii. <u>Disability (part 1)</u>: (This was the claim relating to s.6 Equality Act 2010. Judge Leach had annotated to CMO[1] to say that the Claimant was considering whether to pursue this claim or not).**

**2.1 Did the claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about? The Tribunal will decide:**

**2.1.1 did the Claimant have a physical or mental impairment? The claimant relies on:**

**2.1.1.1 Cardiac issues (MI) following a heart attack in 2010 as a result of which the claimant is on medication for the rest of his life.**

**2.1.1.2 Cervical Myelopathy**

**2.1.1.3 Depression and anxiety.**

**(Judge Leach had annotated the CMO to say that if disability discrimination complaints are being pursued, is it only the depression and anxiety impairment that is relevant?)**

**In response, the Claimant had set out his response in his 05.11.24 document:**

***The Claimant has a disability as per the Equality Act definition (section 6) which has substantial and long-term adverse effects that affect his day-to-day activity as per the following:***

***Physical and Mental Impairment (Section A Equality Act 2010): The Claimant has mental health impairment (depression & Anxiety) which is strongly linked to his physical impairment (Myocardial Infarction & spinal myelopathy) which was developed after the investigatory meeting on 18th October 2023***

**<u>Disability (part 2)</u>**

**Judge Leach had annotated the CMO to say that, if disability discrimination complaints are being pursued is it only the depression and anxiety impairment that is relevant?**

[1] Case Management Order

**2.1.2 If so, at the relevant time, did the impairment (alone or together) have a substantial and adverse effect on his ability to do normal, day to day activities?**

**2.1.3 If not, did the claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?**

**2.1.4 If so. would the impairment have had a substantial adverse effect on his/her ability to carry out day-to-day activities without the treatment or other measures?**

**2.1.5 Were the effects long term? Had the impairment lasted for at least 12 months or likely to last at least 12 months? If not, where they likely to recur?**

**2.2 If so, was the Respondent aware, or ought the Respondent have been reasonably aware of this disability and if that is the case, when was it aware or should have become aware?**

**Disability (part 3) Indirect Disability Discrimination**

**Judge Leach had annotated the CMO to say, in relation to s.19 Equality Act 2010, that the Claimant was considering whether to pursue disability discrimination complaints and that, if complaints were being pursued, then the required details must be identified in accordance with the discussions (at the Case Management hearings) and guidance.**

**3.1 Did the Respondent apply the provision, criterion or practice of [gap]**

**(Judge Leach annotated to say that the Claimant must provide the PCP that he was relying upon).**

***The Claimant's response was "PCP is: JA R5 allocate the C to attend Mandatory training & sickness management meetings at the same time & disregarding all his requests to stress him out a exert more pressure deliberately which exacerbated his paranoia & panic attacks). Also JA R5 done the same in the disciplinary invitation on 26th March.***

**3.2 If so, whether it did or would apply such PCP to other persons with whom the Claimant does not share his disability?**

***Claimant's response: "hypothetically no*".**

**3.3 If so, did or would such a PCP put persons who share the same disability as the Claimant at a particular disadvantage when compared to persons with whom the Claimant does not share that characteristic?**

***Claimant's response: N/A***

**3.4 If so, did the PCP put the Claimant at a particular disadvantage?**

**(Judge Leach annotated to say that the Claimant was to insert the disadvantage he alleges he was placed at).**

***Claimant's response: The C couldn't take all requests & issues in one go as he experienced panic attacks & anxiety because of JA R5 less favourable and not being heard.***

**3.5 If so, can the Respondent show that the PCP as a proportionate means of achieving a legitimate aim?**

**(Judge Leach annotated that the Respondent was to confirm once Claimant had provided further information).**

**iii. <u>Direct Discrimination</u>**

**The Claimant has struck this previous allegation out and said on his 05.11.24 document that he withdraws the claim[2]. He has struck through §4 of Judge Leach's CMO dealing with direct discrimination pursuant to s13 Equality Act 2010.**

**iv. <u>Harassment – Section 26 Equality Act (protected characteristic sexual orientation)</u>**

**5.1 On 3 November 2023 during a disciplinary hearing, did the fourth respondent act in a way that was (or could reasonably have been seen as) ridiculing the claimant by sniggering at his voice and gestures?**
**5.2 If so, was that unwanted conduct?**
**5.3 Was it related to the claimant's sexual orientation as a gay man?**
**5.4 Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?**
**5.5 If not, did it have that effect? The Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.**

**v. <u>Direct Discrimination – Section 13 Equality Act (protected characteristic sexual orientation)</u>**

**6.1 What are the facts in relation to the following allegations:**

[2] Bizarrely, in the 5 November 2024 document the Claimant says that he still "believes" that he was discriminated against on grounds of sex, although he also seems to concede that he has no evidence of this.

**6.1.1 That the Claimant was ridiculed by the fourth respondent in a disciplinary hearing on 3 November 2023 when she sniggered at the claimant's voice and gestures;**

**6.1.2 That the fourth Respondent gave the claimant a disciplinary warning on 3 November 2023;**

**6.1.3 The Claimant's dismissal on 8 April 2024?**

**6.2 Did the Claimant reasonably see the treatment as a detriment?**

***The Claimant has responded to say that he believes that "allegations mentioned in 6.2 were detriments".***

**6.3 If so, has the Claimant proven facts from which the Tribunal could conclude that in any of those respects the Claimant was treated less favourably than someone in the same material circumstances (a "straight" man) was or would have been treated?**

**(Judge Leach noted that the Claimant relies on a hypothetical comparison).**

**6.4 If so, has the claimant also proven facts from which the Tribunal could conclude that the less favourable treatment was because of sexual orientation?**

**6.5 If so, has the respondent shown that there was no less favourable treatment because of sexual orientation?**

**vi. <u>Protected Disclosures</u>**

**(Judge Leach noted that the Claimant was considering whether to pursue protected disclosure complaints and commented that if he was, then the Claimant needed to provide the information that he highlighted in the CMO document).**

**7.1 Did the Claimant make disclosures of information? The Claimant relies on the following alleges disclosures:**

**7.1.1 Disclosure 1 – on 12 January 2024, the Claimant made online submissions to the NMC regarding Peter Maclean, Discharging Co-ordinator at NHS Stockport Foundation Trust, that he had failed to disclose a safeguarding concern to the Claimant in relation to a patient which prevented that patient from returning to a previous care home.**

**7.1.2 Disclosure 2 – on 3 April 2024, the Claimant made online submissions to the Solicitors Regulation Authority and the Information Commissioner's Office AND ANOTHER NHS**

**TRUST PORTSMOUTH regarding Gary Hay, solicitor and owner of a HR consultancy company, Law2Business, who the Respondent had instructed to chair the Claimant's disciplinary hearing. The Claimant claims Mr Hay had committed a criminal offence, failed to comply with a legal obligation and/or other breach being concealed.**

**7.1.3 Disclosure 3 – on 4 April 2024, the Claimant e-mailed Alyshba Jivraj regarding his concerns in relation to Mr Hay**

**7.2 In relation to disclosure 1, the Claimant relies upon Section 43B(1)(d) in that the claimant was concerned for the residents' health and safety.**

**7.3 In relation to disclosure 2, Judge Leach annotated the CMO to say that the Claimant was to confirm the relevant section that he relied upon and what concerns he had in mind at the time of that disclosure.**

***The Claimant's response was that (a) section 43B(1)(A): the Claimant mistakenly plagiarism for misrepresentation as GH was introduced HR Consultant where he was an expert lawyer in interrogation for 25 years and is known as "an expert for difficult doctors" who abused his power of trust for his own financial gains & benefit"*** **[sic].** ***(b) Section (1)(B): Mr Hay owner of a company which was dissolved at the time of the WB ow a non-exist company would oblige to tax & other obligations?*** **[sic]**

**7.4 In relation to disclosure 3, Judge Leach said that the Claimant was to confirm the relevant section he relies upon and what concerns he had in mind at the time of that disclosure.**

***The Claimant's response was: Section 43(1)(F) AJ R4 concealed all the information about Mr May regarding his executive director NHS who his company dissolved & using his NHJS credentials.*** **[sic]**

**7.5 Did the Claimant have a reasonable belief that the making of any of the alleged disclosures was in the public interest and tended to show one of the above failures or potential failures as identified?**

***The Claimant's response was: The C definitely believes that the 1st & 2nd disclosure would be of the public interest.*** **[sic]**

**vii. <u>Detriments – s43B Employment Rights Act 1996</u>**

**8.1 What are the facts in relation to the following alleged acts or deliberate failures to act by the Respondent?**

**D1 the wages paid to the claimant on or about 1 February 2024 and particularly deduction made from wages.**

**D2 the decision not to uphold grievances raised by the Claimant and communicated to the claimant on or about 5 February 2024**

**8.2 Did the Claimant reasonably see that act or deliberate failure to act as subjecting him/her to a detriment?**

**8.3 If so, was it done on the ground that he made a protected disclosure /other prohibited reason]?**

**viii. <u>Unfair dismissal – s98 and s103A employment Rights Act 1996</u>**

**<u>Reason:</u>**

**9.1 Has the respondent shown the reason or principal reason for dismissal?**

**9.2 Was it a potentially fair reason under section 98 Employment Rights Act 1996?**

**<u>Fairness – section 98 ERA</u>**

**9.3 If the reason was misconduct, did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant? The Tribunal will usually decide, in particular, whether:**

**9.3.1 The respondent genuinely believed the claimant had committed misconduct;**

**9.3.2 there were reasonable grounds for that belief;**

**9.3.3 at the time the belief was formed the respondent had carried out a reasonable investigation;**

**9.3.4 the respondent followed a reasonably fair procedure;**

**9.3.5 dismissal was within the band of reasonable responses.**

**ix. <u>Automatic Unfair dismissal – s103A ERA</u>**

**(Judge Leach annotated to say that the Claimant was to consider whether to pursue this complaint – that the sole or principal reason for his dismissal was that he had made one or more of the protected disclosures alleged).**

**9.4 Was the reason or principal reason for the Claimant's dismissal that the Claimant had made a protected disclosure? The Claimant relies on the alleged disclosures 1 to 3 identified above.**

***The Claimant responded: On the ground of the C protected characteristic by blowing the whistle against Mr Hay the chairperson of the C disciplinary hearing by misrepresentation fraudulent action & using his NHS credentials for his own financial gains & benefits the Claimant received his dismissal letter 4 days after the whistle blowing where he should be heard & dismissed by the chairperson, this would happen in the normal process, since Mr Hay was the one where the whilst was blown against, AJ R4 took over his part & dismissed the C to avoid the doubt of the automatic unfair dismissal & ensure that the process went fairly, they sent the disciplinary hearing link invite to the C 8 minutes after commending the meeting (10:08 am) intentionally without calling the C to ask him to attend the hearing as they did in the previous hearings to justify the hearing was done in the absence of the C & the dismissal decision has been taken fairly, the C thought that the meeting was cancelled after the whistleblowing incident as no invite was received prior to the meeting.***

**x. <u>Unlawful deduction of wages</u>**

**10.1 The Claimant complains that he received statutory sick pay on 11, 15, 16 and 17 January 2024 (and became aware of this deduction on 5 February 2024, when he received his salary).**

**10.2 Was there a deduction from the claimant's full pay? (Respondent to provide a breakdown of pay in January 2024).**

**10.3 If so, was the deduction unauthorised and unlawful?**

<u>Detriments</u>

17. For clarity, it should be noted that, in relation to the Claimant's protected disclose/whistleblowing claims (pursuant to section 43B of the Employment Rights Act 1996), he asserts that these resulted in two detriments, namely failure to pay his salary and rejection of his grievance.

**The evidence**

18. The parties had agreed a bundle of documents in three lever arch files which ran to around 818 pages. Any references to page numbers [brackets] in these Reasons is a reference to that bundle unless otherwise indicated.

19. Just because I have not mentioned a piece of evidence here does not mean that we have not considered it. In writing this judgment I have focussed on summarising as much as possible and focusing on the most important pieces of evidence.

20. We heard from five witnesses, the Claimant and Respondents 2 to 5, each of whom swore an oath or confirmed the truth of a written statement before being questioned.

21. The Claimant was the main witness on his side. Mr Bunting indicated that he did not have any questions for the other witnesses on the Claimant's side who attended. Nonetheless, we record that the Claimant served witness statements from:

i. Lieutenant Matthew Wood (RN) dated 13 June 2025 who (inter alia) says that he attended "*a meeting with John's management team and seniors when this initial* [sic], *so I have relatively good understanding of the work John has been conducting*…" [§5]

ii. Ms Amy Duffy (the Claimant's sister) dated 13 June 2025 who did not attend the hearing to give evidence.

iii. Mr Mark Hambleton dated 25 May 2025 who did not give oral evidence. His witness statement was essentially a character witness. He did not directly witness the events and matters that the Claimant complains of.

iv. Mr Anwar ("Syed") Ali dated 16 June 2025 who did not attend the hearing to give evidence.

The above witness statements were admitted in evidence and given appropriate weight. Ms Duffy in particular was afforded little weight because she was present on 11 March 2024 (see below) but did not attend to be cross-examined by the Respondent.

22. The only liability-related witness other than the Claimant himself, who attended, was Mr Wood. He only had a very short involvement with the events under review. Because the Respondent had no questions for him, I said that we would take Mr Wood's evidence into account as if he had been sworn and insofar as his evidence is relevant to the issues that we have to had to decide.

23. Regrettably, the Claimant had not followed Judge Leach's Case Management Order about witness statements and he had not dealt with the main issues under dispute in a witness statement that could and should have set out what happened when and generally gave his narrative regarding his case. Instead, his witness statement focussed on the impact of his claimed experiences. (His witness statement starts: "*I… submit this statement to the Employment Tribunal to share the profound emotional, psychological, professional and financial toll that I have endured as a result of the unlawful, discriminator and retaliatory actions of Altruistic Care Ltd and its senior managers*" [sic]. Nonetheless, following encouragement from me, Mr Bunting did cross-examine the Claimant on all the issues in the combined list of issues and the issues in his pleaded case, as far as the Respondents understood the Claimant's allegations.

24. Given the subject matter of the claim and the Claimant's clinical history of heart problems and cervical myelopathy we bore in mind the Claimant's health status throughout the hearing. We also kept in mind the helpful guidance contained within the Equal Treatment Benchbook regarding the challenges faced by litigants in person in both preparing and presenting their claims, as well as the sections on sex (even

though sex discrimination was not pursued as a separate allegation in the case), sexual orientation and physical disabilities. From time to time the Claimant needed extra breaks or additional time during breaks, particularly to consider the Respondent's documents, such as the revised list of issues document presented at the beginning of the hearing. At times the Claimant became emotional and agitated. On occasions I had to ask him not to make offensive comments about the Respondents, including regarding religious comments, and had to remind him to modify his language on occasion, although generally he was polite and courteous to the Tribunal and witnesses.

25. Generally, the Claimant expressed himself very confidently, freely and at times using graphic language. This had the advantage that the Tribunal had no doubt about what he was feeling much of the time. At one point the Claimant became particularly agitated and threatened to walk out of the hearing. However, we were pleased that he was able to calm himself and remained in the hearing room allowing the hearing to progress. The Respondent witnesses were professional in their manner throughout and were able to answer the Claimant's cross-examination questions in a calm and considered manner. They made appropriate concessions.

**Strike out applications**

26. At the beginning of the final hearing, we were faced with two strike-out applications (which I have mentioned above) which we dealt with before proceeding to hear the evidence in the main claims. As set out above, these were the Claimant's applications. The gist was that the Respondents' claims were so lacking in substance that they should not even be allowed to defend the Claimant's claims against them. The Claimant relied, inter alia, on a skeleton argument [starting at A 330]

27. The Claimant's strike-out applications were difficult to follow but they revolved around him alleging that: the grievance and appeal investigations were unfair insofar as the reports produced contained mistakes in the formatting and formal details at the beginning of the reports; the investigations were not conducted fairly insofar as the minutes of the meeting on 26 March 2024 contained mistakes; the Claimant raised issues about who his actual employer was, whilst at the same time he said that HMRC had confirmed that "he is an Altruistic Care Employee", (although we noted that it is for him to decide who his employer is and his responsibility to bring the claim against the correct party). In the second strike out application the Claimant claimed that the Respondents had exhibited "manipulative" behaviours, as well as repeated allegations of fraud, "misleading and deceitful behaviour". He also claimed that he has not seen his contract of employment and that he had not seen certain allegedly relevant emails. The Claimant had identified that he was particularly relying on (1)(a), (b) and (e) of Rule 38 of the Employment Tribunal Procedure Rules 2024. Dealing with the Claimant's strike out applications was time-consuming because they were difficult to follow and he referred to documents within the bundle without giving the context.

28. The Respondents resisted the strike out applications. The thrust of their submissions was that there was a dispute where evidence needed to be called and decisions made by us. In relation to the first application, the Respondents argued that there had been no "manipulation of the documents" generated in investigating the Claimant's case, any errors were minor and nothing turned on them. The Claimant

took particular exception to a document [D232] produced by Sam (Samantha) Marshall. The Respondents submitted that it was a matter of evidence whether or not this was relevant to our findings. Even if the Respondents had made mistakes and were "culpable", this would not amount to a reason to strike out, they argued. Mr Bunting commented that the Claimant used **"**lots of strong adjectives" but had provided "little forensic detail". The Respondents also noted the Claimant's complaints about the ways that various meetings had been recorded by audio and video. Nonetheless, these complaints did not amount to issues which would trigger striking out the Respondents' defences. Whilst the Respondents noted the Claimant's complaints around the legality of the business [334-5], in reality there was no dispute regarding the identity of his employer being R1. So far as the second strike out application was concerned, the Respondents pointed out that the detriments are what the case is about. Whilst the Claimant made allegations of "falsification", it was unclear what is meant, and, in particular there, was no falsification of ET3 responses. The Respondents simply did not understand the Claimant's complaints about his contract of employment because his signature appeared on his contract of employment [D9]. (The complete contract is at [D1-D9]).

29. We adjourned to consider the strike-out applications and unanimously came to the decision that they should be dismissed and that the case should proceed with the Respondents being allowed to defend the allegations in accordance with their grounds of resistance. We made our decision having considered Rule 38 of the Employment Tribunal Procedure Rules 2024. We noted that strike out of a response is a very high bar to reach and that we needed to hear the evidence and determine what we were and were not satisfied about. Many of the points that the Claimant had made in the strike out application were matters of submission. Further, he had not provided the forensic detail in any document or in oral submissions which would get him over the high hurdle. We noted that, to succeed, the Claimant had to show that the defences were scandalous, vexatious and/or had no reasonable prospects of success. Alternatively: that the manner in which the proceedings had been conducted by or on behalf of the Respondent has been scandalous, unreasonable or vexatious; or that the Respondent had failed to comply with any of these Rules or with an order of the Tribunal; or that they had not actively pursued part of their claim; or, finally, that the Tribunal considered that it was no longer possible to have a fair hearing in respect of the response.

30. In making our decision we reminded ourselves of the case law guidance on "scandalous or vexatious" in **Bennett v Southwark LBC [2002] ICR 881**. We noted that a party may find their defence is struck out if they have conducted the case in an "unreasonable" manner. However, for a Tribunal to strike out for unreasonable conduct, it must be satisfied either that the conduct involved deliberate and persistent disregard of required procedural steps, or had made a fair trial impossible; and in either case, the striking out must be a proportionate response, as per **Blockbuster Entertainment Ltd v James** [**2006] IRLR 630, CA.**

31. We noted that there was no evidence that relevant witnesses have gone missing or died or were ill and unavailable. Further, there was no evidence that key documents were no longer available. We noted that we would not reach final decision until we had been taken to all the relevant evidence. Consequently, we found that the strike out application failed. In making our decision we reminded the Claimant that he needed to look at the crux of the case and not focus on what was peripheral.

32. It is also important to record that, in reaching our decision, we looked in detail at what the Claimant had said about protected disclosures in his "*Brief Overview*" document (emailed to the Tribunal in November 2024 in response to Judge Leach telling the Claimant that he had to specify the detail of his list of issues). This document had never added any further alleged protected disclosures to the list of issues and disclosures that Judge Leach had already identified. Specifically, the "*Brief Overview*" document did not provide any further details of any protected disclosures, including relating to any events on 10 November 2023 or on 27 December 2023. As set out above, the relevant claimed protected disclosures under review by us were: Disclosure 1 – *on 12 January 2024, the Claimant made online submissions to the NMC regarding Peter McLean, Discharging Co-ordinator at NHS Stockport Foundation Trust, that he had failed to disclose a safeguarding concern to the Claimant in relation to a patient which prevented that patient from returning to a previous care home*; Disclosure 2 – *on 3 April 2024, the Claimant made online submissions to the Solicitors Regulation Authority and the Information Commissioner's Office AND ANOTHER NHS TRUST PORTSMOUTH regarding Gary Hay, solicitor and owner of a HR consultancy company, Law2Business, who the Respondent had instructed to chair the Claimant's disciplinary hearing. The Claimant claims Mr Hay had committed a criminal offence, failed to comply with a legal obligation and/or other breach being concealed*; and Disclosure 3 – *on 4 April 2024, the Claimant e-mailed Alyshba Jivraj regarding his concerns in relation to Mr Hay*.

## Important background matters

33. Before I consider the chronology of relevant events there are two further background matters which seemed to trouble the Claimant and about which he seemed to be very suspicious, but which are not relevant to his claims.

Company structure

34. The Claimant worked at Plane Tree Court Nursing Home, St Lesmo Road, Stockport. His contract of employment says that he was employed by R1 [D1]. The wage slip that he presented [B1] is headed "Altruistic Care Ltd" and is absolutely standard showing gross pay as well as the usual deductions for tax, NI and pension. R1 also operated another care home called Hayes Cottage Nursing Home in Hayes, Uxbridge. The Claimant never worked there.

35. The unchallenged evidence was that both Plane Tree Court and Hayes Cottage Nursing Homes belong to Serencroft Limited (Company number 14921066) whose registered address is Unit 5, Exhibition House, Addison Bridge Place, London. The evidence was that Serencroft Limited was the parent company which owned other nursing homes in addition to Plane Tree Court and Hayes Cottage and that some of the Respondents worked at or with the other nursing homes. Because a lot of the work tasks that the Respondents worked on were administrative, it did not matter where they were physically based. One of their directors (Operations Director) is Ms Fahreen Jivraj-Maguire (who is not a Respondent but who heard the Claimant's appeal against dismissal on 8 May 2024). R4 is also employed by Serencroft Ltd. Nonetheless, the Claimant was very distracted by the company structure and frequently commented, and also submitted, that there was something dishonest regarding the company structure, although he failed to specify his precise concern. His complaints were vague

and general. He was fully aware of the existence of Serencroft Ltd. He could have asked his employers for clarification of the legal relationship between Serencroft Ltd, Altrustic Care Ltd, Plane Tree Court Nursing Home and Hayes Cottage. Information about the companies and directors is available to the public on Companies House Gov.UK website. There was no evidence that the Claimant ever made such basic enquiries. During the hearing the Claimant's approach was to cast aspersions regarding the companies, and by implication the directors, without providing any detailed complaint; certainly no complaint amounting to a legal claim.

Peninsula

36. R1 used Peninsula Businesses Servies Limited apparently trading as Peninsula Face2Face ("Peninsula") to perform some "HR" (ie human resources-related activities). In effect they delegated or out-sourced certain tasks to them. I have not seen the contract (including the terms of contract) between Peninsula and R1. The documents that we were taken to suggested that the formal contract was probably between Peninsula and Serencroft Limited. Peninsula provided independent advice and individuals with experience in HR and employment-related matters to deal with certain matters relating to the Claimant. Peninsula seem to have been approached by the Respondent for advice in October 2023 and were instructed by R1 (in reality probably Serencroft Ltd) to assist from the end of November 2023.

37. The Claimant was particularly critical of the appeal outcome report provided after the meeting with Matt Lucas on 3 January 2024 (see below at [§89])

38. Again, the Claimant seemed extremely suspicious of this arrangement without being explicit about what the problem was or why it was unlawful. Rather, his approach was again to cast aspersions and, other than point to a particular document which was carelessly copied, he did not explain his criticism of Peninsula or Serencroft or R1 in their use of Peninsula other than the key complaints which form the issues in the case.

## Relevant Legal Principles – Equality Act 2010

Jurisdiction

39. As per the list of issues (set out at §15 above – and noting the order that they are presented in the list of issues) the summary of the Claimant's claims relate to:

i. Disability pursuant to section 6 of the Equality Act 2010;

ii. Indirect disability discrimination pursuant to section 19 of the Equality Act 2010;

iii. Harassment pursuant to section 26 of the Equality Act 2010;

iv. Direct Discrimination pursuant to section 13 of the Equality Act 2010 where the protected characteristic is sexual orientation;

v. Protected disclosures resulting in detriments (unpaid wages and rejection of his grievance) pursuant to section 43B of the Employment Rights Act 1996.

vi. Unfair dismissal pursuant to sections 98 and 103A of the Employment Rights Act 1996.

vii. Automatic Unfair Dismissal pursuant to section 103A of the Employment Rights Act 1996.

viii. Unlawful deductions from wages

40. Disability pursuant to **section 6 of the Equality Act 2010** provides:

> *(1) A person (P) has a disability if—*
>
> *(a) P has a physical or mental impairment, and*
>
> *(b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.*
>
> *(2) A reference to a disabled person is a reference to a person who has a disability.*
>
> *(3) In relation to the protected characteristic of disability—*
>
> *(a) a reference to a person who has a particular protected characteristic is a reference to a person who has a particular disability;*
>
> *(b) a reference to persons who share a protected characteristic is a reference to persons who have the same disability.*
>
> *(4) This Act (except Part 12 and section 190) applies in relation to a person who has had a disability as it applies in relation to a person who has the disability; accordingly (except in that Part and that section)—*
>
> *(a) a reference (however expressed) to a person who has a disability includes a reference to a person who has had the disability, and*
>
> *(b) a reference (however expressed) to a person who does not have a disability includes a reference to a person who has not had the disability.*
>
> *(5) A Minister of the Crown may issue guidance about matters to be taken into account in deciding any question for the purposes of subsection (1).*
>
> *(6) Schedule 1 (disability: supplementary provision) has effect.*

41. **Section 19 of the Equality Act 2010** dealing with indirect disability discrimination provides:

> *(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.*
>
> *(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—*
>
> *(a) A applies, or would apply, it to persons with whom B does not share the characteristic,*

> *(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,*
>
> *(c) it puts, or would put, B at that disadvantage, and*
>
> *(d) A cannot show it to be a proportionate means of achieving a legitimate aim.*
>
> *(3) The relevant protected characteristics are— age; disability; gender reassignment; marriage and civil partnership; race; religion or belief; sex; sexual orientation.*

42. **Section 13 of the Equality Act 2010** dealing with protected characteristic (sexual orientation) provides:

> *(1) 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.*

43. Harassment contrary to **section 26 of the Equality Act 2010** is defined:

> *(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.*
>
> *(2) A also harasses B if—*
>
> *(a) A engages in unwanted conduct of a sexual nature, and*
>
> *(b) the conduct has the purpose or effect referred to in subsection (1)(b).*
>
> *(3) A also harasses B if—*
>
> *(a) A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,*
>
> *(b) the conduct has the purpose or effect referred to in subsection (1)(b), and*
>
> *(c) because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.*
>
> *(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—*
>
> *(a) the perception of B;*
>
> *(b) the other circumstances of the case;*
>
> *(c) whether it is reasonable for the conduct to have that effect.*

> *(5) The relevant protected characteristics are— age; disability; gender reassignment; race; religion or belief; sex; sexual orientation.*

44. Protected disclosures are dealt with at section **43B of the Employment Rights Act 1996** which provides:

> (1) *In this Part a "qualifying disclosure " means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—*
>
> *(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, is being or is likely to be deliberately concealed.*
>
> (2)…

45. Matters relating to unfair dismissal pursuant to sections 98 and 103A of the Employment Rights Act 1996 are set out:

> Section 98 (Unfair dismissal General Fairness)
>
> *(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—*
>
> *(a) the reason (or, if more than one, the principal reason) for the dismissal, and*
>
> *(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.*
>
> *(2) A reason falls within this subsection if it—*
>
> *(a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,*
>
> *(b) relates to the conduct of the employee,*
>
> *(3)…*
>
> *(4) Where the employer has fulfilled the requirements of sub-section (1), 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 reasonable 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".*

Section 103A (Protected disclosure).

> *An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure*

46. Noting that the complaints of disability, direct discrimination (sexual orientation) and harassment were all brought under the Equality Act 2010, Tribunals should have regard to any relevant provisions of the Code of Practice on Employment issued by the Equality and Human Rights Commission which came into force on 6th April 2011 ("the Code").

47. In relation to unfair dismissal, the proper application of the general test of fairness in section 98(4) has been considered by the Appeal Tribunal and higher courts on many occasions. The Employment Tribunal must not substitute its own decision for that of the employer: the question is rather whether the employer's conduct fell within the "band of reasonable responses": **Iceland Frozen Foods Limited v Jones [1982] IRLR 439 (EAT)** as approved by the Court of Appeal in **Post Office v Foley**; **HSBC Bank PLC v Madden [2000] IRLR 827**.

48. If the employer fails to show a potentially fair reason for dismissal (in this case, conduct), dismissal is unfair. If a potentially fair reason is shown, the general test of fairness in section 98(4) must be applied.

49. In a misconduct case the correct approach under section 98(4) was helpfully summarised by Elias LJ in **Turner v East Midlands Trains Limited [2013] ICR 525** in paragraphs 16-22. Conduct dismissals can be analysed using the test which originated in **British Home Stores v Burchell [1980] ICR 303**, a decision of the Employment Appeal Tribunal which was subsequently approved in a number of decisions of the Court of Appeal. The "**Burchell** test" involves a consideration of three aspects of the employer's conduct. Firstly, did the employer carry out an investigation into the matter that was reasonable in the circumstances of the case? Secondly, did the employer believe that the employee was guilty of the misconduct complained of? Thirdly, did the employer have reasonable grounds for that belief?

50. Since **Burchell** was decided the burden on the employer to show fairness has been removed by legislation. There is now no burden on either party to prove fairness or unfairness respectively.

51. A fair investigation requires the employer to follow a reasonably fair procedure. By section 207(2) of the Trade Union and Labour Relations (Consolidation) Act 1992 Tribunals must take into account any relevant parts of the ACAS Code of Practice on Disciplinary and Grievance Procedures 2015.

52. The appeal is to be treated as part and parcel of the dismissal process: **Taylor v OCS Group Ltd [2006] IRLR 613.**

53. If the three parts of the **Burchell** test are met, the Employment Tribunal must then go on to decide whether the decision to dismiss the employee was **within the**

**band of reasonable responses**, or whether that band fell short of encompassing termination of employment.

54. It is important that in carrying out this exercise the Tribunal must not substitute its own decision for that of the employer. The band of reasonable responses test applies to all aspects of the dismissal process including the procedure adopted and whether the investigation was fair and appropriate: **Sainsburys Supermarkets Ltd v Hitt [2003] IRLR 23.** The focus must be on the fairness of the investigation, dismissal and appeal, and not on whether the employee has suffered an injustice. The Tribunal must not substitute its own decision for that of the employer but instead ask whether the employer's actions and decisions fell within that band.

55. In relation to warnings, paragraph 21 of the ACAS Code of Practice says that an employee should be told how long a warning remains current. In general terms reliance on an expired warning as part of the decision to dismiss may lead to unfairness: see **Diosynth Ltd v Thomson [2006] IRLR 284** (Court of Session). However, it does not inevitably follow that an employer acting fairly must completely disregard an expired warning.

Burden of Proof

56. Generally, the Claimant has the burden of proof. However, the Equality Act 2010 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."**

57. Consequently, 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.

58. In **Hewage v Grampian Health Board [2012] IRLR 870** the Supreme Court approved guidance previously given by the Court of Appeal on how the burden of proof provision should apply. That guidance appears in **Igen Limited v Wong [2005] ICR 931** and was supplemented in **Madarassy v Nomura International PLC [2007] ICR 867**. Although the concept of the shifting burden of proof involves a two stage process, that analysis should only be conducted once the Tribunal has heard all the evidence, including any explanation offered by the employer for the treatment in question. However, if in practice the Tribunal is able to make a firm finding as to the reason why a decision or action was taken, the burden of proof provision is unlikely to be material.

Time limits

59. The time limit for Equality Act claims appears in section 123 as follows:

**"(1) Proceedings on a complaint within section 120 may not be brought after the end of –**

**(a) the period of three months starting with the date of the act to which the complaint relates, or**

**(b) such other period as the Employment Tribunal thinks just and equitable …**

**(2) …**

**(3) For the purposes of this section –**

**(a) conduct extending over a period is to be treated as done at the end of the period;**

**(b) failure to do something is to be treated as occurring when the person in question decided on it".**

## Findings of fact

60. This section of our Reasons sets out the broad chronology of events. There were some points where we had to resolve disputed issues of primary fact in order to decide the case, and where appropriate we will address these disputes in our discussion and conclusions section below rather than in this section.

61. The Claimant was employed as a Deputy Manager and Registered General Nurse between 1 October 2018 and 8 April 2024.

Letter of concern

62. On 10 May 2023, the Claimant was issued with a Letter of Concern by R3 (Riley) due to his conduct towards his Line Manager (R2 Saju) on 24 April 2023 which she felt was disrespectful and insubordinate [D17-D18]. It is noted that the letter of concern was issued on Serencroft headed. The letter states that the Respondent did not intend to proceed to formal disciplinary action. The letter warned that any repeat "*of this conduct, or indeed any misconduct in general" might result in the Claimant being subject to formal disciplinary action*". It is noted that the substantive issue involved admission of a patient to Plane Tree Court Care Home ("PTCCH"). According to Claimant's live evidence, he apologised. The Claimant said that they had "*kissed and made up*". He did not dispute the basis of the letter of concern.

Complaint from Mr Maclean and subsequent investigation

63. On 4 October 2023, a complaint was raised by an outside agency about Claimant's work-related conduct towards Peter Maclean, Discharge Co-Ordinator at Stepping Hill Hospital [D15]. R1 relies on referrals such as the ones from Mr Maclean for new residents. It is relevant to note that Mr Maclean was a Registered Nurse, and so professionally regulated by the Nursing and Midwifery Council ("NMC").

64. After an interaction with the Claimant over the phone about a potential referral, Mr Maclean had phoned PTCCH complaining about the Claimant's conduct in the telephone call. Mr Maclean spoke to R2 (Saju) who asked Mr Maclean to put his

complaint in writing. This resulted in the email at [D15-16]. It was reported that the Claimant had become angry with Mr Maclean and accused him of lying. The Claimant seems to have expressed to Mr Maclean that he would not prioritise referrals provided by Mr Maclean in the future and warned that the Claimant would put any such referrals aside. Mr Maclean suggested that the Claimant's conduct was unprofessional and could have an impact on the wellbeing of residents and the availability of hospital beds required by acutely unwell patients.

65. Ms Saju (R2) replied to Mr Maclean by an email [D20] (date not visible). She said "… *I am extremely disappointed at John's behaviour and I will take this matter seriously*". The telephone conversation between the Claimant and Mr Maclean was later discussed at a meeting between the Claimant, R3 (Riley) and R2 (Saju) on 18 October 2023 [D24] (see below).

66. Meanwhile, the Claimant went home from work early due to sickness on 4 October 2023, seemingly not related to the Mr Maclean complaint. We are satisfied that the Claimant was in work at the beginning of 4 October 2023 because there is also an email at [D15] from Ms Saju (R2) to Mr Riley (R3) at 12:50 saying that the Claimant had gone home as he was "*not well*".

67. The same day (4 October 2023) Ms Saju (R2) and Ms Riley (R3) held a meeting with staff where some colleagues expressed concerns about the Claimant's conduct, as well as unrelated matters, during the staff meeting [D19]. Other than Ms Saju (R2) and Ms Riley (R3) who led the meeting, we cannot see from the note who else attended. There are 16 complaints under the heading relating to the "Unit Manager" and it is unclear whether all 16 relate to the Claimant, although some complaints clearly related to him. We note that the Claimant was not invited to the meeting and indeed only became aware of the meeting a considerable time later.

68. When the Claimant returned to work [as per §6 of her witness statement] Ms Saju (R2) says that she had an "*informal chat*" with the Claimant "*about it*" (ie his conversation with Mr Maclean) in order to "*see if he was able to reflect on the matter, but he was unable to accept that he was in the wrong*….".

69. In order that the chronology makes sense, we record that the root cause of the problem was presented very differently by the respective parties. From the employer's perspective Mr Maclean's complaint was about communication and professionalism. Clearly, Mr Maclean represented a source of business, namely patients in need of care services upon discharge from Stepping Hill Hospital. In stark contrast, the Claimant's view was that his conversation with Mr Maclean involved disclosure of confidential/sensitive information about the potential patient which was relevant to potential "safeguarding" issues pertaining to the patient. The Claimant's reaction to Mr Maclean's communication was that Mr Maclean had been unprofessional.

70. We question the degree of informality with which Ms Saju (R2) and Ms Riley (R3) "chatted" to the Claimant about Mr Maclean's complaints upon his return to work because on 17 October 2023 Ms Saju (R2) had obtained an email from Peninsula [D22&23] received at 2:26 which included "guidance questions" for a forthcoming investigation meeting with the Claimant. We note that the suggested topics/questions from Peninsula were varied. Some appear to focus on the phone call with Mr Maclean, but others were more wide-ranging and seem to us to be related to matters raised at the staff meeting on 4 October 2023 that the Claimant had not attended (nor had he

been invited to attend apparently because of having gone home earlier due to not feeling well).

71. At 18:01 on 17 October 2023 Ms Saju (R2) emailed the Claimant who was scheduled to work the following day, telling him that she had arranged cover for his shift the following day so that she could have "a meeting" with him at 09:00. The meeting was not given a title. We emphasise that, because the Claimant was notified of the meeting the day before, then this was not contrary to D1's policies, nor to the ACAS Code of Practice.

72. On 18 October 2023, Ms Riley (R3) and Ms Saju (R2) conducted an investigatory meeting with the Claimant [D24-D29]. This was not an "informal chat" as per [§6 Ms Saju's witness statement]. The topics were wide ranging including issues which had been raised, relationships with colleagues, performance and the Claimant not fulfilling his responsibilities. The meeting resulted in an investigation report [D33-36] which identified three areas of concern: Unprofessionalism/misconduct; not maintaining confidentiality and trust; and not fulfilling responsibilities, namely overseeing ordering of critical medication and completing consents to Covid vaccinations. Due to the fact that the Claimant already had the Letter of Concern on file, on 26 October 2023, Ms Riley (R3) determined that the Peter Maclean matter should proceed to a disciplinary hearing [D36]. However, it should be noted that only the complaint of "unprofessionalism/misconduct" relating to the Peter Maclean proceeded to the next stage. The other matters were not escalated. ("*We will deal with the other 2 allegations informally*"). This suggests that the disciplinary report had been considered carefully. The Claimant has described the 18 October 2023 meeting as one where the Respondent had attended "mob-handed". It is noteworthy that that Claimant worked closely with Ms Riley (R3) and Ms Saju (R2). They knew of his sexual orientation.

73. The Claimant was sent a letter on 31 October 2023 to attend a disciplinary meeting on 1 November 2023 [D38]. He said that he could not attend [D40] so the meeting was rescheduled for 2 November 2023. In the end the meeting took place on 3 November 2023.

74. On 1 November 2023 [D39] Ms Riley (R3) wrote to Ms Bata (R4) saying that she had had a meeting with the Claimant lasting an hour after he had received his "disciplinary pack". She commented "*We always knew he will be complicated*" and noted that he was talking about raising a grievance re "*duty of candour and the discharge coordinator not sharing information etc*". This email includes "*After going through the complaint again in detail with him – we have finally managed to get him to recognise that his unprofessionalism could have been better and he is willing to send a written apology to P McLean [sic] – which is the outcome we wanted…*" She goes on to suggested that one possibility would be to use the forthcoming meeting of 2 November 2023 as a "feedback" session rather than a disciplinary session. Ms Riley (R3) queried whether Ms Bata (R4) still wanted to continue down the disciplinary route.

<u>Disciplinary meeting and letter</u>

75. The disciplinary hearing took place on 3 November 2023 by MSTeams (and so was an audio and video meeting). The transcript is a [D43-48]. The meeting was conducted by Ms Jivraj-Bata (R4) HR Manager. At the beginning the transcript records that it was said to be a disciplinary meeting. She did not take the previous suggestion

of Ms Riley (R3) to have it is a "feedback" session and instead treated the meeting as an investigation meeting. (She said "*I won't be making a decision on anything today. I'm just simply here to hear the evidence, establish the facts and carefully consider your responses. And then I will make a decision*"). We also note that Ms Jivraj-Bata (R4) records that there had been pre-meeting email correspondence about whether or not the Claimant was going to bring someone to the meeting with him. In the end he had decided not to bring anyone because the Claimant had said did not want to wait until his supporter was available. We note that Ms Jivraj-Bata (R4) was based in London and she and the Claimant were unfamiliar with each other. Nonetheless, it is the Respondents' (R1 & R4) case that Ms Jivraj-Bata (R4) was familiar with the Claimant's sexual orientation.

76. Ms Jivraj-Bata (R4) had seen the investigation report. The meeting was a wide-ranging discussion dealing with confidentiality, referrals and focussed on the Maclean referral. We note that Ms Bata (R4) has a medical background (she is a dentist). In the meeting with the Claimant, she engaged with the clinical and professional issues raised by Mr Maclean's referral. We find that the tone and the substantive issues come across as one professional speaking to another in a professional manner. Crucially, this meeting records that the Claimant conceded that he has "reflected" about his communication style. The Claimant said [D-46 & 47] "*Yeah, I've reflected back on that. And yes, I can be a little bit bullgy* [sic]. *Yes I can be direct….you know, I think like I said, I've reacted and bit back. I wouldn't normally be like that… I'm not a person who makes the same mistakes twice. So I have. I have reflected back on this and there is room for improvements in my own scope. And I'm very aware of that, I thought that could speak openly, honest with and what I thought actually wasn't there. It backfired on me and I think that's why I bit back. In future I don't think I [will] put myself in that position again.*"

77. In oral evidence the Claimant said that Ms Jivraj-Bata (R4) had sniggered at his voice and gestures. He also said that he was upset by the recording and did not like seeing himself in it. Significantly, in oral evidence, however, he told us that he asked for the video to be deleted. As a result, we learnt that the Respondent (R1) had deleted the video recording. We noted that the Claimant was clearly upset by the recording, but there is nothing to suggest that he complained later to Ms Duncan that he had been laughed at or humiliated in the disciplinary meeting with Ms Jivraj-Bata (R4) or that there was any adverse comments or behaviour at all, never mind connected to his sexual orientation. In the transcript there is no evidence of a complaint about sniggering and/or his hand gestures which, he later claimed, were indicative of homophobia**;** No evidence that Ms Jivraj-Bata (R4) was being unprofessional or mocking him. There is no suggestion of any dissatisfaction on the part of the Claimant at the way that the meeting progressed. The meeting transcript contains signifiers that both were behaving in a courteous manner towards each other. At the end of the meeting Ms Jivraj-Bata (R4) explained the Claimant's right of appeal and he ended the meeting thanking her.

78. Despite this, the Claimant now claims that, during the disciplinary hearing, Ms Jivraj-Bata (R4) ridiculed him by sniggering at his voice and gestures. The Claimant says this was harassment on grounds of sexual orientation and/or direct discrimination on grounds of sexual orientation.

79. The Respondents (R1 & R4) forcefully deny the Claimant's factual claims regarding how Ms Jivraj-Bara conducted the disciplinary hearing. The Respondent's position is that any conduct on the part of Ms Jivraj-Bata (R4) had nothing to do with sexual orientation. In this regard the Respondents reminded the Tribunal of the Claimant's lengthy grievance (see below), in which he alleged discrimination, but which suggests that Ms Jivraj-Bata (R4) was in fact supportive of the Claimant during the meeting. [See §26 D54] "*… the next level HR Director who made me feel very assured in the meeting I was at ease with her I was open honest and transparent with her only to be hit with the highest penalty possible which is unjustified and a bully boy tactic I believe hence the appeal…"*

80. In live evidence, the Claimant criticised the Respondents for not having retained the video recording of the meeting, but he also confirmed that he had actually expressly asked that the Respondents delete it, after he had viewed it. (This is dealt with below [at §97 and following paragraphs below] in the grievance meeting with Ms Duncan on 17 January 2024).

81. Following the meeting, the Claimant received the letter dated 3 November 2023 [D42] on PTCCH headed notepaper from Ms Jivraj-Bara (R4) telling him that he had a written warning which would remain live for 12 months. The letter says "*… I do believe that your responses to the allegation is unsatisfactory because you admitted saying that you would put referrals sent by [Mr Maclean] to the side and this is unprofessional behaviour. You also did acknowledge that you could have communicated this differently and in future you could be more professional in these situations.*" Notwithstanding, the Claimant alleges that the written warning was direct discrimination on grounds of sexual orientation.

82. The Respondents' (R1 & R4) position is that this written warning letter of 03.11.23 was in no sense related to the Claimant's sexual orientation.

83. At the hearing before us, the Claimant complained vociferously that Ms Jivraj-Bata (R4) had said that she would spend time considering the interview before she made her decision. Ms Jivraj-Bata (R4) had drafted the letter immediately after the meeting and sent it to the HR assistant Ms Amaresh (R5) [D49]. The email chain shows that Ms Jivraj-Bata (R4) had finalised drafting the letter within 40 minutes of the end of the meeting. The Claimant took exception to the speed of production of the letter and complained repeatedly at the hearing that it was a "predetermined" decision. However, Ms Jivraj-Batra (R4) confirmed at the hearing that she had considered the issues properly and, in particular, was relying on the fact that the Claimant had conceded his poor communication and lack of professionalism regarding Mr Maclean to her.

84. The Claimant Appealed against the written warning (investigation and disciplinary hearing) on 10 November 2023 by writing to Fahreen Jivraj-Maguire [D50]. "*I am appealing against the investigation and disciplinary which should of never got to this stage for carrying out my job and having a professional conversation on the topic of holding information with another profession … I have reflected and still believe I have done no wrong. I cannot allow myself to be punished and treated this way*…" The Claimant also requested a copy of the disciplinary recording on 7 December 2023 [D98].

85. As set out below, the Respondent outsourced the appeal of the disciplinary process to Matt Lucas of Peninsula Face2Face [see §89 and following paragraphs below].

Raising the grievance

86. The Claimant raised a lengthy and separate grievance on 20 November 2023 [D51-D55]. This was regarding the Claimant's allegations that he "*now feel targeted and bullied and victimised because of recent actions which brings me to feel unfairly treated and sexually discriminated against*". He also complained that, by this time, another Registered Nurse had been appointed by the Respondent and that he had not been involved in their selection. [Key paragraphs in the grievance letter are 26, 28, 29, 30 and 31]. This complicates the chronology somewhat because the Respondents' disciplinary process and appeal and the Claimant's grievance ran in parallel and there are overlaps in the material introduced into both. The Claimant's original grievance focussed on another RGN having been appointed without his input into the process, his belief that the "duty of candour" was not upheld by the Respondents, that the management structure was "female dominated" with a lack of male staff within the management structure and a complaint that the 12 months written warning was too harsh. He also referred to the 12 month written warning saying that "*This is an act of bullying and victimisation as it feels to me as I believe there is no room for male input in our organisation, I can only conclude this after 6 years in your employ and believe my sex and sexual orientation is the reason for decisions and actions deliberately leaving me out resulting in unfair treatment I am now all of a sudden experiencing which coincides with the complaint received on the 04.10.23.*" It is important to note that the Claimant did not explain the link been any sex or sexual orientation elements in the matters which gave rise to the grievance. Rather his complaint translates to him objecting to what had happened to him and him saying that he could only conclude that he had been treated the way that he had, resulting in the 12 months written warning, on the basis of sex and sexual orientation in a female dominated workplace.

87. The grievance was acknowledged by Ms Amaresh (R5) on 29 December 2023 [D108]. She said that the grievance would be heard by Ms Jivraj-Bata (R4) (HR Director) on 10.01.24. Ms Amaresh (R5) summarised the issues (35 points) at [D108-113].

88. On 7Janaury 2024 (ie after the Claimant's disciplinary meeting with Martt Lucas (Peninsula) on 3 January 2024) the Claimant wrote to Ms Jivraj-Bata (R4) [D143] we do not have the full communication, but by 8 January 2024 Ms Jivraj-Bata (R4) must have had a conversation or other communication with the Claimant because on 8 January 2024 she wrote to the Claimant saying: "*Following our informal discussion regarding the* ***grievances, I feel it is best that this meeting*** *is conducted by someone external as there are some points which include myself. This way you can voice your grievances freely and hopefully you will feel more comfortable to do so. Jaya will be in touch with timings for this.*"

89. On 12 January 2024 Ms Amaresh (R5) wrote to the Claimant setting out what she believed the 19 points of grievance were that the Claimant had raised, she told him that the grievance would be dealt with by way of video call and told him that he was entitled to take a colleague or trade union rep with him to the meeting [D182].

Appeal of disciplinary hearing

90. As already mentioned above, R1 decided that they would outsource the appeal against disciplinary hearing resulting in the written warning to their HR Consultants, Peninsula. The Claimant received an email from Matthew Lucas Face2Face Consultant at Peninsula inviting him to a meeting [D135]. The meeting was scheduled for 14:00 on 3 January 2024. The disciplinary appeal was heard by Matt Lucas of Peninsula on 3 January 2024 [D124-D134]. Mr Lucas emphasised that he was impartial despite the commercial relationship between the Respondent and Peninsula [D124].

91. The disciplinary appeal outcome was provided in a report from Peninsula dated 9 January 2024. There were three slightly different drafts of the appeal outcome report in the hearing bundle [D144-D152, D153-161 and 163-171]. When the Claimant raised these different drafts with Ms Amaresh (R5) in cross-examination, she pointed out that they were superficial differences. We note that the Claimant was unable to show us any substantive differences between the three drafts of the report. It seems that the appeal outcome report has been compiled after the appeal hearing with Mr Lucas having sent the recording of the meeting to Ms Amresh (R5) who transcribed the minutes of the meeting and returned it to Peninsula and who then provided the report authorised by Matt Lucas. Ms Amaresh (R5) confirmed that she played no part in making the decision. Peninsula or Serencroft might be criticised for document/draft control, but we are unaware of any material inconsistences of note between the various drafts. The differences are cosmetic.

92. For completeness I record that the Claimant made some complaints to Mr Lusas about the gender make up of his employer [D129]. He said, "*but there's not one male within management in London or here or anywhere else. We're top heavy with female, but there no male managers…Yeah I think sex discrimination is part of the grievance as well that I've put down. This is how I feel…. I don't understand because there's many males in nursing and there's loads of them in London. So what? Why we haven't got somebody. There are floating around. I know it doesn't necessarily in itself constitute affects discrimination, but to me it makes you raise an eyebrow…."* Clearly this general complaint the gender balance within his employer's organisation has got nothing to do with the Claimant's interactions with Mr Maclean which led to the written warning which was to remain on his record for 12 months.

93. [D150] the appeal was dismissed in its entirety and so the original written warning was upheld. There is no evidence to suggest any collusion. The cosmetic differences between versions of the reports do not suggest any impropriety. (The changes in the drafting were evidently made by Peninsula, for what they regarded as legitimate reasons). We note that Mr Lucas recorded at [§52, D169] that the Claimant had "*contradicted his point of appeal within his comments made within the Disciplinary Hearing as well as the Disciplinary Appeal hearing.*"

94. After the Claimant's disciplinary appeal had been dismissed there is evidence that the Claimant had spoken to Ms Jivraj-Bata (R4) on 11 January 2024 saying that he did not accept the result of the appeal and saying that he wanted to appeal the appeal [D179]. In an email to someone called Graham who appears to be connected to Peninsula Face2Face, Ms Jivraj-Bata (R4) explained that the Respondent wanted the Claimant to stay with them and that they "valued his role". The email also records

that the Claimant had said that he would be "*going to lawyers and the NMC*" because "*He feels he had done nothing wrong*". There is no evidence of the Claimant explaining why he intended to go to the NMC (or lawyers) at this time.

The NMC and first claimed protected disclosure

95. On 12 January 2024 the Claimant contact with the NMC regarding Peter Maclean and possibly also in relation to his own conduct (it is unclear what his communication with the NMC consisted of, see below). In his witness statement the Claimant said [§33] "*After three months of inaction, I had no choice but to refer the matter to the NMC, they found no case to answer – confirming that my professional judgment had been correct all along, but after that, everything changed*" For the first time, in oral evidence at the hearing, the Claimant said that the email at [D488] was a record of his first protected disclosure which talks about a telephone conversation that the Claimant had had with someone called Mark Wood at the NMC. The Respondent disputes the Claimant's assertion that the Claimant's communication to the NMC on 12 January 2024 was a protected disclosure, noting that the NMC is a prescribed person, for the purpose of s43F of the Employment Rights Act 1996 ('ERA'). The Respondents accept, however, that the Claimant disclosed some information to the NMC.

96. In relation to the NMC communication on 12 January 2024, the Respondents question what the Claimant subjectively believed regarding the information he disclosed to the NMC and whether he believed that it tended to show a relevant breach under s43(1)(d). The Respondent asserts that, if the Claimant believed that the health and safety of an individual had been, was being or was likely to be endangered, then they would have expected that the Claimant would have reported the issue to his employer on/after 4 October 2023, and/or reported it to the NMC sooner than he did on 12 January 2024.

97. At [D214] it appears that the NMC sent an acknowledgment letter on 17 January 24. It is unclear who they sent it to. The NMC letter says that it was sent to "Deputy@xxxxxx.come" which does not appear to be a genuine email address, or at least, not linked to the R1.

Progressing the grievance

98. Returning to the Claimant's grievance, initially, Peninsula appointed Candice Duncan as the person to hear the Claimant's grievance. She had first conversation with Jaya Amresh (R5) who had become the link between Peninsula and the Respondents around 16 January 2024 (brief introductory email) [D201]. The first actual contact was a fleeting introduction at 20:07 on 16 January 2024 before the meeting the following day at 09:30 on 17 January 2024.

99. The minutes of the Claimant's grievance meeting with Candice Duncan (Peninsula Face2Face) on 17 January 2024 are at [D202-213]. The Claimant attended the meeting and indicated that he was happy to proceed "unaccompanied". It is also noteworthy that he describes himself as "Deputy Manager at Hayes Cottage Nursing Home" and does not say anything critical regarding the fact that he was formally employed at Plane Tree Court. The Claimant's starting point was that Peninsula was

a "*cash cow, an organisation who makes profit on other organisations.* This is indicative of a number of criticisms made by the Claimant of the Respondent when they had gone outside of the Serencroft group to hear issues pertaining to his employment.

100. Ms Duncan had clearly been sent the Ms Amaresh (R5) document which summarised the Claimant's 35 grievances [D108-113]. She emphasised that it was her role to listen to his grievance, draw up a report and make relevant recommendations to the Claimant's employer [D204]. In relation to the Claimant's telephone interaction with Mr MacLean the Claimant told Ms Duncan that he had called Mr MacLean "*a liar*" [D205]. Ms Duncan was made aware that the Claimant had made a disclosure to the NMC, but she was not given much detail. In the case report [D186-198] dated 2 February 2024 (more of which below), the report of the grievance to Ms Duncan summarised that the Claimant had taken a "*self-referral*" from the NMC on 12 January 2024 in which "*the behaviours were not deemed as disciplinary action with [the Claimant] further noting that had they wanted to investigate it further than a form would have been sent*" [195].

101. When Ms Duncan asked about his managers he had said of Ms Saju (R2): "*She's my home manager. I'll love her to death, she's absolutely brilliant. Honestly, I feel very close to her…*" [D206]. Crucially, the Claimant told Ms Duncan that he had been dealt with differently since October 2023 as a "*deployed [sic] tactic so that it would trigger HR*" [D209]. The Claimant asserted, that the Maclean issue was used to "trigger" Alyshba Jivraj Bata (R4) who in turn passed on issues around the Claimant to Peninsula and which resulted in the Claimant receiving a formal written warning which would remain on his file for 12 months. The Claimant explained to Ms Duncan that he then "did a self-referral" to the NMC. His graphic evidence includes said: "*So you know, you all urinate in the same pot, that's the way I felt, and so I went to the NMC…. And I did a self-referral to see if I've done anything wrong rather than listening to Trudy and Jiji and my boss and Alyshba and Matt Lucas, as I needed to know myself if I've done anything wrong.*" [D209]. The Claimant explained that he did not have any documents relating to his "self-referral" to the NMC. The Claimant explained that he only had a conversation with Sandeep at the NMC on 12 January 2024 and that Sandeep was from the "self-referral" team at the NMC [D210]. The claimant also told Ms Duncan that "….*I would have had to accept it if the NNC said John, you've done wrong. But this is just Matt Lucas and Alyshba's opinion. I think Tribunal will think differently, looking at past cases. I think they would look at it sensitively and diplomatically.*" We comment that it is striking that (i) the Claimant repeats that his interaction was as "self referral" to the self-referral team at the NMC and also that (ii) even as of 17 January 2024 the Claimant seems to have been contemplating a claim to the Employment Tribunal.

102. One of the issues explored in detail during the cross-examination of Ms Jivraj-Bata (R4) HR Manager was that the Claimant was "uncomfortable" with the recording of the disciplinary hearing which had taken place on 3 November 2023 by MSTeams (The transcript is a [D43-48]). At [D212] when talking about the recording of the disciplinary appeal. The Claimant told Ms Duncan: "*So there was a note taker and a recording of this appeal* (it was not an appeal) *and I, to be honest … I looked deranged. I couldn't understand, I struggled, I think I've suffered from paranoia since all of his in October and its massively affected my sleep. So I'm not sleeping much, and I could see that I looked a little bit deranged in this appeal thing, but I absolutely hated looking*

*at this recording so I'm following the …. ACAS guidance…. So yeah, I consented to it but I've struggled with it, and I need to get this deleted. I don't like it. I don't know where its being stored. This was a full recording of teams between Alyshba and me….. My disciplinary which I think may have been 6th November. I cannot remember the exact day…*" This is relevant as confirmation that the Claimant required the recording of his disciplinary meeting to be deleted. To recap, this is the meeting in which the Claimant has claimed as part of his case that Ms Jivraj-Bata (R4) had mocked the Claimant on the basis of his presentation and gesture linked to his sexual orientation. It is striking when discussing this topic with Ms Duncan that he did not complain about Ms Jivraj-Bata's (R4) subsequently alleged demeaning behaviour referencing his sexual orientation.

103. We noted that the Claimant was clearly upset by the recording, but, as above, there is nothing to suggest that he complained to Ms Duncan at the time that he had been laughed at or humiliated in the disciplinary meeting with Ms Jivraj-Bata (R4) or that there was any adverse comments or behaviour at all, never mind connected to his sexual orientation.

104. Overall, Ms Duncan seemed to struggle to understand the core of the Claimant's grievance. She asked the Claimant to clarify which the part(s) of his complaint was/were that he was saying, (i) he felt that there was no case to answer, (ii) that he had not acted unprofessionally during the disciplinary hearing but that, (iii) as a result of what had happened, he felt that the dynamics had changed within the business.

105. Having heard the grievance hearing, regrettably and somewhat confusingly, it appears that Candice Duncan left Peninsula and from the minutes it appears that her colleague, Samantha "Sam" Marshall (also of Peninsula), finalised the template report dealing with the grievance. Nonetheless, the transcript of the actual grievance meeting between the Claimant and Ms Ducan clearly show what was said.

106. Again, it is unfortunate that three versions of the final report (all dated 2 February 2024) seem to have been signed off by Sam Marshall who is in the Face2Face team in Peninsula. There are errors, notably insofar as the report refers to Hayes Cottage Nursing Home Limited (another nursing home in the Serencroft group). This is clearly an error because the Claimant was at PTCNH. However, and more importantly, we were not taken by the Claimant to any substantive differences between the various drafts of the report. The overall outcome, regardless of version, was that the grievance should be dismissed in its entirety, but that there were recommendations. It was a matter for the employer to decide whether they would accept some or all of the recommendations.

Appeal of the Claimant's grievance

107. The Claimant appealed the grievance dismissal putting in a grievance appeal on 10 February 2024 by email to Ms Jaya Amaresh (R5) [298] on the basis that he did not know who Sam Marshall was and so the report should not be accepted.

108. An appeal of the dismissal of the Claimant's grievance was held by way of a hearing on 15 March 2024. [G1-13]. The meeting was chaired by Ms Jivraj-Bata (R4) and audio-recorded. In it the Claimant mentioned that he had previously had a heart attack and was on medication for this condition. He claimed that he has been treated

differently as a result of his sexual orientation and also his heart condition and that these factors had not been taken into consideration. When asked specifically how he had been treated differently he said: "*…by knowing the Act and you employ all walks of life, you should know the Equalities Act inside out and you should know the DDA Act inside out as well and anybody can fluctuate going into DDA and coming out of it depending on what their illness is and if you get over it and stuff, I'm covered by it because my life-ling disability*". When he was asked again why he had been treated differently because of his sexual orientation he said that he was "*covered by these Acts*". The Claimant claimed that he had not been treated fairly or equally on the basis that he had been called "*to the disciplinary room for something that's not just disciplinable*". He confirmed that he should not have been disciplined "*in the first place*". He also said that the Respondent should act "*on the side of caution*" given that he is a gay man. On several times Ms Jivraj-Bata (R4) asserted that the Claimant had misunderstood the legislation. He also said that he believed that Peninsula had advised against disciplining him.

109. All of the topics that the Claimant had raised in his appeal on 15 March 2024 are set out in the outcome letter of Ms Jivraj-Bata (R4) [D383] dated 26 March 2024 and which included his points of appeal (32 points). The appeal was not allowed so the original decision stood. It is noteworthy, however that the letter emphasised that the Claimant had raised discrimination issues. Under appeal point (1) the Claimant is recorded as saying "*Why have you not took into consideration of DDA Act 1995 and Equalities Act 2010 [sic] in my case knowing my sexual orientation and health limitations*". This appeal point was dismissed on the basis that: "*In our meeting you asserted that your sexual orientation and heart condition meant that you are protected under equalities legislation and criticised management for not being knowledgeable about the legislation. You did not at any point suggest that your medical condition or sexual orientation were connected to the behaviours that led to you being issued with a written warning. You also did not suggest that you had been issued with a written warning because of your medical condition or sexuality. Your argument appeared to be that because you have certain protected characteristics, the Company was unable to take disciplinary action against you…. There is no evidence that the disciplinary process and sanction was in any way connected to or influenced by your medical condition or sexuality. As a result, this ground of your appeal is not upheld.*" It is also striking that, whilst the Claimant raised disability and Equality Act discrimination at the grievance dismissal appeal hearing on 15 March 2024, he had not significantly done so within the grievance itself.

Sickness absence in January and February 2024

110. Stepping back to January 2024, on 11 January 2024 (the same day that the Claimant said that he wanted to appeal his unsuccessful disciplinary appeal and would be speaking to the NMC), the Claimant had phoned the Respondent R1 saying that he was unwell but asking if he could take annual leave. There is an email from Ms Trudy Riley (R3) to Ms Jivraj-Bata (R4) [D178] which says "*Just to let you know - John has called Jiji to say he is unwell, with a heavy cold and could he take annual leave rather than sick. Jiji suggested he takes some rest this morning and if he could make to the HOD meeting at 11:00 this morning.*" It seems that from this point the Respondent decided to investigation the Claimant's sickness record. See [D177 & 178]

111. From [D329] onwards there is correspondence about the Claimant's absences dated between 4 March 2024 and 7 April 2024 passing between the Claimant and Jaya Amresh (R5). On 4 March 2024 the Claimant was asked to attend a meeting about sickness management on 6 March 2024 (ie during the period after his grievance had been heard by Candice Duncan resulting in the Sam Marshall report, but before his grievance appeal had been heard by Ms Jivraj-Bata (R4)). His response about his absences included the assertions that "*due to stress, bullying, harassment, discrimination and data protection and latterly whistleblowing issues I previously raised but as not dealt with satisfactorily as well as mishandled my sensitive information by both parties Atruistic Ltd and Penninsular Group and remains outstanding as per my discussion and meeting on 15th February. Therefore, I am unable to deal with anything else until the above is rectified. This for my own well being as I need to put myself first*" [sic]. On 6 March 2024 Jaya Amaresh (R5) responded to the Claimant saying that his Bradford score for the month of January 2024 was "very high". Ms Amaresh then noted that the Claimant was on a day of training on 6 March 2024 and so suggested that they met the following day (7 March 2024) at 14:00.

112. The Claimant did not attend the sickness management meeting on 7 March 2024, but he wrote an email on 7 March 2024 in which he said that last day of absence had been on 18 January 2024 and had not been off work since. He says that he was covered under the Discrimination Act 1995 [D329]**.** On 7 March 2024 the Claimant wrote that, due to his "*current health limitations*", that "*stress*" was to be avoided "*at all costs*"**.** He also wrote to say that he could not move to "*the next issue*" until his "*grievance appeal and data protection issues*" were dealt with. [D329-332].

113. In oral evidence Ms Amaresh (R5) explained that the Bradford score is designed to understand sickness absence over a 3-month period. In March 2024 he was getting towards the end of the first three months of that year.

11 March 2024 interaction between the Claimant and his colleagues

114. Subsequently the Claimant had a face-to-face meeting on 11 March 2024 in which the Respondent says he displayed threating and intimidating behaviour towards Ms Saju (R2) and Ms Riley (R3) as set out in their witness statements [D333 to D336] both dated 12 March 2024. The Claimant had attended the office with his sister, Ms Amy Duffy, and made accusations including that Ms Saju (R2) and Ms Riley (R3) had discriminated against him on grounds of gender and sexuality. He also stated several times that Ms Saju (R2) and Ms Riley (R3) should phone their husbands to tell them that they (R2 and R3) would be sued. He also told them to inform the directors that "*it will be costing them*" because he was going to get solicitors to litigate his claim unless they paid him. He also said that he would be contacting the CQC.

Suspension

115. Following this meeting on 11 March 2024, the Claimant was told that he was suspended on full pay as a holding measure pending further investigation. The letter at [D337] dated 12 March 2024 from Ms Jivraj-Bata (R4) to the Claimant said that the Claimant would be investigated for: (1) failing to attend absence and punctuality meetings on 6 March 2024 and 7 March 2024; (2) An intimidating email dated 10 March 2024 sent at 05:58 which was a "serious act of insubordination", (3) intimidating behaviour towards Ms Saju (R2) and Ms Riley (R3) on 11.03.24; and (4) "*alleged serious and ongoing insubordination towards your managers and directors*".

Fact finding meeting 18 March 2024

116. On 18 March 2024 there was a "fact-finding meeting" regarding matters in the letter [D337] dated 12 March 2024. The meeting was between the Claimant and Ms Amerish (R5) [D347-352] to explore the meeting on 11 March 2024. In this meeting the Claimant talked about "whistleblowing" to the NMC [D347] and his disability. He says "*OK so I've had a heart attack. I'm on lifelong medication to sustain and prevent further heart problems. Been diagnosed with heart disease and has since my employment as well as cervical myelopathy following spinal surgery in 2022*". The Claimant's comments at the meeting also included "*Since I blew the whistle and reported myself to the NMC, the NMC said that I have no case to answer, but instead they wanted to take the contact details of the person who missed the information. So I now have had to report Peter to the NMC and the victimisation has become because of that.*" The Claimant was also asked about what had happened on 11 March 2024. His response included "*That day it was a panic. I got the DARS I saw the victimisation I saw the bullying I saw the harassment. It tells the story*". Ms Amerish (R5) produced a minute of the meeting [D347-352] The Claimant also provided a version which looks like a transcription which is at [355-381]. At the hearing before us, the Claimant said that the minute of Ms Amerish (R5) and his transcript were inconsistent, but the only difference that he could point to was that the first 75 seconds were missing from Ms Amerish's minutes. He did not draw our attention to anything substantive.

117. Thereafter he was on substantive suspension.

Events before the 4 April 2024 Disciplinary meeting

118. The Respondent decided to outsource the handling of the disciplinary hearing into the 11 March 2024 events. On 26 March 2024 Ms Jivraj-Bata (R4) wrote to the Claimant inviting him to a disciplinary hearing on 28 March 2024 [letter D389-390]. She told him that the Respondent had decided to appoint an independent third party, Gary Hay, the owner of HR Consultancy Law2Business saying that he had "*over 25 years' in employment law and HR matters*". This letter also raised a further disciplinary matter which will be dealt with below, and related to an allegation that the Claimant had taken food from the kitchen refrigerator intended for residents, without permission.

119. The disciplinary meeting with Gary Hay was originally scheduled for 28 March 2024 but the Claimant asked for the meeting to be adjourned on that basis that this would be a "reasonable adjustment". He also challenged the accuracy of the investigatory meeting between the Claimant and Ms Amerish (R5) on 18 March 2024. He said that he needed the recording [D392]. The recording had been deleted but the evidence at the hearing was the Respondent got a technician to retrieve it, and it was retrieved [D391]. In oral evidence it was said that the file was retrieved from deleted items then there were problems sending it to the claimant but, ultimately, it was sent.

120. On 2 April 2024 the Claimant said that he had the recording [D401] and was working on the "discrepancies". He says that he was also waiting for the video recording. [D401]. In response Ms Ameresh (R5) [D403] wrote to the Claimant on 2 April 2024 saying that there are three mistakes (only) where she has mis-transcribed a word.

121. On 2 April 2024, Ms Jivraj-Bata (R4) emailed the Claimant in response to various queries he had raised, and she confirmed the disciplinary hearing would now

be held on 4 April 2024 at 10am [email/letter D414]. (This was the second time it had been rearranged to accommodate C, having also been listed for 2 April 2024 at one point). The Claimant was reminded that the meeting was his opportunity to understand his response to the allegations. Four allegations were set out to be discussed at the meeting. He was told that he could provide written representations in advance of the meeting. The Claimant was also warned that, if he did not attend, then the meeting would proceed in his absence [D414].

122. On 3 April 2024 the Claimant reported Mr Gary Hay, the prospective chair of his disciplinary meeting the following day, to the Solicitors Regulation Authority ("SRA"). Inter alia, the Claimant claims that this was his second protected disclosure. The report to the SRA was in the form of an electronic form [D428-433]. It is unclear from this form what material within the form would amount to a protected disclosure. The SRA are not a prescribed person under s43F of the Employment Rights Act 1996.

123. On 4 April 2024 at 00:30 the Claimant emailed Ms Jivraj-Bata (R4) telling her that he had researched into Mr Gary Hay's background. He said that Mr Hay's business Law2Business had been dissolved twice and that that the Claimant had not been told that Mr Hay was an "interrogation lawyer". At §4 of his email the Claimant said "*As per your invite letter you asked me to attend a disciplinary hearing with a non existing HR company to conduct my disciplinary hearing this is not accepted from my side as it puts me at disadvantage since my findings shows that he is interrogation lawyer this explains your diploid tactic & dishonesty with no transparency which is enough for me to decline the invite & and blow the whistle one last time*" [sic]. The Claimant also complained that the Respondent had communicated with Mr Hay via his NHS email address and so alleged that this was an "abuse of power" because they had involved NHS England with "his data protection". He claimed at the, as a result he now had "Litigations" with NHS England, Altrtic care limited [sic] *"& peninsula group & all individual parties who were involved in my case*". At §5 of the letter he said that he had raised complaints with NHS England, SRA, Legal Ombudsman, ICO and CQC.

<u>The kitchen food-related investigation</u>

124. Linked to the disciplinary meeting discussed above which was to be chaired by Gary Hay and which was originally scheduled for 28 March 2024, there is another disciplinary matter which became part of the disciplinary matters that Mr Hay was to deal with. This was an allegation that the Claimant had taken food from the kitchen refrigerator intended for residents without permission [see the letter of invitation to the meeting D389 and D390].

125. At [D301] there is the record of another investigation meeting held on 20 February 2024. The investigation revolved around the fact that the chef at PRCCH, William Johnson, had reported that a piece of roast beef ("*quite a big chunk of beef*") which he had put in the fridge on Sunday 18 February 2024 had gone missing. It had been put there for residents for the following Monday and Tuesday. Ms Saju (R2) and another of the Respondent's employee, Rose Hargreaves, managed the investigation into the missing food. During the interview of the chef he said that the missing beef had come to light because a member of staff, Cheryl Healey, had asked for a slice but when she came to take it for a sandwich at 5am the beef was not in the fridge. In the course of the investigation five people, plus the chef who made the original complaint, were investigated.

126. The evidence emanating from this investigation into the beef was unclear and inconsistent in places as between those interviewed. A number of staff say that they did not see the beef and there is contradictory evidence about what they did with left over meat. There was also some evidence of staff members getting permission to take spare food for themselves.

127. The investigation included consideration of CCTV in the home. (During the hearing we learned that all the public areas of the home and the kitchen were subject to CCTV). In her oral evidence Ms Saju (R2) gave her description of the CCTV. We also heard that the Claimant has never seen the relevant CCTV footage. In the investigation report (see below), she sets out that between Sunday 18 and Monday 19 February 2024 the Claimant was seen going into the fridge on three occasions. He was seen entering the kitchen with a small basket, going to the fridge and removing a Tupperware box and placing this in his basket and then leaving and going to his car. He returned and took an item wrapped in cling film and placed it in his jacket. He also returned and decanted jelly into a Tupperware box. When asked about this during the investigation, the claimant had said that he could not recall what he had been doing. At the meeting and also in his oral evidence the Claimant said that he had taken the jelly out of the fridge in order to thrown it away.

128. On 4 March 2024 Ms Saju (R2) produced the fridge incident investigation report [D325-328] including the statements from all the staff. She decided that the fridge incident issue should be escalated. She explained her recommendation on the basis that, "*This needs to be escalated to a disciplinary because this is an act of stealing. There is also an element of trust, confidence and dishonest behaviour. John has clearly misused his position and [power as a deputy manager*."

129. Ms Saju's (R2) investigation report became lined up as one of the issues on a fresh disciplinary meeting originally scheduled for 28 March 2024 with Mr Hay.

4 April 2024 disciplinary meeting

130. The Claimant did not attend the disciplinary hearing meeting. It came light that the Claimant had not been sent the MS Teams link. From the invitation letter, it seems that there was no way of the Claimant joining the meeting without the link. Nonetheless, he was on notice to find out what the arrangements for the meeting were. The Claimant had, inter alia, the email addresses for his respondent colleagues including Ms Amaresh (R5). There are very many examples in the bundle of email correspondence between the Claimant and Ms Amaresh (R5). Clearly he had the telephone number for PTNCH.

131. When the Claimant did not attend the meeting on 4 April 2024 at 10:00 Ms Amaresh (R5) investigated and realised that he had not been sent an MSTeams joining link so she sent him a link at 10:08 to the email address which he always used. The Claimant's oral evidence was that he had been "on his computer" at 10:00 but at 10:08 when Ms Amresh (R5) sent the link out, ie 8 minutes after the start time for the meeting [D437], he was no longer waiting. He told us that, because he had complained the night before about Mr Hay and because other previous meetings had been re-arranged for him then he assumed that this meeting would be rearranged too.

132. No minutes were prepared of the disciplinary hearing meeting with Gary Hay [D439-441] on 4 April 2024 because the Claimant failed to attend. Following the

meeting, a dismissal letter was sent from Ms Jivraj-Bata (R4) dated 8 April 2024 [D439-441]. We do not have evidence about how Mr Hay considered the evidence around the four allegations set out in Ms Jivraj-Bata (R4's) letter dated 2 April 2024 to the Claimant. We do not know the precise terms of reference. Nonetheless, in the dismissal letter, Ms Jivraj-Bata (R4) says that "*I considered there is sufficient evidence to uphold the allegations, as set out below*".

Appeal of Dismissal Hearing

133. The Claimant appealed his dismissal on 13 April 2024 [D449-451] on the basis that he says that he did not receive the invitation. In his 13 April 2024 email to Ms Jivraj-Bata (R4) he also said that "*the right thing to do would have been to remove Mr Hay from my case as requested and show your honesty which never came. Hence why I could not deal with you or Mr Hay that day*" [sic]. It therefore seems that the heart of the Claimant's objection and reason for not attending the meeting on 4 April 2024 was not late receipt of the meeting electronic link; rather the Claimant did not attend because of his objection to Mr Hay.

134. The Claimant was sent an invitation to a meeting to appeal his dismissal on 26 April 2024 by letter from Ms Amaresh (R5) dated 24 April 2024. This meeting was to be held by MSTeams to be heard by Operations Director Ms Farheen Jivraj-Maguire. Again, the Claimant was informed that he could be accompanied by a workplace colleague or trade union representative. He was also told that if he wished to submit written representations then he should do so by 17:00 night before. He was also warned that if he did not attend without good reason, then a decision would be made in his absence.

135. On 25 April 2024 [D457] the Claimant wrote to asking for the appeal of the dismissal to be adjourned [D457]. He asked for the appeal to be re-listed for week commencing 6 May 2024. This request was granted and he is also warned what the potential outcomes could be from the appeal of the dismissal.

136. As per the transcript at [D470] the appeal of the dismissal went ahead on 8 May 2024. Again, the Claimant was unaccompanied at the meeting. It is noted that [see the bottom of D470] he said "*… but 8 minutes past 10 I got an invite to sit in front of Gary Hay. Well I've just gone and whistleblower on Gary Hay, that doesn't sit right with me*". Ms Farheen Jivraj-Maguire went through all the various allegations in detail. The Claimant was given the opportunity to say what he could have said if he had attended the Gary Hay hearing. He was given opportunity in the appeal to deal with the substantive, underlying issues.

Outcome of appeal against termination of employment

137. On 28 May 2024 Ms Farheen Jivraj-Maguire wrote to the Claimant saying that there were no grounds upon which to uphold the appeal. She gave detailed reasons to explain her decision [482-5].

Submissions and skeleton argument

138. Both parties made submissions. In advance I discussed with the Claimant the issues that he might want to address in submissions. The Claimant made oral submissions going over the main points as per the list of issues (although he did not follow the list of issues or refer to them. He had made notes which he did not share). One additional point that he emphasised, as he had done at times in his evidence, was "DARVO" (at times this was recorded incorrectly as "DARS" in the papers). The Claimant explained that "DARVO" is an acronym which stands for "deny, attack, reverse victim and offender". He submitted that the Respondents had manifested DARVO behaviours on many occasions and that this was, in effect, a reactive behaviour that perpetrators typically perform when being challenged or being held accountable for their behaviour. He said that this was a well-known behavioural phenomenon and that the Respondents had exhibited such behaviour when he had challenged them about various matters relating to the running of the home and, for example, his stance in relation to his communication with Mr Maclean. What this translated to seemed to be an allegation that the Claimant had been made into something of a "scape goat". In legal language, this translated to him having made protected discloses and him having suffered detriment as a result, the detriments being failure to pay his salary and rejection of his grievance.

139. Mr Bunting made oral submissions and also relied on a skeleton argument, a copy of which was provided to the Claimant in advance. The Respondents' submissions included that the written warning was in no sense related to the Claimant's sexual orientation but that the written warning on 3 November 2023 was relevant to Claimant's ordinary unfair dismissal claim. We note that, usually, a Tribunal will not look behind a previous disciplinary warning other than in exceptional cases where the warning was issued in bad faith or it was manifestly inappropriate (**Davies v Sandwell Metropolitan Borough Council [2013] EWCA Civ 135**). The Tribunal's role is to consider the fairness of the dismissal, and this can include deciding whether it was reasonable to rely on a previous warning. In the present case, the Respondent submitted that the warning came about because of the Claimant's style of communication and that he had again been inappropriate and unprofessional with Mr Maclean on 4 October 2023 and again on 11 March 2024 with his colleagues. We were reminded, however, that the Tribunal generally ought not consider whether the warning should have been issued in the first place. (The Respondent accepted that, if the written warning was harassment or direct discrimination, it might be open to the Tribunal to consider the merits of the warning).

140. In relation to the alleged disclosures to the NMC, the Respondent submitted that it was not clear that the Claimant subjectively believed that the information he disclosed tended to show a relevant breach under s43(1)(d) of the ERA. The Respondent submitted that, if the Claimant had believed that the health and safety of an individual had been, was being or was likely to be, endangered, then the Claimant would presumably have reported the issue to his employer on/after 4 October 2023, and/or reported it to the NMC sooner than he did on 12 January 2024. Also, even if the Claimant had subjectively believed that the information he disclosed tended to show the relevant breach, then the Claimant also had not shown that any such belief was reasonably held. The Respondent also submitted that the Claimant had not shown that the Claimant reasonably believed that his disclosures were in the public interest.

**Discussion and conclusions**

141. We approached our deliberations by very carefully going through the chronology of events and drawing up the comprehensive chronology set out above going to all the relevant documents, witness statements and notes of the evidence. This was a very time-consuming task due to the way that the claim had been presented by the claimant in the documents and at the hearing, notably without a witness statement to structure the narrative arch of his claims. We then went through the list of Issues by dealing with the factual allegations one by one and deciding in relation to each factual allegation if it amounted to discrimination or harassment as alleged. We then considered the protected disclosures ("Whistleblowing") allegations before turning to consider the unfair dismissal allegations and whether this might amount to "ordinary" or automatic unfair dismissal. We have considered the unpaid allegation also.

List of issues "disability (part 1)"

142. With reference to the list of issues, this is the claim relating to s.6 Equality Act 2010 which has been expressed as: "2.1 *Did the Claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about? The Tribunal will decide: 2.1.1 did the Claimant have a physical or mental impairment? The claimant relies on: 2.1.1.1 Cardiac issues (MI) following a heart attack in 2010 as a result of which the claimant is on medication for the rest of his life. 2.1.1.2 Cervical Myelopathy 2.1.1.3 Depression and anxiety*."

143. We reminded ourselves that Judge Leach seemed to be unsure regarding whether or not the Claimant was going to pursue this claim as per his annotation of the Case Management Order. Disability discrimination was not something that featured in the Claimant's evidence or submissions other than obliquely. We noted that the Respondents conceded that the Claimant had cervical myelopathy which was longstanding. The Claimant had had a surgical procedure, but we find that there was no evidence that this was interfering with his work in any way at the relevant time. It was also conceded that the Claimant had sustained a heart attack in 2010 and was on long-term medication. Again, there was no evidence that it interfered with his working at the time under review. However, due to the vague and unstructured nature of the Claimant's approach, we have considered his health issues.

144. The issue of anxiety was raised on occasion in relation to the Claimant attending meetings. We find that the Respondent frequently postponed meetings at the request of the Claimant whether for anxiety or other reasons. The Respondent was flexible to the Claimant's requests.

145. In relation to the Claimant's medical history and absences, we note that the Claimant had been a good attender, but his absence record declined and that the Claimant seems to have avoided the meeting to discuss his absence record and health. (This is the meeting that had been triggered by the Bradford score).

146. In relation to depression and anxiety see [D329]. This was an email from the Claimant to Ms Amaresh (R5) dated 7 March 2024 in which he said that "…*due to my current health limitations, stress is to be avoided at all cost as I can only deal with the issue I have already raised and not resolve before I can mote onto the next issues for example the sickness management meeting you are requesting…"* In cross-

examination Ms Amaresh said that the whole purpose of the meeting was to find out about the absences and what support the Claimant might need. If he was suffering from anxiety and stress and needed to make reasonable adjustments, then that would have been an appropriate forum to see what reasonable adjustments were required. In contrast, what the Claimant seemed to be saying is that he could not even attend the meeting to deal with reasonable adjustments because he was too stressed. We find that it appeared to be strategic avoidance on the part of the Claimant because he did return to work. His avoidance of the meeting did not seem to be pathological. He did not present any medical evidence that attending meetings were just too stressful and anxiety-provoking for him to be able to cope with meetings. Further, the transcripts of the meetings that he did attend show him participating fully, answering questions and sharing his opinions in a confident and forthright manner. The transcripts of meetings he did attend showed communication behaviours which mirrored his confident and forthright communication style displayed throughout the hearing before us.

147. The Claimant also relied on the DWP PIP assessment form [C40-48] dated April 2024. At [C45] the form records that the Claimant was taking medication at the time but the DWP form says "… *you have no specialist input for your mental health and reported no prescribed medication for this*." We find that this was based on information that the Claimant had given to the DWP, and also from information recorded in his GP records. It corroborated the Respondent's contention that the Claimant was not suffering from any relevant mental health problems at the time and which further corroborates the contention that anxiety or depression had no relevance to the Respondents warning, meetings with, investigations of and decisions regarding the Claimant.

148. In relation to the 10 May 2023 initial warning letter, on the Claimant's evidence he had apologised, "kissed and made up". Also, in relation to the Mr Maclean issue, the Claimant eventually agreed to apologise. There was no evidence at all of the Claimant saying, following reflection, that his unprofessional behaviour and poor communications, including with Mr Maclean, had been caused by anxiety, depression or otherwise caused by lack of mental health.

*149.* We also note (list of issues above disability part 2) that the Claimant said in his "Brief Overview" document: *Physical & Mental Impairment (Section A Equality Act 2010):The Claimant has mental health impairment (depression & Anxiety) which is strongly linked to his physical impairment (Myocardial Infarction & spinal myelopathy)* ***which was developed after the investigatory meeting on 18th October 2023.***

150. We note that the Claimant did not present any medical evidence that any of his physical or psychological conditions had interfered with his ability to carry out his duties at work or participate in the investigations and meetings connected to the disciplinary actions. We find that there was no evidence that the Respondent considered the Claimant's cervical myelopathy or his well-controlled cardiac issues or his anxiety in relation to any of the issues in the workplace which led to him being disciplined and, ultimately, being dismissed. We find no evidence that any of the medical conditions had a causative link to any of the allegations of discrimination, harassment, whistleblowing or unfair dismissal.

<u>List of issues "disability (part 2)"</u>

*151.* With reference to the list of issues, this is the claim relating to s.6 Equality Act 2010 which has been expressed as: "*Judge Leach had annotated the CMO to say that, if disability discrimination complaints are being pursued is it only the depression and anxiety impairment that is relevant?*" *2.1.2 If so, at the relevant time, did the impairment (alone or together) have a substantial and adverse effect on his ability to do normal, day to day activities?* In relation to 2.1.2 we find that the answer is "no" because the Claimant did not present any evidence or argue that any impairments either acting alone or together had a substantial and adverse effect on his ability to carry out normal day to day activities.

152. The list of issues continues: "2*.1.3 If not, did the claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?*" The answer is "no" because the Claimant did not argue this.

153. In relation to: "2*.1.4 If so. would the impairment have had a substantial adverse effect on his/her ability to carry out day-to-day activities without the treatment or other measures?*" Again, the answer is "no" because the Claimant did not argue this.

154. In relation to "2*.1.5 Were the effects long term? Had the impairment lasted for at least 12 months or likely to last at least 12 months? If not, where they likely to recur?*" The Claimant did not argue this. The medical problems mentioned (cervical myelopathy, well-controlled cardiac issues and anxiety and depression) did not meet the definition of "substantial" and that there was no evidence that the Claimant was suffering from any relevant impairment which would be likely to last for at least 12 months.

155. In relation to "2*.2 If so, was the Respondent aware, or ought the Respondent have been reasonably aware of this disability and if that is the case, when was it aware or should have become aware?*" Given all our other findings this is not relevant.

<u>List of issues "disability (part 3) Indirect Disability Discrimination"</u>

*156.* We noted that it is recorded in the list of issues that "*Judge Leach had annotated the CMO to say, in relation to s.19 Equality Act 2010, that the Claimant was considering whether to pursue disability discrimination complaints and that, if complaints were being pursued, then the required details must be identified in accordance with the discussions (at the Case Management hearings) and guidance. 3.1 Did the Respondent apply the provision, criterion or practice of [gap] (Judge Leach annotated to say that the Claimant must provide the PCP that he was relying upon)*". It was also noted in the combined list of issues document that "*The Claimant's response was "PCP is: JA R5 allocate the C to attend Mandatory training & sickness management meetings at the same time & disregarding all his requests to stress him out a exert more pressure deliberately which exacerbated his paranoia & panic attacks). Also JA R5 done the same in the disciplinary invitation on 26th March. 3.2 If so, whether it did or would apply such PCP to other persons with whom the Claimant does not share his disability? Claimant's response: "hypothetically no". 3.3 If so, did or would such a PCP put persons who share the same disability as the Claimant at a particular disadvantage when compared to persons with whom the Claimant does not share that characteristic? Claimant's response N/A. 3.4 If so, did the PCP put the Claimant at a particular disadvantage? (Judge Leach annotated to say that the Claimant was to insert the disadvantage he alleges he was placed at). Claimant's response: The C couldn't take all requests & issues in one go as he experienced panic*

*attacks & anxiety because of JA R5 less favourable and not being heard. 3.5 If so, can the Respondent show that the PCP as a proportionate means of achieving a legitimate aim? (Judge Leach annotated that the Respondent was to confirm once Claimant had provided further information).*"

157. In relation to indirect disability discrimination the Claimant's position was entirely unclear. In particular it was not possible to identify what his "PCP" (provision, criterion or practice) was. If his PCP was being made to attend mandatory sickness meetings, then he only raised one meeting, and he had not had any problems at the return-to-work meetings. The Claimant did not argue this issue cogently at all. The only person that the Claimant cross-examined on this topic was Ms Amaresh (R5) who said that she was only aware from 7 March 2024 and in her witness statement [§13 & 14] that she was only trying support the Claimant and to understand what the problem was. He did not cross-examine Ms Saju (R2) or Ms Riley (R3), his line manager, about any of his alleged mental health issues. Trudy Riley (R3) did say that the Claimant had had a "melt down" and that he said that he had been "stressed". She said that he had had "a lot going on". She agreed that he was stressed because he was moving and supporting a nephew and a sister and the appeal grievance. However, she did not agree that he had had a "meltdown" on several occasions. It was also unclear what the Claimant meant by "panic attacks" and "paranoia". We were not shown any documents giving a formal medical diagnosis of either of these conditions.

List of issues "Direct Discrimination"

158. The agreed list of issues documents says that "*The Claimant has struck this previous allegation out and said on his 05.11.24 document that he withdraws the claim*[3]*. He has struck through §4 of Judge Leach's CMO dealing with direct discrimination pursuant to s13 Equality Act 2010*". It seems that the Claimant had originally planned to pursue allegations of discrimination on grounds of sex, linked to the fact that he worked in a female-dominated business. However, he formally abandoned this allegation. Consequently, direct discrimination was not pursued other than occasional comments in his oral evidence.

List of issues "Harassment – Section 26 Equality Act (protected characteristic sexual orientation)

159. The agreed list of issues documents says "5*.1 On 3 November 2023 during a disciplinary hearing, did the fourth respondent act in a way that was (or could reasonably have been seen as) ridiculing the claimant by sniggering at his voice and gestures? 5.2 If so, was that unwanted conduct? 5.3 Was it related to the claimant's sexual orientation as a gay man? 5.4 Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant? 5.5 If not, did it have that effect? The Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect*."

[3] Bizarrely, in the 5 November 2024 document he says that he still "believes" that he was still discriminated against on grounds of sex, although he also seems to concede that he has no evidence of this.

160. The starting point is that the Claimant did not get his original warning letter for any matter connected to his sexual orientation. Further, there was lots of evidence that the team of staff that the Claimant worked with were aware of his orientation.

161. The disciplinary hearing under review in the list of issues that took place on 3 November 2023 was by MSTeams (and so was an audio and video meeting). The transcript is at [D43-48]. The meeting was conducted by Ms Jivraj-Bata (R4) the Respondent's HR Manager. This is the meeting when he said: that he has "reflected" about his communication style. The Claimant said [D-46 & 47] "*Yeah, I've reflected back on that. And yes, I can be a little bit bullgy* [sic]. *Yes I can be direct….you know, I think like I said, I've reacted and bit back. I wouldn't normally be like that… I'm not a person who makes the same mistakes twice. So I have. I have reflected back on this and there is room for improvements in my own scope. And I'm very aware of that, I thought that could I could speak openly, honest with and what I thought actually wasn't there. It backfired on me and I think that's why I bit back. In future I don't think I [will] put myself in that position again.*"

162. We find that the transcript suggests that the Claimant seemed to have got on well with Ms Jivraj-Bata (R4). As set out above, he says that he "reflected" after the meeting. This is not the behaviour of someone in dispute with their employer. In the transcript there is no evidence of a complaint about sniggering and/or his hand gestures which, he later claimed, were indicative of homophobia**;** No evidence that Ms Jivraj-Bata (R4) was being unprofessional or mocking him.

163. In relation to the allegation of "*ridiculing the claimant by sniggering at his voice and gestures*" it is the Claimant's word against that of Ms Jivraj-Bata (R4) but we are not satisfied that there is any evidence to corroborate the Claimant's claims. At the hearing before us the Claimant said that he was "upset" by the recording of the meeting and did not like seeing himself in it. He told us that he asked for the video to be deleted. There is nothing to suggest that he complained later to Ms Duncan that he had been laughed at or humiliated in the disciplinary meeting with Ms Jivraj-Bata (R4) or that there was any adverse comments or behaviour at all, never mind connected to his sexual orientation.

164. The email that the Claimant wrote to Ms Fahreen Jivraj-Maguire on 20 November 2023 [D54] is also relevant. At [§26] her referred to "*…the next level HR Director who made me feel very assured in the meeting I was at ease with her I was open honest and transparent with her only to be hit with the highest penalty possible which is unjust and a bully boy tactic I believe hence the appeal and all the exhaustive questions I have for you.*"

165. We therefore find that there is no contemporaneous evidence that Ms Jivraj-Bata (R4) ridiculed or sniggered at the Claimant, whether as a reaction to his sexual orientation or otherwise. Further, the Claimant volunteered the information to Ms Fahreen Jivraj-Maguire on 20 November 2023 that Ms Jivraj-Bata (R4) had made him feel "very assured" at the time. Therefore, no parts of issue 5.1 to 5.5 and the Claimant's claims of harassment are made out.

<u>List of issues "Direct Discrimination – Section 13 Equality Act (protected characteristic sexual orientation)"</u>

166. The agreed list of issues document says: "*6.1 What are the facts in relation to the following allegations: 6.1.1 That the Claimant was ridiculed by the fourth respondent in a disciplinary hearing on 3 November 2023 when she sniggered at the claimant's voice and gestures.*" We have already found for the reasons set out above that the Claimant was not ridiculed as claimed or at all.

167. The agreed list of issues document says: "*What are the facts in relation to….6.1.2 That the fourth Respondent gave the claimant a disciplinary warning on 3 November 2023*." We find that Ms Alyshba Jivraj-Bata (R4) indeed gave the Claimant a disciplinary warning. We note that the Claimant claimed that the warning was prejudged or predetermined. It was conceded that the warning letter was prepared within about 40 mins. However, we are satisfied that the reason why the letter had been capable of being sent so quickly was because the Claimant had agreed with Ms Jivraj-Bata's concerns. She records his agreement at [D42 – the disciplinary outcome letter of 3 November 2023]: "*At the hearing your explanation was that the discharge coordinator* (Mr Maclean) *had withheld information from you which had put you in a very difficult position with a relative and you were worried that this many have led to an improper placement. Whilst these may have be valid concerns, I do believe that your responses to the allegation is unsatisfactory because you admitted to saying that you would put referrals sent by him to the side and this is unprofessional behaviour.* ***You also did acknowledge however that you could have communicated this differently and in future you could be more professional in these situations***".

168. The agreed list of issues document says: "*What are the facts in relation to….6.1.3 The Claimant's dismissal on 8 April 2024?"* In this regard we have noted the "Notice of Termination of Employment" letter [D-439-441] which sets out four allegations. We noted that it was symptomatic of the Claimant's behaviour that the meeting was supposed to have taken place on 28 March 2024 but that on 27 March he had cancelled the meeting and the Respondent had re-arranged the meeting to accommodate the Claimant. Allegations 1 and 2 related to the incident on 11 March 2024 when the claimant had behaved in a manner that was "*inappropriate, verbally aggressive and/or insubordinate*" and also that he had made threats to sue Trudy Riley and Jiji Saju and to "call their husbands" etc. Allegations 1 and 2 had nothing to do with the Claimant's sexual orientation. Ms Riley (R4) gave evidence that was not contradicted that she and the Claimant had known each other for many years. She was fully aware that he was an openly gay man. Allegation 3 related to the Claimant's failure to attend a sickness absence review meeting and allegation 4 related to the allegation that the Claimant had taken food from the kitchen refrigerator which was intended for residents. Again, the Claimant's sexual orientation was irrelevant to allegations 3 and 4.

169. In relation to the dismissal meeting of 8 April 2024 with Mr Gary Hay, we were satisfied that the link to the MSTeams meeting was sent to the Claimant late. We note that the Claimant claimed that he was ready waiting at 10:00 but had given up by 10:08 by which time he was no longer on his computer. The Claimant complained vociferously that the Respondent did not contact him regarding the final details for the meeting, but equally he did not email or telephone the Respondent. We are satisfied that the Respondent was justified in going ahead when the Claimant did not log on and join the call. The Claimant had done MSTeams meetings several times in the past and knew the drill. He would have known that he needed a link. He would have known

that it was a quick and easy task to send a link if it had been missed or lost (it was not lost on this occasion).

170. In considering the evidence regarding the 4 April 2024 meeting, we have considered whether or not the Claimant might have had an expectation that the meeting chaired by Mr Hay might have been adjourned. This is because the Claimant had objected to proposed meetings to the Respondent many times and they had been flexible and often conceded, rearranging to suit the Claimant. However, we also had regard to what the Claimant said in the online form that he used to report Mr Hay to the SRA [D428-432]. At [D430] he told the SRA that: "*I decided not to attend the disciplinary meeting where I received a letter on 08.04.24*". Overall, whilst it is true that the link to the meeting was sent 8 minutes late and after the scheduled start time for the meeting, we find that the Claimant deliberately decided not to attend the meeting. This is because he had not had confirmation that the meeting was cancelled and could and should have sought clarification from the Respondent. Whilst the Respondent had postponed meetings at the Claimant's requests previously, they had communicated him about postponements. We also find that the Claimant deliberately did not want to attend the meeting because he was not happy about the involvement of Mr Gary Hay for his own private reasons. There is no evidence that the Claimant's sexual orientation had any relevance to the decision to proceed with the meeting in the Claimant's absence.

171. We find that the key point in relation to the 8 April 2024 meeting and findings of misconduct is that the findings were justified. In her letter to the Claimant [D439 to 411] Ms Jivraj-Bata (R4) wrote to the Claimant saying that "*In the light of my findings that each allegation is upheld, I consider that your behaviour in relation to each of these allegations (whether considered separately or together) amounts to serious misconduct*". Whilst it is not clear whether the dismissal came about because Mr Hay made recommendations nor quite how the decision had been reached, there was no evidence that the Claimant had been dismissed in any way connected to his failure to attend the meeting on 8 April 2024. Further, the Claimant has not explained how or what the outcome of the meeting would have been or that it would have been different if he had attended.

172. It is also noted that the 8 April 2024 meeting and findings did not seem to consider the matter raised in the Matt Lucas disciplinary appeal hearing which dealt, inter alia, with the Mr Maclean issue [D442-448]. It is also striking that the 8 April 2024 meeting and findings did not touch upon the Claimant's sexual orientation at all. Notwithstanding, the Claimant was, as we know, dismissed for reasons of "serious misconduct".

173. Returning to the agreed list of issues document, it says: "6*.2 Did the Claimant reasonably see the treatment as a detriment? The Claimant has responded to say that he believes that "allegations mentioned in 6.2 were detriments". 6.3 If so, has the Claimant proven facts from which the Tribunal could conclude that in any of those respects the Claimant was treated less favourably than someone in the same material circumstances (a "straight" man) was or would have been treated? (Judge Leach noted that the Claimant relies on a hypothetical comparison).*" We cannot see any material difference between the way that the Claimant was treated and the way that his "straight" man comparator would have been treated. The Claimant's sexual orientation was entirely irrelevant to the way that the Respondent dealt with matters on 3 November 2023 and 8 April 2024.

174. In relation to the agreed list of issues: "*6.4 If so, has the claimant also proven facts from which the Tribunal could conclude that the less favourable treatment was because of sexual orientation?*" and "*6.5 If so, has the respondent shown that there was no less favourable treatment because of sexual orientation?*" The answers to 6.4 and 6.5 are "no". The Claimant has not satisfied us that he has suffered any less favourable treatment because of his sexual orientation.

List of issues "protected disclosures"

175. The agreed list of issues says that *"(Judge Leach noted that the Claimant was considering whether to pursue protected disclosure complaints and commented that if he was, then the Claimant needed to provide the information that he highlighted in the CMO document)*". Notwithstanding, by the time of the hearing before us the Claimant was relying on communications with the NMC and SRA. The agreed list of issues document continues: "*7.1 Did the Claimant make disclosures of information? The Claimant relies on the following alleges disclosures: 7.1.1 Disclosure 1 – on 12 January 2024, the Claimant made online submissions to the NMC regarding Peter McLean, Discharging Co-ordinator at NHS Stockport Foundation Trust, that he had failed to disclose a safeguarding concern to the Claimant in relation to a patient which prevented that patient from returning to a previous care home*."

176. We found the communication with the NMC to be confused and confusing. Fundamentally it was not easy to follow what, if anything, the substantive problem was or might have been because, by the time of the communication with the Claimant about the patient that Mr Maclean was dealing with in trying to find a placement, the patient's risk flag seemed to have been removed and there was no need to disclose any potentially sensitive information. Further, if the Claimant had genuine complaint with the way that the Respondent care home dealt with such requests, then the correct route appeared to be the CQC who regulate the home. Instead, he went directly to the NMC.

177. It was also unclear when he made his report to the NMC what the content of the report to the NMC consisted of. [D183] suggests that the Claimant submitted a "refer a colleague form" and that the Claimant first contacted the NMC on 12 January 2024, but, overall, there is very sparse evidence. [D214] is an email about the NMC referral form and suggests that some form of documentation had been logged with NMC. However, we do not know the *content* of what the Claimant said to the NMC. [D488-491] is a copy of an undated full NMC "colleague referral" form emailed to Mark Wood but this seems to have initiated a response from the NMC on 26 July 2024, long after the conversation with Mr Maclean in October 2023.

178. At the same time, there was compelling evidence that he had referred ***himself*** to the NMC. The Claimant explained to Ms Duncan that he had done "a self-referral" to the NMC. "*and so I went to the NMC…. And I did a self-referral to see if I've done anything wrong rather than listening to Trudy and Jiji and my boss and Alyshba and Matt Lucas, as I needed to know myself if I've done anything wrong.*" [D209]. This clearly suggests that the Claimant had referred himself (not Mr Maclean) to the NMC because he wanted to know if he had done something which might have breached his professional responsibilities and practice.

179. On this topic it should also be noted that on 4 April 2024 [D438] the Claimant received an email which suggests he had made a report to the CQC but that it was about a staff employment issue or dispute. (The emails says that the CQC did not have a remit "*to get involved with staff employment issues of disputes*.") In any event, it was raised very late. (4 April 2024 was the date that the Claimant was supposed to be attending the meeting with Mr Hay at a point when the allegations against him had been clearly set out).

180. On a different but linked point, on 28 February 2025, there is a further email to the Claimant from Fiona Bryan of the CQC Network North. She says that issues regarding Plane Tree Court had been brought to her attention after the Claimant had written to his MP and the MP had, in turn, written to the CQC. Ms Bryan says that previous correspondence to the CQC from the Claimant had appeared to relate to employment matters but she says that, via the MP, the Claimant had raised "safety concerns". However, the date in February 2025 shows that this tranche of reporting had occurred long after the Claimant had stopped being employed by the Respondent and so cannot be linked to any detriment allegedly suffered by the Claimant.

181. For the sake of completeness we also note what the Claimant says at [§32] of his witness statement that he "*firmly believe that my protected whistleblowing disclosure regarding Peter Mclean and his unsafe discharge practices was the catalyst*…" and then [§33] that he had "*no choice but to refer the matter to the NMC*" but that they found "*no case to answer – confirming that my professional judgment had been correct all along*…" This piece of evidence suggests very strongly that the Claimant had referred himself to the NMC and had not therefore made a protected disclosure about anyone else.

182. In summary in relation to 7.1.1, the NMC referral is entirely unclear. At best it seems that the Claimant referred himself to the NMC and not Mr Maclean or anyone else.

183. The agreed list of issues says that: "*7.1.2 Disclosure 2 – on 3 April 2024, the Claimant made online submissions to the Solicitors Regulation Authority and the Information Commissioner's Office AND ANOTHER NHS TRUST PORTSMOUTH regarding Gary Hay, solicitor and owner of a HR consultancy company, Law2Business, who the Respondent had instructed to chair the Claimant's disciplinary hearing. The Claimant claims Mr Hay had committed a criminal offence, failed to comply with a legal obligation and/or other breach being concealed*".

184. Again, in relation to 7.1.2 the Claimant's claim is very difficult to follow. The Claimant seemed to communicate (bearing in mind that he had not provided a witness statement) that he thought that there was a genuine conflict of interest on the part of Mr Hay. The Claimant did not seem to understand that it was permissible for Mr Hay to work as a solicitor in private practice and/or an employed solicitor and at the same time do consultancy work for Peninsula, in this case sitting on disciplinary panels.

185. Further, the Claimant's objections about Mr Hay to SRA [D428-432] mention that he had a link to Capsticks Llp which was dissolved twice in 2019 and 2021. We were entirely unclear how this was relevant to the Claimant's complaints and issues in his claim.

186. The Claimant also took issue with the fact that Mr Hay was a non-executive director of Portsmouth Hospital and had used his NHS email address for matters relating to his role in hearing the Claimant's appeal. [D430] "*Also he was using NHS credentials by using his NHS email address where my employer shared his email address for future communications & they breached my data protection by sending my personal details & employment issues to NHS email*". The Claimant also communicated with Portsmouth Hospitals NHS university and Isle of Wight Trust [D454 & 453]. On 3 April 2024 he wrote to Matt Wigglesworth saying "*Is there any chances I can speak with Penny as I have a sensitive issues I would like to raise with her re 1 of the boards of non executive directors"* Ms Penny Emerit responded on 10 April 2024 saying that the concerns were ones that the Claimant should raise though his employer because they were the relevant "data controller". She also tried to reassure the Claimant that there were robust controls in place at the Trust and only Gary Hay had access to his own email. For completeness, other than the Claimant's very general complaint there was no evidence that anyone other than Mr Hay had seen any evidence or information relating to the Claimant or Mr Hay's role in dealing with the disciplinary matters.

187. The Claimant also relied on information at [F35 to 42], namely an online blog about Mr Gary Hay "Westminster Confidential" and [F41&42] Mr Gary Hay's online LinkedIn profile. Again, we could not see the relevance to the Claimant's complaints in these proceedings.

188. The Claimant also seems to have made a complaint to the ICO subject access request service [D464-467] saying that he wanted information about a "*data protection breach by Alyshba Jivraj-Bata HR Director of Serencroft Ltd who has directly discriminated against my sexual orientation characteristic and the disability discrimination 1995 dismissed*". We noted that the Claimant had given his reference or customer ID number at [D467] as "*The Winner Takes it all (Abba)*".

189. Returning to the agreed list of issues: "*7.1.3 Disclosure 3 – on 4 April 2024, the Claimant e-mailed Alyshba Jivraj regarding his concerns in relation to Mr Hay*". The Claimant said that Mr Hay's business Law2Busienss had been dissolved twice and he also complained that he had not been told that Mr Hay was an "interrogation lawyer". At §4 of his email the Claimant said "*As per your invite letter you asked me to attend a disciplinary hearing with a non existing HR company to conduct my disciplinary hearing this is not accepted from my side as it puts me at disadvantage since my findings shows that he is interrogation lawyer this explains your diploid tactic & dishonesty with no transparency which is enough for me to decline the invite & and blow the whistle one last time*" [sic]. Again, we did not understand the Claimant's complaint or the relevance to the case. Mr Hay was a solicitor with experience in professional regulation matters, including of medical professionals and seems to have been sub-contracted to Peninsula and instructed on the Claimant's case to deal with the one-off disciplinary meeting on 4 April 2024. We do not understand the objection and note that it should have reassured the Claimant that his case was being dealt with by someone independent from both his employer and Peninsula. Further, the objection to Mr Hay being an "interrogation" lawyer seems to have been misplaced. The information suggests that Mr Hay had experience of cross-examination, a skill which is common to most lawyers.

190. The list of issues continues: "*7.2 In relation to disclosure 1, the Claimant relies upon Section 43B(1)(d) in that the claimant was concerned for the residents' health and safety*". In this regard we noted that the Claimant was employed in the care home because he is a Registered Nurse. He was the one tasked with understanding professional health-related responsibilities. Had that really been his concern, then we find that he would have gone to the CQC and not the NMC from the outset. It did not make sense that he was referring about another employee in another organisation. It was Ms Riley's (R3) oral evidence that he would have known which the correct organisation was to make a referral to. As set out above, there was also some evidence that he had self-referred for the reasons set out above. It is also possible that he made two referrals to the NMC; one relating to himself and another relating to Mr Maclean, but if that was the case it was not clear. The Claimant has the burden of proof, it was his responsibility to ensure that there was no ambiguity on such issues and that his case was presented in a clear manner.

191. We found the evidence regarding the claimed protected disclosures to be entirely confused and confusing. However, we find that the Claimant's alleged motivation about patient safety was secondary and incidental. He discussed the protected disclosure claims repeatedly and in detail, for example at [D43 to 48]. In any event, the NMC complaints were inconclusive regarding health and safety and were made to the wrong forum anyway. The final result of the complaint regarding Mr Maclean and surrounding discussions was that it was identified that the Claimant needed more training in relation to communication. As identified above, it was not until after he had left the home that the Claimant raised issues with the CQC that they say they would engage with, but this "whistleblowing" was too late to be of relevance to his claims.

192. The list of issues also says: "*7.3 In relation to disclosure 2, Judge Leach annotated the CMO to say that the Claimant was to confirm the relevant section that he relied upon and what concerns he had in mind at the time of that disclosure". The Claimant's response was that (a) section 43B(1)(A): the Claimant mistakenly plagiarism for misrepresentation as GH was introduced HR Consultant where he was an expert lawyer in interrogation for 25 years and is known as "an expert for difficult doctors" who abused his power of trust for his own financial gains & benefit" [sic]. (b) Section (1)(B): Mr Hay owner of a company which was dissolved at the time of the WB now a non-exist company would oblige to tax & other obligations?* [sic]"

193. In relation to Mr Hay, it is unclear what exactly Mr Hay did in relation to the Claimant's case and appeal hearing. For example, it is unclear if he considered the case "*in absentia*" or did it revert back to Ms Jivrij-Bata (R4) on the basis that the letter actually went out in her name. It is unclear precisely what Ms Jivrij-Bata's (R4) role was. However, there is no evidence that the Claimant raised his objections in a coherent manner with the Respondents. The claim would be easier to understand if the Claimant had done this. However, he took matters into his own hands and the result is confused and confusing. We repeat the observations made above about Mr Hay being an "interrogation" lawyer.

194. Returning to the list of issues: "*7.4 In relation to disclosure 3, Judge Leach said that the Claimant was to confirm the relevant section he relies upon and what concerns he had in mind at the time of that disclosure*. *The Claimant's response was: Section 43(1)(F) AJ R4 concealed all the information about Mr Hay regarding his executive*

*director NHS who his company dissolved & using his NHS credentials.* [sic] *7.5 Did the Claimant have a reasonable belief that the making of any of the alleged disclosures was in the public interest and tended to show one of the above failures or potential failures as identified? The Claimant's response was: The C definitely believes that the 1st & 2nd disclosure would be of the public interest.* [sic]"

195. It has been impossible to identify what the Claimant's concerns were in relation to any of the "whistleblowing" protected disclosures with any precision. This was not helped by the fact that the Claimant failed to deal with these crucial matters in a witness statement. He also failed to attend the disciplinary meeting with Mr Hay when his concerns could have been discussed. We also note that the Gary Hay complaint was made on 3 April 2024, and so the day before the meeting that the Claimant was due to attend. Crucially, he did not make it clear anywhere, including his complaints and submissions, how or why his complaints were made in the public interest. To succeed the Claimant would also have to demonstrate an honest belief that he was making protected disclosures in the public interest, and he has failed to do so. All of the evidence pointed to the Claimant having made the complaints for his own private reasons connected to his deteriorating professional relationship with the Respondent.

List of issues "Detriments – s43B Employment Rights Act 1996"

196. The next issue on the list of issues relates to detriments: "8*.1 What are the facts in relation to the following alleged acts or deliberate failures to act by the Respondent? Detriment 1 the wages paid to the Claimant on or about 1 February 2024 and particularly deduction made from wages*".

197. In her evidence, Ms Riley (R3) explained that the Claimant had been paid all the money owed albeit in two tranches. The relevant background was that he had been treated as a salaried worker and according to Ms Riley and when he not infrequently had worked longer than contacted hours, he had been paid accordingly. Historically he was also paid in full when off sick, although it seemed that strictly he was only entitled to statutory sick pay. This was because he had often been "owed" hours and there had been a reconciliation of hours and pay. Therefore, the pattern had been that there had not been deductions. Consequently, historically, the Claimant's sick leave had not resulted in the Claimant being paid statutory sick pay. Instead, time of sick had been reconciled with his additional, owed overtime hours. Also, prior to events giving rise to his claims, his sickness absence had been low.

198. By February 2024, however, things had changed and the Claimant had a period with greatly increased absences including in January 2024. In the end, he had been paid a reduced amount which equated to 82% of what he was usually paid for the month because of January absences and him having been paid statuary sick pay, (rather than his sick absence having been reconciled with overtime). We found that the Claimant was not, of course, a "zero hours" employee and was on the list of professional management staff at the home. However, we could not see any causative link between the 82% payment and the alleged "whistleblowing" and so we find that the reduction was not related to the allegations of "whistleblowing". We also note that the evidence explaining why the Claimant had been paid 82% of what he had expected was clearly and logically explained and the Claimant did not follow up on the explanation. He provided no evidence or submissions which undermined the Respondents' logical and systematic justification for the reduced pay.

199. In relation to the list of issues: "*D2 the decision not to uphold grievances raised by the Claimant and communicated to the claimant on or about 5 February 2024. 8.2 Did the Claimant reasonably see that act or deliberate failure to act as subjecting him/her to a detriment? 8.3 If so, was it done on the ground that he made a protected disclosure /other prohibited reason?*" We find that the Respondents had engaged with the Claimant on a professional level. We noted that the grievance was initiated on the basis that the Claimant was not included when the Respondent appointed another Registered Nurse. We note that the grievances were all looked at externally and that it was unclear what the actual loss (i.e. detriment) claimed to the Claimant was.

200. In relation to the issue of detriment we note the Claimant's submissions on the topic of "DARVO". We understood this to be an acronym for an identifiable pattern of behaviour in certain individuals. However, we could not see these patterns of behaviour in the Respondents' dealings with the Claimant. On a different but linked point we noted that the Claimant raised complaints with outside agencies (NMC, SRA, CQC) but these seemed to be completely different issues from the matters considered in the report communicated to the Claimant around 5 February 2024.

201. We also noted that in October 2023 when the Respondents were carrying out investigations culminating in the meeting on 3 November 2023, there was no evidence that R1 was trying to get rid of the Claimant. Various issues had been raised in the course of that investigation that they could have tackled him on, but they did not do so. Rather, the investigation focussed on the Claimant's communications with Mr Maclean relating to his professionalism; matters which he accepted could be improved.

List of issues "Unfair dismissal – s98 and s103A employment Rights Act 1996"

202. The list issues records: "*Reason: 9.1 Has the respondent shown the reason or principal reason for dismissal?*" In relation to the 8 April 2024 letter stating that the Claimant was dismissed due to misconduct, we find that any of the allegations in isolation or in combination would be sufficient reason for dismissal, except the taking-food-from-the-fridge incident. Whilst we were satisfied that the Claimant did take some food from the fridge, despite his denials, there was also ambiguity around the fact that staff legitimately stored their own food in the fridge and also, on occasion, were allowed to take food that was no longer destined for the home's residents. (We are clear that the Claimant did not commit theft as per the criminal/legal definition). Notwithstanding, his dismissal was for misconduct, and the other three allegations were clear incidents of misconduct.

203. In relation to "*9.2 Was it a potentially fair reason under section 98 Employment Rights Act 1996?*" we have no hesitation in finding any of the four allegations in isolation or combination amounted to a potentially fair reason.

204. Turning to consider: "*Fairness – section 98 ERA 9.3 If the reason was misconduct, did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant? The Tribunal will usually decide, in particular, whether: 9.3.1 The respondent genuinely believed the claimant had committed misconduct;*" We find that the facts of the allegations speak for themselves that the Claimant had committed various acts of misconduct as recorded in the 8 April 2024 letter and so that there were "reasonable grounds" for the Respondents' belief that he had been guilty of misconduct (as per 9.3.2 of Judge Leach and the list of

reasons). We also find as per 9.3.3 that "*at the time the belief was formed the respondent had carried out a reasonable investigation*", not least because the disciplinary process had involved external people.

205. We have given particular care to consideration of the issue of "9.*3.4 the respondent followed a reasonably fair procedure*" because we note that it was always conceded that the Claimant was sent the link to the dismissal meeting on 4 April 2024 late. We were not satisfied regarding the Claimant's claim in oral evidence that he had been sitting at his computer at 10:00 on 4 April 2024 ready to go but had abandoned the meeting by 10:08 when the MSTeams link was sent to his usual email address. We do not understand why he did not chase the MSTeams link as he could easily have emailed or phoned the Respondent. On a balance of probabilities we find that it is more likely that he decided not to attend the meeting, not least because this is what he stated in the form to the SRA when complaining about Mr Gary Hay. The Claimant had complained to the Respondent about the involvement of Mr Hay and had asked for a postponement the previous day. Having considered all the evidence it appears that the Claimant never intended to attend the 4 April 2024 meeting.

206. We also note that Mr Hay not involved in the appeal of the dismissal with Ms Farheen Jivraj-Maguire on 8 May 2024 who went through all the various allegations in detail with the Claimant. As we noted above in the chronology, the Claimant was given the opportunity to say what he could have said if he had attended the Gary Hay hearing. He was given opportunity in the appeal to deal with the substantive, underlying issues. This was not a "box-ticking" exercise.

207. Linked to the paragraph above, we also note that in his 13 April 2024 email to Ms Jivraj-Bata (R4) the Claimant had also said that "*the right thing to do would have been to remove Mr Hay from my case as requested and show your honesty which never came. Hence why I could not deal with you or Mr Hay that day*" [sic]. We find that this is further evidence which points to the Claimant having deliberately decided to absent himself from the dismissal meeting chaired by Mr Hay. Finally, on a separate but linked point we are also satisfied that, even if an fair procedure had not been followed, perhaps because the Respondent had not sent the MSTeams link to the Gary Hay meeting, (albeit that we find that the procedure was fair) then the Claimant would still have been dismissed (**Polkey v AE Dayton Services Ltd [1987] UKHL 8**).

208. The final issue under this heading is therefore whether: "*9.3.5 dismissal was within the band of reasonable responses*". Given the chronology giving rise to the dismissal, the investigation, the decision to dismiss and the appeal we were easily satisfied that the Respondent's decision and the way that they reached their decision to dismiss was within the range of reasonable responses. We are satisfied that the test in **British Home Stores v Burchell [1980] ICR 303** was met.

<u>List of issues "Automatic Unfair dismissal – s103A ERA"</u>

209. The list of issues records: *"(Judge Leach annotated the list of issues to say that the Claimant was to consider whether to pursue this complaint – that the sole or principal reason for his dismissal was that he had made one or more of the protected disclosures alleged). 9.4 Was the reason or principal reason for the Claimant's dismissal that the Claimant had made a protected disclosure? The Claimant relies on the alleged disclosures 1 to 3 identified above*". Mr Bunting incorporated into the list of issues that "*The Claimant responded: On the ground of the C protected characteristic*

*by blowing the whistle against Mr Hay the chairperson of the C disciplinary hearing by misrepresentation fraudulent action & using his NHS credentials for his own financial gains & benefits the Claimant received his dismissal letter 4 days after the whistle blowing where he should be heard & dismissed by the chairperson, this would happen in the normal process, since Mr Hay was the one where the whilst was blown against, AJ R4 took over his part & dismissed the C to avoid the doubt of the automatic unfair dismissal & ensure that the process went fairly, they sent the disciplinary hearing link invite to the C 8 minutes after commending the meeting (10:08 am) intentionally without calling the C to ask him to attend the hearing as they did in the previous hearings to justify the hearing was done in the absence of the C & the dismissal decision has been taken fairly, the C thought that the meeting was cancelled after the whistleblowing incident as no invite was received prior to the meeting.*"

210. In relation to section 103A, we do not find that the Claimant was dismissed because he had made protected disclosures/"whistleblowing". As set out above we were not satisfied that there were in fact any protected disclosures/"whistleblowing" because his claims were so confused and confusing and the content of what he reported, particularly to the NMC, was wholly unclear. In any event, we were satisfied that the Claimant was dismissed as per the matters set out in the 8 April 2024 letter and as a result of his misconduct.

List of issues "Unlawful deduction of wages"

211. The list of issues says, "*10.1 The Claimant complains that he received statutory sick pay on 11, 15, 16 and 17 January 2024 (and became aware of this deduction on 5 February 2024, when he received his salary). 10.2 Was there a deduction from the claimant's full pay? (Respondent to provide a breakdown of pay in January 2024). 10.3 If so, was the deduction unauthorised and unlawful?*" The evidence on this point was dealt with above. At the hearing Ms Riley explained the position in relation to the Claimant having historically had a good sickness record, and as a result of the fact that, he was generally owed time by the respondent, in relation to which monies were offset on the relatively rare occasions when the Claimant had taken sick leave. After she had explained that the Claimant had been paid for 82% of his time in keeping with his sickness in January 2024 the Claimant did not seem to take issue with it. He did not provide an alternative explanation or demonstrate how Ms Riley's explanation was wrong or inaccurate.

List of issues "Time limits"

212. I have not dealt with time limits issues because we have not upheld any of the Claimant's allegations and complaints. However, we record that, in relation to the disciplinary hearing took place on 3 November 2023 by MSTeams and which was a video and audio meeting and where the Claimant complained that Ms Jivraj-Bata (R4) had sniggered at his voice and gestures, whilst we noted that the Claimant was clearly upset by apparently seeing himself in the recording, nonetheless there was nothing to suggest that he complained at the time or later to Ms Duncan that he had been laughed at or humiliated in the disciplinary meeting with Ms Jivraj-Bata (R4) or that there was any adverse comments or behaviour at all, never mind connected to his sexual orientation. We therefore find that, had we found for the Claimant on this issue, then it would have been out of time. For the avoidance of doubt, nor was this incident, we

find, part of an ongoing course of discriminatory conduct in the light of the Claimant's sexual orientation.

## Conclusion

213. For all the reasons set out above, all the claimant's complaints failed and were dismissed. There was no breach of the Equality Act 2010 and the Claimant's dismissal was not unfair. We are not satisfied that there are any outstanding monies owed to him.

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Tribunal Judge Holt

Dated 19 November 2025

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON

Date: 21 November 2025

FOR THE TRIBUNAL OFFICE