

RESERVED JUDGMENT



EMPLOYMENT TRIBUNALS

BETWEEN

CLAIMANT

RESPONDENT

PAUL FARTHING

V

HM LAND REGISTRY

HELD AT SWANSEA MAGISTRATES' COURT ON: 1 – 7 JULY 2025

BEFORE: EMPLOYMENT JUDGE POVEY
MS A BURGE
MS J KEENE

REPRESENTATION:

FOR THE CLAIMANT:

IN PERSON

FOR THE RESPONDENT:

MS TUCK KC (COUNSEL)

JUDGMENT

1. So far as relevant, all the complaints were presented in time and the Tribunal had jurisdiction to determine them.
2. The complaint of unfair dismissal is not made out and is dismissed.
3. The complaint of breach of contract (wrongful dismissal) is not made out and is dismissed.
4. The complaint of breach of the duty to make reasonable adjustments is not made out and is dismissed.
5. The complaint of discrimination arising from disability is not made out and is dismissed.

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REASONS

1. This is a claim brought by Paul Farthing ('the Claimant') against his former employer HM Land Registry ('the Respondent').

Background

2. By way of a brief procedural background to the claim:
 - 2.1 The Claimant was employed as an Assistant Land Registrar by the Respondent from 4 April 2022 until his dismissal for gross misconduct on 17 November 2023. The Claimant had previously been employed by the Driver & Vehicle Licensing Agency (DVLA) since September 2020 and enjoyed continuity of employment;
 - 2.2 Following a period of early conciliation (from 21 January 2024 until 3 March 2024), the Claimant presented his claim to the Tribunal on 28 March 2024, alleging unfair dismissal, wrongful dismissal and discrimination on grounds of disability. In its response, the Respondent resisted the claim in its entirety;
 - 2.3 At a case management hearing on 19 July 2024, a list of issues was agreed. Save for the fact that disability was no longer in dispute, that list of issues was confirmed by the parties at the outset of the final hearing as the issues to be determined by the Tribunal; and
 - 2.4 On 2 July 2025, the Tribunal made an anonymisation order in respect of two of the Respondent's employees, one of which was a witness in the proceedings (referred to as 'RT'). We subsequently discharged the anonymisation order in respect of one employee. We also ordered that the maintenance of the anonymisation order in respect of RT would be reviewed once we had promulgated our decisions. A separate order managing that process will be issued.

The hearing

3. We heard oral evidence from the Claimant, who represented himself.
4. For the Respondent, we heard oral evidence from the following employees:
 - 4.1. Denise Daniels (Senior Counter Fraud Officer)
 - 4.2. Jonathan Mudford (Senior Delivery Manager)
 - 4.3. Stuart Brown (Head of Performance & Business Development)

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- 4.4. Joanne Unsworth (Corporate & Commercial Legal Lead)
5. All the witnesses we heard from provided and adopted their written statements. The Claimant, for reasons discussed at the outset of the hearing, withdrew Paragraphs 96 – 101 of his written statement.
 6. A statement was also provided for the Claimant from his friend Ben Randle. Neither the parties nor the Tribunal had any questions for Mr Randle. As such, he was not called to give evidence and his statement was accepted into evidence unchallenged.
 7. The Respondent had provided a witness statement for RT, who for reasons explained in advance of the hearing did not attend. The statement was in evidence (as it had been exchanged in accordance with earlier case management directions). As we explained to the parties, the Tribunal afforded it such weight as was appropriate, in circumstances where RT was not attending the hearing to be questioned upon its contents, and mindful of the reasons given by RT for not attending.
 8. The Tribunal was provided with a paginated bundle of documents to which we were referred throughout the hearing ('the Bundle'). We also received written and oral submissions from the Claimant and from Ms Tuck for the Respondent.
 9. The Claimant was a litigant in person. We explained the process and procedures to him, checked his understanding, encouraged him to ask questions and gave guidance throughout. We were satisfied that the Claimant was able to fully engage in the process and present his claim to the best of his abilities. Indeed, we were impressed by the Claimant's clarity and focus, his understanding of the importance of the issues in the case and the adept and professional manner in which he questioned the Respondent's witnesses.
 10. We were grateful to Ms Tuck, her instructing solicitors and the Claimant for the assistance they provided and the work they had undoubtedly undertaken both before and during the hearing. We were also grateful to all the witnesses, including the Claimant, who attended and answered the questions asked of them.
 11. We concluded hearing evidence and submissions on 7 July 2025. On 8 July 2025, the Tribunal deliberated. We planned to deliver our oral judgment and reasons to the parties on the afternoon of 9 July 2025. We had by then concluded our deliberations and reached our decisions. However, due to unforeseen circumstances, unconnected to the case, it was not possible to hand down judgment on 9 July 2025. As such, we reserved our decision. The Tribunal apologises to the parties for those

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unforeseen changes and the delay in promulgating the reserved decision and reasons.

12. In reaching our decisions, we had regard to all the evidence we saw and heard, as well as the submissions we received.

The relevant law

Unfair dismissal

13. By virtue of Section 94 of the Employment Rights Act 1996 ('ERA 1996') an employee has the right not to be unfairly dismissed by her employer. In respect of what constitutes an unfair dismissal the relevant law is to be found within Section 98 of the ERA 1996.

14. Section 98(1) requires that in deciding whether a dismissal was unfair it is for the employer to show the reason for that dismissal. That reason must fall within a list of potentially fair reasons to be found within Section 98(2) of which subsection (2)(b) states:

A reason falls within this subsection if it relates to the conduct of the employee.

15. Section 98(4) of ERA 1996 requires the Tribunal to consider whether the employer acted fairly in dismissing the employee, as follows:

Where the employer has fulfilled the requirements of subsection (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 reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
- (b) shall be determined in accordance with equity and the substantial merits of the case.

16. In a conduct dismissal, the Tribunal is bound to consider the guidance issued by the Employment Appeals Tribunal in the Courts (including the decisions in British Home Stores Ltd v Burchell [1978] 379, Iceland Frozen Foods Ltd v Jones [1993] ICR 1, Post Office v Foley [2000] IRLR 827, Sainsbury's Supermarkets v Hitt [2003] IRLR 23).

17. In particular, the case law requires me to consider four sub-issues in determining whether the decision to dismiss on the grounds of conduct was fair and reasonable:

17.1. Whether the employer genuinely believed that the employee had engaged in conduct for which he was dismissed;

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- 17.2. Whether they held that belief on reasonable grounds;
- 17.3. Whether in forming that belief they carried out proper and adequate investigations, and
- 17.4. Thereafter, whether the dismissal was a fair and proportionate sanction to the conclusions they had reached.
18. In addition, the Tribunal must consider the reasonableness of the employer's decision to dismiss and, in judging the reasonableness of that decision, the Tribunal must not substitute its own decision as to what was the right course to adopt for the employer. Rather, the Tribunal must consider whether there was a band of reasonable responses to the conduct within which one employer might reasonably take one view whilst another quite reasonably takes a different view. Our function is to determine whether in the circumstances of the case, the decision to dismiss fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within that band it is fair. If it falls outside that band, it is unfair.
19. The Tribunal is also required to consider the fairness of the procedure that was followed by the employer in deciding to dismiss the employee. However, if the procedure followed was unfair, the Tribunal is not allowed to ask itself whether the same outcome (i.e. dismissal) would have resulted anyway, even if the procedure adopted had been fair (per Polkey v AE Dayton Services Ltd [1987] IRLR 503 HL).
20. The requirement for procedural fairness includes consideration of the reasonableness of the decision to dismiss up to and including any appeal process undertaken (West Midlands Co-operative Society v Tipton 1986 ICR 192, HL).
21. The ACAS statutory Code of Practice on discipline and grievance procedures is issued under section 199 of the Trade Union & Labour Relations (Consolidation) Act 1992. It provides practical guidance and best practice to employers, employees and representatives and sets out principles for handling disciplinary situations in the workplace. An unreasonable failure to follow the guidance in the Code permits the Tribunal to adjust any award for unfair dismissal, by up to 25%.

Human rights & unfair dismissal

22. Article 8 of the European Convention on Human Rights ('ECHR') states as follows:

Right to respect for private and family life

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1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

23. Article 10 of the ECHR states as follows:

Freedom of expression

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

24. Section 3 of the Human Rights Act 1998 ('HRA'), so far as relevant, states as follows:

- (1) So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights.
- (2) ...

25. Section 6 of the HRA provide that:

- (1) It is unlawful for a public authority to act in a way which is incompatible with a Convention right.
- (2) ...
- (3) In this section "public authority" includes—
 - (a) a court or tribunal,

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26. In X v Y [2004] EWCA Civ 662, the Court of Appeal provided guidance for Tribunals where HRA points are raised in unfair dismissal cases, as follows (per Mummery LJ):

49....In general, whenever HRA points are raised in unfair dismissal cases, the employment tribunals should properly consider their relevance, dealing with them in a structured way (though not necessarily at great length), even if it is ultimately decided that they do not affect the outcome of the claim for unfair dismissal.

...

59.

...

- (4) It is not immediately obvious, on a reading of section 98 [ERA 1996] without reference to a particular set of facts, as to how it could be incompatible with or be applied so as to violate article 8...and so attract the application of s3 [HRA]. Considerations of fairness, the reasonable response of a reasonable employer, equity and substantial merits ought, when taken together, to be sufficiently flexible, without even minimal interpretative modification under s3 , to enable the employment tribunal to give effect to applicable [ECHR] rights. How, it might be asked, could the proper application by the employment tribunal of the objective standards of fairness, reasonableness, equity and the substantial merits of the case result in the determination of a claim for unfair dismissal that was incompatible with article 8 ?
- (5) In general, the reasonable expectation is that a decision that a dismissal was fair under s98 would not be incompatible with article 8... There would be no need to invoke s3 in order to achieve a result compatible with article 8... In such cases s3 can be ignored.
- (6) There may, however, be cases in which the HRA point could make a difference to the reasoning of the tribunal and even to the final outcome of the claim for unfair dismissal. I shall now consider the possible application and effect of s3 of the HRA in such cases.
- (7) As explained earlier, a dismissal for a conduct reason may fall within the ambit of article 8. A reason for a dismissal is "a set of facts known to the employer or beliefs held by him which cause him to dismiss the employee" *Abernethy v. Mott Hay* [1974] ICR 323. The relevant set of facts may relate to the employee's private life. Take, by way of example, an extreme case involving the more straightforward position of a public authority employer. An employee of a public authority is dismissed for eating cake at home or in his lunch break at work. That is the set of facts constituting the conduct of the employee within s 98(2)(b) of the ERA. The decision to eat cake is, in general, a private one. It is difficult, though not impossible, to conceive of a justification under article 8.2 for the employer's interference with respect for private life by dismissal for that reason. It is possible that in some circumstances the

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interference with a person's right to eat cake is necessary, legitimate and proportionate.

(8) In the case of a public authority employer, who is unable to justify the interference, the dismissal of the employee for that conduct reason would be a violation of article 8. It would be unlawful within ss6 and 7 of the HRA. If the act of dismissal by the public authority is unlawful under the HRA, it must also be unfair within s98, as there would be no permitted (lawful) reason in s 98 on which the public authority employer could rely to justify the dismissal. In that case no question of incompatibility between s98 and the [ECHR] right would arise.

(9) ...

(10) If, however, there was a possible justification under s98 of the dismissal of the cake-eating employee, the tribunal ought to consider article 8 in the context of the application of s 3 of the HRA to s 98 of the ERA. If it would be incompatible with article 8 to hold that the dismissal for that conduct reason was fair, then the employment tribunal must, in accordance with s3, read and give effect to s98 of the ERA so as to be compatible with article 8. That should not be difficult, given the breadth and flexibility of the concepts of fairness used in s98.

...

27. In Pay v Lancashire Probation Service EAT/1224/02/LA, the Employment Appeal Tribunal ('EAT') accepted that a public authority employer will not act reasonably under section 98 of the ERA 1996 if it violated an employee's ECHR rights. The EAT thought that, at least as far as public authority employers were concerned, the words 'reasonably or unreasonably' in section 98(4) of the ERA 1996 should be interpreted as including the phrase 'having regard to the applicant's [ECHR] rights'. In this context, a public authority employer would not have acted 'reasonably' under section 98(4) where it was found to have unjustifiably breached an employee's ECHR rights.

Wrongful dismissal

28. By virtue of the Employment Tribunals Extension of Jurisdiction (England & Wales) Order 1994 SI1623, proceedings may be brought before the Tribunal in respect of a claim of an employee for the recovery of damages or any sum for breach of a contract of employment where the claim arises or is outstanding on the termination of the employee's employment.

29. Section 86 of the ERA 1996 affords rights of notice to employees, the length of which is determined by their period of continuous employment with their employer. Any failure by the employer to give correct notice constitutes a breach of his contract of employment, save where either

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the employee waives his rights to, or accepts payments in lieu of, notice. In addition, an employer is entitled to dismiss an employee without notice where satisfied that the employee's conduct amounted to a repudiatory breach of the employment contract and discloses a deliberate intent to disregard the essential requirements of that contract. The employer faced with such a breach by an employee can either affirm the contract and treat it as continuing or accept the repudiation, which results in immediate dismissal.

Disability discrimination

30. Section 39(2) of the Equality Act 2010 ('EqA 2010') states:

An employer (A) must not discriminate against an employee of A's (B)—

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

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

(c) by dismissing B;

(d) by subjecting B to any other detriment.

31. Disability is a protected characteristic (per section 4 of the EqA 2010). Section 6 of the EqA 2010 defines disability for the purposes of the Act.

32. Discrimination arising from disability is defined by section 15 of the EqA 2010 as follows:

(1) A person (A) discriminates against a disabled person (B) if—

(a) A treats B unfavourably because of something arising in consequence of B's disability, and

(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

33. There are two distinct steps to the test to be applied in determining whether discrimination arising from disability has occurred (per Basildon & Thurrock NHS Foundation Trust v Weerasinghe UKEAT/0397/14):

33.1. Did the claimant's disability cause, have the consequence of, or result in, "something"?

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- 33.2. Did the employer treat the claimant unfavourably because of that "something"?
34. In Pnaiser v NHS England [2016] IRLR 170, the Employment Appeals Tribunal summarised the proper approach to claims for discrimination arising from disability as follows:
- 34.1. The Tribunal must identify whether the claimant was treated unfavourably and by whom.
- 34.2. It then has to determine what caused that treatment, focusing on the reason in the mind of the alleged discriminator. The motive of the alleged discriminator in acting as they did is irrelevant.
- 34.3. The Tribunal must then determine whether the reason was "something arising in consequence of [the claimant's] disability", which could describe a range of causal links. That stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator.
- 34.4. The knowledge required is of the disability, not knowledge that the "something" leading to the unfavourable treatment was a consequence of the disability.
35. Section 20 of the EqA 2010 sets out the duties to make reasonable adjustments in respect of disabled persons. So far as relevant, section 20 states:
- (1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.
- (2) The duty comprises the following ... requirements.
- (3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.
36. Schedule 8 to the EqA 2010 provides more details as to the duty to make reasonable adjustments. In addition, section 212 of the EqA 2010 defines "substantial" as "*more than minor or trivial.*"
37. What constitutes a PCP should be construed broadly, It includes formal and informal practices, policies and arrangements and may in certain cases include one-off decisions (per Lamb v The Business Academy Bexley UKEAT/0226/15). However, it is not appropriate to interpret the phrase "provision, criterion or practice" so as to encompass all one-off

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decisions made by employers during the course of dealings with particular employees (per Ishola v Transport for London [2020] EWCA Civ 112).

38. If a person fails to comply with the duty to make reasonable adjustments, that person discriminates against the disabled person (per section 21 of the EqA 2010).

Findings of fact

39. Many of the facts relevant to determining the issues were not in dispute. The parties helpfully provided an agreed, neutral chronology of the relevant events. We were however required to determine some specific allegations made by the Claimant regarding Mr Mudford and the disciplinary procedure.
40. We begin with some general observations regarding the evidence we saw and heard.
41. The Tribunal found the Respondent's witnesses that we heard from to be consistent, plausible and measured. Their oral evidence was routinely supported by the documentary evidence. As such, we were able to place weight on their respective testimonies.
42. In contrast, whilst we concluded that the Claimant genuinely believed much of what he said in his oral and written evidence, it was often not supported by the documentary evidence before us. As such, we found the Claimant's oral and written evidence to be less reliable and less capable of being relied upon. The Claimant's evidence had qualities more akin to views and opinions and his interpretations of what he perceived to have taken place.
43. As to the weight we attached to the statement of RT, where that testimony was supported by, and consistent with, contemporaneous documentary evidence or by a witness we did hear from, we gave it appropriate weight. Otherwise, we had limited regard to her evidence. However, in reality, RT's role, in respect of the issues we had to decide, was peripheral. She was not the investigating officer, the dismissing officer or the appeal officer. She did not decide to put the Claimant through the disciplinary process and she had no role in any of the allegations of discrimination advanced by the Claimant. She, along with a colleague, provided human resources (HR) support to some of those who were making these decisions. To that extent, her role was entirely appropriate and to be expected of a large public sector employer.
44. The Claimant was employed as an Assistant Land Registrar by the Respondent. His employment in that role began on 4 April 2022 and ended with his dismissal on 17 November 2023. It was not in dispute

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that the Claimant had previously been employed by DVLA and had continuity of employment dating back to September 2020.

45. The Claimant is a qualified solicitor. It was not in dispute that, at the relevant time, he was disabled (as defined by section 6 of the EqA 2010) by reason of a traumatic brain injury and anxiety.
46. The Respondent operated grievance and disciplinary policies (at [136] – [180] and [181] – [234] of the Bundle, respectively), a social media policy (an extract of which was at [771]) and a data policy (an extract of which was at [974]). It also operated a code of conduct for employees (at [733]), who were also subject to the Civil Service Core Values (at [762]).
47. On 11 June 2023, the Respondent received a complaint from a member of the public, Samantha Williams, about the Claimant (at [286] of the Bundle). The complaint included allegations that the Claimant was using his position to influence others on social media against Ms Williams and accessing Land Registry records regarding property owned by Ms Williams and her husband.
48. The complaint was triaged by the Respondent and it was concluded that there was a case to answer. Ms Daniels was appointed as investigating officer and Mr Mudford as the disciplining officer, with HR support from RT. The triage report summarised the complaints as follows (at [244] of the Bundle, emphasis retained):
 - [The Claimant] making false accusations about the complainant to their employee and the police
 - [The Claimant] having been visited by the police, having been given a letter of non-trespass on the complainant's property, and there being various crime numbers about the alleged behaviour. The complainant was advised to report [the Claimant] for harassment.
 - A complaint has been made to the [Solicitors Regulation Authority] – we need to know if that is being actioned by them.
 - The content of the social media posts is concerning Misuse of social media (Social media policy) - tasks and guides (landregistry.gov.uk)
 - Using his position with [the Respondent] to promote false information
 - Concern that [the Claimant] is accessing complainant's personal information (via working at [the Respondent] I assume)
49. The terms of reference for Ms Daniels' investigation were as follows (at [254] of the Bundle):

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- 1.1.1. To endeavour to establish the facts relating to each of the allegations in relation to [the Claimant] and his interactions with Mrs Samantha Williams (SW) between April 2022 and present.
 - 1.1.2. To investigate and gather all the available evidence in relation to any access to [the Respondent's] information, by [the Claimant], outside of job role, including (but not limited to) access of title numbers and register information.
 - 1.1.3. To investigate and gather social media posts of [the Claimant] and his online interactions with SW.
 - 1.1.4. To conduct fact finding interviews with all those involved, including:
 - 1.1.4.1. [The Claimant]
 - 1.1.4.2. Mrs Samantha Williams (SW)
And any other appropriate individuals identified as relevant during the investigation process.
 - 1.1.5. To establish whether the police or [Solicitors Regulation Authority] are involved and taking further action. As a result of the allegations potentially reported to them.
 - 1.1.6. To produce a report together with supporting evidence attached as appendices, for the Deciding Officer [Mr Mudford], including relevant sections of the Civil Service or [the Respondent's] policy as appropriate.
50. As part of her investigation, Ms Daniels interviewed Geraint Davies, the Claimant's line manager (on 13 July 2023), Ms Williams (on 24 July 2023) and the Claimant (on 16 August 2023).
51. Ahead of his interview, the Claimant raised a number of concerns about the investigation and the processes being followed. The Claimant was subsequently interviewed at the Respondent's Swansea site and was accompanied by his trade union representative, Chris Day. At the outset of his interview, the Claimant confirmed that he did not require any adjustments and was content for the interview to proceed. The meeting with the Claimant lasted two hours. The Claimant raised further concerns about the investigation process after his interview.
52. One specific issue raised by the Claimant with Ms Daniels was his request that, as part of her investigation, she interview Mr Randle, Samantha Harrison (a friend of the Claimants' who had also had dealings with Ms Williams) and Adam Farthing (the Claimant's brother) to better understand his dispute with Ms Williams (per the Claimant's email of 18 August 2023, at [642] – [643] of the Bundle). In response, Ms Daniels asked the Claimant to provide statements from those witnesses that he wished to have considered as part of the investigation (per her email of 22 August 2023, at [642]). She did not see a need to interview the proposed witnesses, having regard to the remit of her investigation

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and the information she had gathered to date (per Paragraph 64 of her witness statement).

53. No such statements were provided to Ms Daniels by the Claimant for inclusion in her investigation.
54. On 29 September 2023, Ms Daniels published her investigation report (at [250] – [793] of the Bundle). The body of the report ran to over 30 pages, consisting of five sections. There were 92 appendices to the report (which increased to 96 following receipt of further relevant evidence in October 2023, at [795] – [807]).
55. The investigation report detailed the investigations undertaken, set out the findings of fact and contained the following concluding summary (at 283] of the Bundle):

[The Respondent] received a complaint from SW on 13 June 2023. The complaint was in respect of the behaviour and actions of [the Respondent's] Assistant Land Registrar, [the Claimant]. As a result of this complaint, an internal disciplinary investigation commenced.

There have been a number of allegations and counter allegations, however this investigation is limited to the terms of reference.

The complaint stems from a breakdown in the business relationship/friendship between [the Claimant] and SW. The details of which are explained in more detail in the body of the report.

The relationship between SW and [the Claimant] began to deteriorate sometime in late 2022, and by early 2023 this had resulted in both making allegations of bullying and harassment.

[The Claimant] is alleged to have been personally harassing SW through continued and abusive phone calls. The allegations also involve social media posts and emails that SW considers to be harassing.

SW has reported the alleged harassment by [the Claimant] to the [Solicitors Regulation Authority], the police and to [the Respondent].

Further it is alleged that [the Claimant] has made unauthorised use of HMLR systems to access personal data to facilitate this harassing behaviour.

[The Claimant] alleges that SW is harassing both him and a third party referred to as BR (Ben Randall).

The Claimant has made a complaint to SW's employer, reported her business to the authorities for various issues and made contact with the police, claiming harassment by SW.

[The Claimant] claims that his social media posts were intended to warn others about SW and her business. [The Claimant] denies making abusive

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telephone calls to SW. [The Claimant] confirms that he did send emails to SW, however does not consider these to be harassing.

[The Claimant] confirms he has accessed [the Respondent's] systems for personal use.

56. The investigation reported suggested that the case proceed to a formal disciplinary meeting (at [284] of the Bundle).
57. By a letter dated 9 October 2023, Mr Mudford invited the Claimant to a disciplinary meeting, scheduled for 26 October 2023 (at [808] – [810] of the Bundle). The Claimant was provided with a copy of Ms Daniels' investigation report, informed of his right to be accompanied at the meeting, the purpose of the meeting, that dismissal could be a potential outcome, that the Claimant had the right to provide any written reply to the allegations ahead of or at the meeting and could call relevant witnesses.
58. In the same letter, the Claimant was informed of the allegations against him, as follows (at [808] of the Bundle, emphasis retained):

Allegation A:

Misuse of official HMLR information

Allegation B:

Misuse of official position

Allegation C:

Misuse of social media (as defined in HMLR's social media policy)

Allegation D:

Unauthorised disclosure of official information

Allegation E:

Unlawful discrimination or harassment

Allegation F:

Bringing HMLR into serious disrepute

Allegation G:

Serious breach of the Civil Service Code of Conduct

59. The disciplinary meeting was subsequently rearranged to 2 November 2023, to accommodate the Claimant's union representative. In addition, following a request from the Claimant, Mr Mudford confirmed the following in his email of 11 October 2023 (at [813] – [814] of the Bundle):

59.1. The meeting would not be recorded electronically but would be recorded by way of a note taker; and

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- 59.2. If, as indicated, the Claimant wished to call Mr Randle as a witness, he was invited to provide further details of what the Claimant believed Mr Randle's evidence could provide, beyond that already captured in Ms Daniels' investigation.
60. The Respondent also referred the Claimant to occupational health (OH), to consider the impact of his brain injury upon his ability to engage in the disciplinary process, what adjustments should be made and whether the disciplinary meeting should be recorded. OH met with the Claimant and produced a report on 31 October 2023 (at [817] – [821] of the Bundle).
61. In light of that report, Mr Mudford decided that it would be appropriate to record the disciplinary meeting, in order to reduce the Claimant's anxiety and having regard to the difficulties identified of him retaining and processing information. This was confirmed to the Claimant on 1 November 2023.
62. The OH report also referred to the Claimant's emotional lability, as a symptom of his brain injury. In his oral evidence, the Claimant was asked how his emotional lability presented. He stated that it manifested itself as reacting immediately and in the immediate moment. He contrasted that with how he conducts himself when he able to reflect and reach a considered position. The Claimant talked about needing maybe 20 to 30 minutes to adjust to any given situation and emphasised the importance of being able to step back and reflect.
63. Ahead of the disciplinary meeting, the Claimant provided a detailed statement, responding to the allegations (at [1387] – [1425] & [828] – [830] of the Bundle). The Claimant included a number of appendices, one of which contained a detailed list of alleged discrepancies in Ms Williams' account to the investigation (at [1393] – [1417]). He also provided a statement from Mr Randle (at [1962] – [1971]).
64. The disciplinary meeting took place on 2 November 2023, at the Respondent's Swansea site. An agreed record of the meeting was in evidence (at [868] – [908] of the Bundle, with the Claimant's tracked changes). At the start of the meeting, the Claimant raised concerns about the location of the meeting room and its proximity to the office he worked in. Mr Mudford arranged a different room for the meeting. The Claimant was again accompanied by a trade union representative (on this occasion, Helen Kenny).
65. The meeting on 2 November 2023, with breaks, began at 11am and was adjourned at 2pm. During the meeting, the Claimant did not dispute the contents of the investigation report, although he did raise concerns regarding the conduct of the investigation. He accepted that he had sent the emails complained of by Ms Williams, had referred to himself as a government lawyer in private communications and had accessed Land Registry records for non-work purposes.

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66. As such, the Claimant did not dispute the following conduct:
- 66.1. Referring to himself as “a lawyer in government” and a “government lawyer” in social media posts directing complaints, concerns and allegations at Ms Williams;
 - 66.2. Alleging in a social media post that Ms Williams (who is a teacher) was not fit to teach children;
 - 66.3. Contacting Ms Williams’ employer (a school), referring to himself as “a government lawyer”, claiming she was unfit to be a teacher, speculating that she might have “mental health issues” with an apparent threat that he would “have no choice” but to “go public” with his allegations if action against her was not taken, with the attendant risks to “the reputation of what is becoming a very reputable comprehensive school” (at [329] of the Bundle), which he then escalated with further emails and allegations (at [331] , [333] & [334] of the Bundle);
 - 66.4. Pursuing a complaint against the school when they failed to act on his allegations, although the authorities found no case to answer against Ms Williams in her role as a teacher (at [335] – [340]);
 - 66.5. Accessing and sharing with others how Ms Williams and her husband held the beneficial interest in the farm they owned (at [345]);
 - 66.6. Alleging in a social media post that Ms Williams’ father-in-law was “a convicted nonce” who had “served jail time for this” and to “watch your kids carefully” at [307]); and
 - 66.7. Accessing land registry records about a flat he was interested in, and which he subsequently rented (at Paragraphs 3.5.55 – 3.5.58 of the investigation report, at [280] – [281]).
67. The meeting on 2 November 2023 was adjourned and reconvened via Teams on 17 November 2023 (as Ms Kenny, the Claimant’s representative was involved in an accident and was unable to continue with the meeting on 2 November 2023). The Claimant had raised, for the first time, a desire not to attend the Respondent’s office in Swansea for meetings. In addition, Ms Kenny was unable to travel because of her accident.
68. Mr Mudford adjourned the meeting on 17 November 2023 to consider his decision. The detail of his decision-making process was set out in Mr Mudford’s witness statement (at Paragraphs 45 – 50). Upon reconvening the meeting, Mr Mudford informed the Claimant that six out of the seven

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allegations against him had been found proven and that, as a result, he was dismissed with immediate effect. Mr Mudford also informed the Claimant that the decision would be confirmed in more detail in writing.

69. By a letter dated 6 December 2023, Mr Mudford confirmed his decision to dismiss the Claimant and set out, in some detail, the reasons for that decision (at [973] – [1004] of the Bundle). It also confirmed that the allegation of unlawful discrimination or harassment was not upheld against the Claimant (Allegation E, from the original list of allegations).
70. There was some dispute about what was said at the meeting on 17 November 2023 and, importantly, what it meant. The Claimant alleged that Mr Mudford changed the reasons for dismissal between the meeting on 17 November 2023 and the written decision of 6 December 2023.
71. At the core of this issue was what Mr Mudford said when giving his decision on 17 November 2023, which was eventually agreed as follows (per the audio recording of the meeting, at [1516] of the Bundle):

some of the allegations have been proven in particular the misuse of social media, misuse of official position and serious breach of the civil service code of conduct...
72. The Claimant contended that Mr Mudford meant that only three of the allegations had been proven (namely, the misuse of social media, the misuse of official position, and serious breach of the civil service code). It was not in dispute that in his written decision, Mr Mudford found that six of the seven allegations were proven. The Claimant said that the written decision was at odds with the oral decision, in that three proven allegations had increased to six.
73. Mr Mudford denied that allegation. He said that he always found six of the seven allegations against the Claimant proven but as he knew he was providing a detailed written outcome, he limited his oral decision to some examples of what had been proven. He pointed to his use of the words “in particular” and denied that he changed his decision.
74. In our judgment, we found that the language used by Mr Mudford did not support the Claimant’s contention or interpretation. On an ordinary interpretation of the phrase “in particular”, we accepted that Mr Mudford was seeking to highlight some of the proven grounds, not all of them. Had he intended to set out all the proven grounds, we would have expected him to say something like “some of the allegations have been proven as follows...”.
75. We also accepted that language can be interpreted in different ways and the meaning the Claimant sought to place on what Mr Mudford said was not fantastical or outlandish. Indeed, it was subsequently recognised in both the Claimant’s grievance and his appeal (see below) that Mr

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Mudford's language could have been clearer in his oral decision (see, for example, Paragraph 5 of the outcome of his grievance, at [1777] of the Bundle).

76. However, the Tribunal had no reason to doubt Mr Mudford's explanation that he did not want to work through every allegation in his oral decision at the meeting on 17 November 2023, preferring to give an overview (at Paragraph 50 of his witness statement) and that (at Paragraph 67 of his statement):

My decision to summarise and shorten the summary of allegations proven was based on concern and empathy for the Claimant. Once I make a decision to dismiss, I always try to find the best way to handle delivering the decision with grace and humility towards the person affected. This has included thinking about how to help them leave the building and return credentials without fuss or drawing attention and in this case was about knowing I could cover my decision in detail in the deciding letter.

77. The reasoning contained within Mr Mudford's decision letter on 6 December 2023, and the evidence relied upon to support the finding that six allegations were proven, was comprehensive. It was also clearly and unequivocally based upon evidence available to Mr Mudford at the time. Those factors did not fit the narrative that Mr Mudford had changed his mind to try to bolster his decision. The evidence was plentiful to find the six allegations proven. There was no need to bolster the decision.

78. The time and work taken to issue the written decision was also self-evident. Mr Mudford's written decision was detailed, comprehensive, wholly based upon the evidence, properly reasoned and written with due care and diligence. We did not underestimate the work which went into its drafting, which was the product of a detailed, thorough, independent and transparent decision-making process. It was also consistent with the care and consideration demonstrated by Mr Mudford throughout, including for the Claimant's welfare.

79. If there as any error by Mr Mudford, it was how he explained his decision on 17 November 2023. What he did not do, in our judgment, was change or bolster the decision, between reaching it on 17 November 2023 and explaining it in detail in his letter of 6 December 2023. The written decision of 6 December 2023 was an accurate record of the decisions reached by Mr Mudford, save that not all his decisions and reasoning had been communicated to the Claimant on at the meeting of the 17 November 2023.

80. It was also alleged by the Claimant that there was an unreasonable delay between the conclusion of the meeting on 17 November 2023 and Mr Mudford's written decision on 6 December 2023. As we have referred, Mr Mudford's decision letter was detailed, extensive and comprehensive. It would take time to draft such a lengthy letter with the

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care and detail which was evidently applied by Mr Mudford. In addition, Mr Mudford was responding to a number of emails from the Claimant received in the aftermath of the decision of 17 November 2023, which were time consuming. The Claimant was given an extended period of time to consider and comment on the notes of the decision meetings. Mr Mudford also kept the Claimant informed and updated

81. Whilst it was understandable that the Claimant was anxious to receive his written decision as soon as possible, there was, in our judgment, no viable criticism of Mr Mudford for the time he took to issue his written decision.
82. The Claimant was informed of his right of appeal against the decision to dismiss him. He exercised that right by a letter dated 20 December 2023, wherein he set out his grounds of appeal, with annexed information and comments (at [1007] – [1011] & [1017] – [1046] of the Bundle). The Claimant also alleged that the Respondent had acted in breach of the Public Sector Equality Duty ('PSED') per section 149 of the EqA 2010 (at [1012] – [1015]).
83. The Respondent appointed Mr Brown to hear and determine the Claimant's appeal. Mr Brown and the Claimant had been members of interview panels in 2023 for a large scale recruitment exercise undertaken by the Respondent. Other than that, Mr Brown had had no interaction with the Claimant. It was not suggested that Mr Brown was not sufficiently independent to conduct the Claimant's appeal.
84. The Respondent decided to determine the PSED complaint with the appeal against dismissal (at [1048] – [1050] of the Bundle).
85. On 9 January 2024, Mr Brown invited the Claimant to an appeal hearing, scheduled for 14 February 2024, at a hotel in Swansea (at [1054] – [1055] of the Bundle). The location was in response to the Claimant's request that the appeal be heard away from the Respondent's premises. The Claimant was informed of his right to be accompanied by a colleague or trade union representative.
86. The Claimant raised a number of objections in response (as to the timing of the appeal hearing, who should be permitted to attend with him, the recording of the appeal hearing and the provision of evidence from Mr Randle), which led to an exchange of email correspondence between the Claimant and Mr Brown (at [1056] – [1062] of the Bundle).
87. On 14 January 2024, the Claimant submitted a complaint, under the Respondent's grievance procedure, regarding the investigation and disciplinary process, alleging, amongst other things, that the processes and procedures had been discriminatory (at [1115] – [1121] of the Bundle). The Respondent decided that the complaint should also be

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dealt with under the appeal procedure and be considered by Mr Brown (at [1129] – [1130] of the Bundle).

88. Mr Brown agreed to record the appeal hearing and to change the date and time to 13 February 2024 (to accommodate the Claimant's union representative, Ms Crowley).
89. On 21 January 2024, the Claimant started ACAS Early Conciliation.
90. Ahead of the appeal hearing, the Claimant sent further evidence he wished to rely upon (at [1143] – [1301] of the Bundle). He also indicted that Mr Randle would attend the hearing as a witness in support of his appeal (at [1302]). After Mr Brown asked the Claimant to set out why he believed Mr Randle's evidence would be relevant to the appeal, the Claimant instead provided an audio recording from Mr Randle (at [1315] of the Bundle). Mr Brown listened to the audio recording ahead of the appeal hearing and was content that he did not need to speak to Mr Randle further (pr Paragraph 28 of his witness statement).
91. The appeal hearing went ahead as planned on 13 February 2024 (the notes of which were at [1316] – [1333] of the Bundle, save that they erroneously recorded the meeting as taking place on 12, rather than 13 February 2024). The Claimant presented his case on appeal.
92. Thereafter, Mr Brown turned to the Claimant's complaint and decided that, given the seriousness of the allegations raised by the Claimant, it needed to be investigated further. It was agreed to pause the outcome of the appeal until that investigation had concluded.
93. Mr Brown drafted the Terms of Reference for the complaint investigation (with Ms Stitchman of HR). These were shared with the Claimant (at [1344] – [1345]) and Ms Unsworth was appointed to conduct the investigation. The scope of the investigation extended to 17 different areas (per Paragraph 4 of Ms Unsworth's witness statement).
94. On 28 March 2024, the Claimant presented his claim to the Tribunal.
95. Ms Unsworth met with the Claimant on 9 April 2024 (who was again accompanied by his union representative). The meeting was recorded, at the Claimant's request (the notes were at [1532] – [1546] of the Bundle). The notes were shared with the Claimant but could not be agreed upon. Ms Unsworth decided to proceed with two versions of the notes (per Paragraph 7 of her witness statement).
96. Ms Unsworth interviewed all those named in the Terms of Reference, which constituted seven separate interviews across April 2024, including Ms Daniels on 12 April 2024 (at [1563] – [1569] of the Bundle) and Mr Mudford on 16 April 2024 (at [1571] – [1579]).

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97. Of her own volition, Ms Unsworth decided it was appropriate to also interview three witnesses not named in the Terms of Reference but who had been mentioned by others in interview (per Paragraph 9 of her witness statement).
98. Ms Unsworth's investigation report was provided to Mr Brown on 10 May 2024, With appendices (which included the documentary evidence considered by Ms Unsworth) it ran to almost 200 pages (at [1504] – 1703] of the Bundle). She considered all the issues raised by the Claimant, detailed her findings and explained the basis for those findings. A summary of her findings was also detailed in her witness statement (at Paragraph 12).
99. On 14 May 2024, having taken time to read and absorb it, Mr Brown sent the investigation report to the Claimant and invited him to a reconvened appeal hearing, scheduled for 22 May 2024 (at [1715] – 1716] of the Bundle).
100. The Claimant replied the same day and sent a detailed document, titled 'Investigation report discrepancies' (at [1707] – 1714] of the Bundle).
101. On 16 May 2024, Mr Brown provided the Claimant with a letter from HR, answering a number of questions raised by the Claimant regarding his PSED compliant and confirmed that he would have the opportunity to raise his concerns about the complaint investigation report at the reconvened appeal hearing (at [1722] – [1728] of the Bundle).
102. There followed an exchange of correspondence between the Claimant and Mr Brown. After initially objecting to the reconvened appeal hearing, the Claimant agreed to proceed with it. However, it was rearranged to 12 June 2024.
103. The reconvened appeal hearing went ahead as planned on 12 June 2024, again at a hotel in Swansea. Ms Crowley once again attended as the Claimant's union representative. The notes of the meeting were in evidence (at [1748] – 1772] of the Bundle, with track changes by the Claimant).
104. During the hearing, Mr Brown decided the Claimant's complaint and informed him of his decision verbally. He did not uphold the complaint and confirmed that decision in writing on 13 June 2023 (at [1773] – [1779] of the Bundle). In summary and for reasons detailed in the letter, Mr Brown concluded that the disciplinary investigation and disciplinary hearing had been conducted fairly and with reasonable adjustments. He also concluded that there was no evidence that HR had discriminated against the Claimant.

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105. At the end of the reconvened appeal hearing, it was agreed that Mr Brown would provide his decision on the appeal against dismissal to the Claimant in writing.
106. On 14 June 2024, Mr Brown issued his written decision on the Claimant's appeal (at [1780] – [1785] of the Bundle). Mr Brown addressed each ground of appeal and for reasons he set out in some detail, explained why he rejected each of them. The decision to dismiss was therefore upheld.

Analysis & conclusions

107. We considered and determined the complaints before us in accordance with the List of Issues, save that we set out our conclusions on the issue of time limits at the end of these reasons.

Unfair dismissal: general

108. It was not in dispute that the Respondent dismissed the Claimant by reason of conduct or that the Claimant had been continuously employed for over two years by the time of his dismissal.
109. As noted above, the reasons for dismissal were that the Claimant had:
- 109.1. Misused official information
 - 109.2. Misused his official position
 - 109.3. Misused social media
 - 109.4. Disclosed official information without authority
 - 109.5. Brought the Respondent into serious disrepute; and
 - 109.6. Committed serious breaches of the Civil Service Code of Conduct.
110. Conduct is a potentially fair reason for dismissal pursuant to section 98 ERA Act 1996. What was in issue was whether the decision to dismiss the Claimant was substantively and procedurally fair.

Unfair dismissal: substantive fairness

111. As this was a conduct dismissal, the following principles required determination:
- 111.1. Whether the Respondent genuinely believed that the Claimant had engaged in conduct for which he was dismissed;

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- 111.2. Whether the Respondent held that belief on reasonable grounds;
- 111.3. Whether in forming that belief, the Respondent carried out proper and adequate investigations; and
- 111.4. Thereafter, whether the Claimant's dismissal was a fair and proportionate sanction to the conclusions reached by the Respondent.
112. Given our findings, the Tribunal was of the view that the Respondent did genuinely believe that the Claimant had engaged in the conduct for which he was dismissed. To a large degree, as explained above, much of the Claimant's conduct was not materially in dispute.
113. In addition, the investigation undertaken by Ms Daniels was comprehensive, impartial and detailed. The Claimant's complaints about the investigation were peripheral and failed to undermine its veracity or its independence. Ms Daniels interviewed Ms Williams, the Claimant and the Claimant's line manager. She had regard to all the relevant evidence, pursued all relevant lines of enquiry and produced a detailed and comprehensive report.
114. In our judgment, the Terms of Reference for the disciplinary investigation were appropriate, given the allegations and complaints made against the Claimant.
115. In addition, the Tribunal agreed with Ms Daniels' evidence in respect of the following discrete matters:
- 115.1. Mr Randle's evidence was of little relevance to the issues she was required to investigate under the Terms of Reference. There was nothing unreasonable or unfair in her decision not to interview him;
- 115.2. It was always open to the Claimant to provide a statement from Mr Randle for the investigation, which he chose not to do; and
- 115.3. The Claimant suggested to Ms Daniels in cross-examination that she should have had regard to the discrepancies in Ms Williams' account, as he had detailed in his statement of 31 October 2023, ahead of the disciplinary hearing. We agreed with Ms Daniels that the Claimant's list of alleged discrepancies in Ms Williams' account to the investigation was irrelevant to the Terms of Reference. The issue was not the nature of the dispute with Ms Williams. It was how the Claimant had acted in respect of his duties and obligations as an employee of the Respondent under the Civil Service Code, the Respondent's code of conduct, the social media policy and the data policy. Ms Daniels explained why she did not engage with the Claimant's allegations regarding Ms

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Willaims' evidence to the investigation and, given the Terms of Reference, it was perfectly open to her and within the range of reasonable responses to ignore any alleged discrepancies. They were simply not relevant to what as under investigation, namely the Claimant's conduct.

116. The Tribunal went on to consider the extent to which, given its genuine belief as to the Claimant's conduct, the Respondent was reasonably entitled to conclude that the allegations against the Claimant (and for which he was dismissed) were made out.

117. Given the policies operated by the Respondent (which applied to the Claimant's employment) and the provisions of the Civil Service Code (which also applied to the Claimant), once it held those genuine beliefs as to the Claimant's conduct, based upon the Claimant's own admissions and a reasonable investigation, the Respondent was clearly entitled to conclude that the Claimant was guilty of breaching those policies and codes of conduct (per [979] – [997] of the Bundle)

118. The Civil Service Code detailed its core values as integrity, honesty, objectivity and impartiality (at [762] of the Bundle). This included the following:

Integrity

...

You must not:

- misuse your official position, for example by using information acquired in the course of your official duties to further private interests or those of others

...

- disclose official information without authority (this duty continues to apply after you leave the Civil Service)

...

119. The Respondent's code of conduct restated much that was within the Civil Service Code, including (at [734]):

You must not misuse information which you acquire in the course of your official duties...

...

You must not make use of your official position to further your private interests of those of others.

120. The Respondent's code also included the following (at [735]):

Our resources, such as services, materials and equipment are provide for official business and you are reminded that reasonable use for private purposes is permitted only as a privilege in urgent circumstances. Abuse of privilege is subject to disciplinary action.

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121. The Respondent's Access, Disclosure and Monitoring of HM Land Registry Data Policy stated (quoted at [974], emphasis retained):

The viewing, copying, amending and/or printing of any HMLR data including but not limited to the items below must only be carried out in connection with HMLR official business **and not accessed for personal or other use.**

- registers of title, (current or historic) though any IT system,
- title plans,
- day list entries,
- index map and linked information,
- FACS or paper files.

122. The Claimant relied on the Respondent's code to justify accessing data, arguing that "our resources" (at [734]) included information held by the Respondent regarding how land was held (e.g. registers of title, title plans, etc). That argument was wholly misplaced. The Respondent had clear and understandable policies on data. Such information could not be used for personal use, a message restated across both its own code of conduct and the Civil Service Code. It was abundantly clear that the reference to "our resources" in the Respondent's code did not include data.

123. Data was not one of the Respondent's resources and the interpretation the Claimant contended for rendered the separate data policy redundant. That cannot be the proper or reasonable interpretation of the respective policies. The Claimant was wrong in his interpretation and the Tribunal had no doubt that the Claimant understood, or ought reasonably to have understood, the clear, obvious and reasonable restrictions on accessing data held by the Respondent about land ownership, interest in land and titles to land.

124. Indeed, Mr Mudford's oral evidence was that every time the Respondent's system is accessed, it reminds staff of the restrictions on the accessing and use of the data it holds.

125. Despite all that, the Claimant, by his own admission, acted in breach of those policies and codes. He accessed data for his own personal use and then utilised it in his on-going dispute with Ms Williams (as to the beneficial interests in the farm she owned with her husband). Accessing the data in the first place was in breach of the policy and the codes. The fact that the Claimant then used it as he did, in a private capacity, served to compound the breach.

126. Even applying the interpretation advanced by the Claimant (with which we repeat was not the correct interpretation), he still faced difficulties. There was no evidence that the Claimant needed to access the Respondent's "resources" as a privilege in urgent circumstances. There was no evidence of him asking if he could access the data (that is,

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seeking the privilege to do so) and no evidence that there was any urgency (for example, he accessed details of the property he was interested in renting between 1 November 2022 and 19 January 2023).

127. The social media policy clearly applied to private as well as employment-related activities, as follows (at [771] of the Bundle):

...if you use social media inappropriately (either at work or in your personal time), this may lead to disciplinary action being taken.

128. Mr Mudford did not have regard to those social media posts which were from the Claimant to single individuals, on the basis that he did not consider them to be subject to the Respondent's social media policy, as, in his words, "it is reasonable to assume an element of publicness to the messages/posts to qualify" for consideration under the policy (at [985] of the Bundle). The Tribunal considered that approach to be balanced, objective and fair, affording, as it did, the Claimant the benefit of the doubt.

129. Notwithstanding that, the social media posts which the Claimant did make public were clearly inappropriate and, at times, abusive and malicious. That the Claimant sent them was never disputed. On the basis of those admitted posts, the Respondent was clearly entitled to find that the Claimant had repeatedly and egregiously breached its social media policy.

130. As to the charge of bringing the Respondent into disrepute (at [997] – [1000] of the Bundle), Mr Mudford was entitled to find that the Claimant's posts on the Farm Facebook Group were sufficiently public, the recipients were sufficiently aware that the Claimant worked for the Respondent and that within those posts, the Claimant referred to Ms Williams' father-in-law as "a nonce" and to Ms Williams as "a narcissist".

131. Mr Mudford was also entitled to conclude that the school contacted by the Claimant, where Ms Williams' was employed, would be reasonably aware (from Ms Williams) that the Claimant was employed by the Respondent, wherein the Claimant had referred to himself as a government lawyer, the reasonable interpretation being that he intended to use his position with the Respondent to support or bolster the allegations he was making against first Ms Williams and then the school itself.

132. Mr Mudford was clearly entitled to find that such conduct was wholly inappropriate and constituted clear and unequivocal breaches of the social media policy, the Respondent's code of conduct and the Civil Service Code. He was also entitled to find that the Claimant's conduct brought the Respondent into disrepute.

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133. Mr Mudford had full and comprehensive regard to mitigating factors, including the evidence of the Claimant's line manager to the investigation (which was positive and complimentary of the Claimant's working practices and abilities) and the evidence regarding the Claimant's brain injury. In particular, the following finding was clearly open to Mr Mudford on the evidence (at [1001] of the Bundle):

You have spoken throughout this process about reacting to events and I have carefully considered and reflected on your reactions throughout the process. However, it is clear that your actions and negative behaviours that you have shown over a continuous period of months have been methodical and calculating, and have not arisen in consequence of your brain injury.

134. The Respondent referred the Claimant to OH to ascertain his ability to cope with the disciplinary procedure. The Tribunal was not aware that the Claimant provided any medical evidence of his own in mitigation but he undoubtedly had many opportunities to do so. The OH report considered how the Claimant's brain injury impacted on him day to day. The report was shared with the Claimant, so he knew its scope and its contents. It was always open to the Claimant to adduce any further medical evidence he wished to rely upon to explain or mitigate his admitted conduct.

135. The Claimant's failure to provide further medical evidence at that time was in contrast with the two disability impact statements and the medical letter the Claimant was able to produce in August 2024 for the purpose of these proceedings (at [1940] – [1949] of the Bundle and in accordance with the Tribunal's directions on disability, wherein the Respondent thereafter conceded that the Claimant met the definition of disability per section 6 of the EqA 2010 at the relevant time).

136. There was nothing before us to suggest that the Claimant was unable to provide such detail, information and evidence about his health, his disabilities and the impact of them upon his day to day life at the time of the disciplinary process.

137. Mr Mudford had proper regard to the mitigation as advanced by the Claimant, as he was required to do. He gave it proper consideration and, based on the mitigation before him, it was reasonable for him to conclude that the mitigation did not excuse, explain or sufficiently contextualise the Claimant's conduct. We noted as well that the main sources of mitigation had been obtained by the Respondent, rather than being provided by the Claimant (namely, the OH report and the interview with the Claimant's line manager).

138. Again, it was open to the Claimant at that time to obtain and present any further evidence he wished to rely upon in mitigation. The Respondent cannot be criticised for not considering mitigation which was not reasonably before it. Time and again the Claimant demonstrated his

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ability to submit detailed evidence and submissions in support of the allegations he was facing. There was nothing to suggest that had the Claimant had any evidence in mitigation that he wished to rely upon, he would have been unable to provide it.

139. In addition, Mr Mudford confirmed in his evidence that he did look at the NHS hyperlinks provided by the Claimant regarding his health conditions, during the course of the disciplinary process, during the adjournment on 17 November 2023 and before making the decision to dismiss (per Paragraph 46 of his witness statement). He also discussed the Claimant's mitigation with him during the disciplinary hearing (see, for example, Paragraph 183, at [884] of the Bundle).
140. For the sake of completeness, and whilst on the topic of mitigation, Mr Brown considered whether mitigation had been properly considered by Mr Mudford in the course of the Claimant's appeal, and reached the following conclusions (at [1783] of the Bundle):

Your appeal also asserts that the Deciding Officer failed to take into account mitigating circumstances (which you outlined in an appendix to your appeal letter). In light of the volume of supporting evidence the Deciding Officer considered, and the opportunities you had to provide further representations in the disciplinary meeting, I do not feel this is a fair or accurate assertion. In particular, I note the Deciding Officer's specific acknowledgment of your brain injury and associated potential long-term consequences of this. The information you provided from expert sources, in conjunction with the report from an Occupational Health referral dated 31 October 2023, suggests that these lasting effects are more likely to manifest in behaviours such as emotional lability; problems with short-term memory and concentration; fatigue; and a persisting inability to tolerate busy and/or unpredictable environments. You have repeatedly stated that your brain injury and the associated symptoms are a mitigating factor for your behaviours throughout the relevant events. However, I support the Deciding Officer's conclusion that your prolonged actions and pre-meditated behaviours over the period in question were more planned and methodical than reactive, and that these are unlikely to have been exerted as a consequence of your brain injury.

141. The Claimant's subsequent depiction of Mr Mudford as a careerist who changed his decision, took against the Claimant and has been dishonest and deceitful was baseless and without any foundation. From the evidence before us (which was extensive), Mr Mudford acted with integrity, professionalism and courtesy throughout what was a difficult and challenging process. All his decisions were considered, all his findings were robustly founded in evidence and his conclusions were cogent and informed. The allegations launched at him by the Claimant during and following the disciplinary process and in the course of this litigation were wholly lacking in merit, foundation or evidence.
142. The Tribunal reminded itself that the Claimant's attacks on Mr Mudford's character and integrity have taken place over a prolonged period of time,

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with ample opportunities for the Claimant to step back and reflect or to adjust to the situation. It was difficult to explain the Claimant's focussed and sustained attacks on Mr Mudford as anything other than considered. They were not explained by the Claimant's tendency toward emotional lability, a symptom of his disabilities.

143. The Claimant's depiction was further undermined by the fact that Mr Mudford found one of the allegations not proven (that the Claimant harassed and bullied someone on grounds of a protected characteristic) and the extent to which Mr Mudford had full, fair and proper regard to the Claimant's health and the other factors in mitigation.
144. For the avoidance of any doubt, there was no evidence whatsoever that Mr Mudford, either during the course of the disciplinary procedure or the course of this litigation has been anything other than honest, sincere and objective.
145. What was clear from the evidence was that the issue for the Respondent was, quite properly, not the disagreement and dispute between the Claimant and Ms Williams. It was how the Claimant reacted and behaved as a result and in furtherance of that disagreement, wherein he misused his position with the Respondent, breached its policy on social media, accessed and disclosed official information without authority, acted in breach of both the Respondent's and the Civil Service Codes of Conduct and brought the Respondent into serious disrepute.
146. For all those reasons, the Respondent not only held a genuine belief about the Claimant's conduct but also held a genuine belief, based upon reasonable investigations, that the Claimant's behaviour had all the consequential and adverse effects detailed above. It did so having full and proper regard, at every stage, of the relevant mitigating factors. As such, the Respondent was reasonably entitled to conclude that the Claimant was guilty of gross misconduct.
147. In our judgment, having concluded that the Claimant's conduct had taken place as alleged and resulted in six of the seven disciplinary allegations against him being found proven, based upon a genuine belief, reasonably held and following a proper investigation, dismissal was clearly within the range of reasonable responses available to the Respondent. That was so even allowing for the mitigating factors which were properly considered.
148. In addition, the Respondent was reasonably entitled to conclude that dismissal was an appropriate sanction, rather than opt for something short of dismissal. That was so given the conduct of the Claimant, the size and resources of the Respondent and the nature of the Claimant's conduct.
149. As such, the Claimant's dismissal was substantively fair.

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Unfair dismissal: procedural fairness

150. The Claimant raised a number of issues as to the fairness of the procedures followed by the Respondent, which we considered. However, we began with a number of observations as to the procedures overall.
151. All the officers involved in the disciplinary process were independent and impartial. None were involved in the process before and, save for Mr Brown being involved in a discrete recruitment exercise with the Claimant in the past, none had any prior dealings with the Claimant. Each officer was based in a different office to the Claimant.
152. The Claimant was given plenty of opportunities to put forward his case throughout the disciplinary process, which he did both in writing and orally. His submissions, his evidence and his representations were all properly taken into account. He was allowed to be represented and accompanied by his trade union representative at all the hearings. He was warned that a possible outcome of the disciplinary process was dismissal. All evidence relevant to the process was shared with the Claimant in advance.
153. The Claimant alleged that there were what he characterised as delays by the Respondent during the process. To be fair to the Claimant, he withdrew that criticism in the course of his oral evidence. In our judgment, he was right to do so. In reality, the Respondent was undertaking detailed, thorough investigation, decision-making and appeal processes. All those involved in those processes for the Respondent testified to the fact that these were the most detailed disciplinary processes, investigations and decisions they had ever conducted. In addition, the Claimant asked for and was granted delays in the process as and when he requested them.
154. As such, we found that there was no undue delay in the process nor was the time taken by the Respondent at all stages procedurally unfair.
155. The Claimant alleged that he had not been made sufficiently aware of allegations he faced. The Tribunal found this difficult to understand. Both the investigation report (which was sent to him) and the invitation from Mr Mudford to the disciplinary hearing provided clear details of the evidence relied upon, the policies which were considered and the grounds upon which the Claimant was facing disciplinary action.
156. In our judgment, the Respondent provided the Claimant with more than enough information for him to have reasonably known the allegations against him and, importantly, the evidence upon which the allegations were based. In addition, we found that both in his written submissions and during the hearings, there was ample evidence of the Claimant fully engaging with and challenging the evidence and the allegations he

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faced. That was indicative of the Claimant sufficiently understanding the case he faced and indicative that the procedure whereby he was made aware of the allegations and the basis for them was fair.

157. To the extent that the Claimant complained that he did not have sufficient detail of the allegations at the investigation stage, he respectfully missed the point. The purpose of the investigation was to establish if there was a case to answer. His role was to be part of that investigation, in circumstances where no decision had yet been made as to whether any disciplinary process would be instigated. It is no criticism of a fair investigation to say "I didn't know the allegations and what they were based on". At that stage, neither did the Respondent, hence the need for the investigation.

158. The Claimant complained that Ms Daniel's approach to the police as part of the investigation was a failure to follow the ACAS Code, was a breach of the Respondent's data policy, was contrary data protection legislation and an unlawful interference with his right to respect for his private life under Article 8 of the ECHR.

159. As part of Ms Williams' complaint, she informed the Respondent that, amongst other things, she had reported the Claimant to the police. One of the Terms of Reference set for the investigation was as follows:

To establish whether the police or SRA are involved and taking further action, as a result of the allegations potentially reported to them.

160. In her written evidence, Ms Daniels explained contacting the police for following reasons (at Paragraphs 65):

I wanted to know if any investigation was underway in order to avoid any conflict of interest and did not want to compromise any ongoing Police investigation.

161. Ms Daniels emailed South Wales Police on 5 July 2023, as part of her investigation, as follows (at [368] of the Bundle):

I work for HM Land Registry within the Counter Fraud Group. I am undertaking an internal investigation, and it has been alleged that reports have been made to South Wales Police, who have undertaken certain activity in respect of these reports.

The allegations are from a Samantha WILLIAMS and are complaints of harassment involving a Paul FARTHING. The reference numbers I have been given are as follows and I believe these may be incomplete references:

- 153723
- 2300064227
- 101 ref 1179200323

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I have been advised that you may have knowledge of these reports/allegations and would be grateful for any information you are able to share.

162. In his written evidence, the Claimant alleged the following (at Paragraph 119 of his witness statement):

The Tribunal will note that [Ms Daniels] clearly misused her official title in an attempt to gain traction with South Wales Police, which clearly shows how desperate she was to set me up for a fall. There is no other reason for her introducing herself in the manner in which she did in some of her emails.

163. He continued (at Paragraph 122):

It is clear from the above that [Ms Daniels] has now [sic] lawful grounds to disclose my personal data to [South Wales Police] and in doing so, committed a data breach. This is yet another example of [Ms Daniels] wilfully ignoring the Respondent's own policies and procedures.

164. Having considered the evidence before us, there was nothing that led us to conclude that Ms Daniels was setting the Claimant up for a fall, as alleged. More importantly, she had no reason, incentive or motivation to do so, despite what the Claimant may believe. Rather, her role was to undertake a thorough, fair and reasonable investigation into serious allegations, which she did professionally, impartially and in accordance with her Terms of Reference. Against that background, whatever the arguments might be about data protection, Ms Daniels was tasked with establishing the extent or otherwise of police involvement, which included, quite properly, ensuring that any investigation or action by the Respondent did not compromise or prejudice any police investigation.

165. We did not accept that Ms Daniels was trying to "gain traction" with South Wales Police. Rather, she reasonably and properly identified her role to the police. In addition, her specific request pertained to allegations of harassment, not fraud.

166. However, most importantly for our purposes, the approach made by Ms Daniels to the police did not in any way render the disciplinary procedure generally, or her investigation specifically, unfair. It was not for us to determine any alleged breaches of data protection legislation. Such matters are outside the jurisdiction of the Tribunal. We were however tasked with determining the fairness of the disciplinary process and Ms Daniels' contact with South Wales Police did not render that process unfair.

167. The Claimant criticised Ms Daniels for not interviewing Mr Randle. We repeat our findings above. It was open to Ms Daniel to conclude that it was not necessary to interview Mr Randle, given the Terms of Reference and the complaint ignores the Claimant's failure, upon invitation, to

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submit any evidence from Mr Randle for the purposes of that investigation.

168. The Claimant repeated his criticisms regarding the failure to interview Mr Randle in respect of Mr Mudford, although for the disciplinary hearing, a statement from Mr Randle was provided by the Claimant and was considered by Mr Mudford. However, we repeat our earlier finding. It was open to Mr Mudford to conclude that given allegations which the Claimant faced (which all related to his conduct, not the dispute he had with Ms Williams), it was not necessary to interview Mr Randle.
169. In any event, there was no prejudice to the Claimant as he was permitted to provide the aforesaid statement which addressed whatever points he wanted to.
170. Mr Brown on appeal similarly concluded that it was not necessary to interview Mr Randle, for similar reasons of relevance. Instead, Mr Randle provided him with a voice note, which Mr Brown listened to. Again, whatever complaints the Claimant may have had about the relevance or otherwise of Mr Randle's testimony, it was provided to, and considered by, Mr Brown (and previously, by Mr Mudford). There was no prejudice or unfairness in how the Respondent chose to deal with Mr Randle's evidence.
171. Indeed, as noted above, Mr Randle provided a statement for these proceedings and neither the Respondent nor the Tribunal had any relevant questions for him on its contents.
172. There was nothing unfair in the Respondent's decision that the evidence of Mr Randle did not warrant him being interviewed. Despite that, the Respondent still permitted the Claimant to submit evidence from Mr Randle, which it had regard to. The Respondent was quite entitled to conclude that the evidence of Mr Randle, when it was provided, was of limited, if any, relevance to the issues it had to decide.
173. As we have already explained, we did not find that Mr Mudford changed his decision between the disciplinary meeting on 17 November 2023 and his written decision of 6 December 2024.
174. The Claimant was correct in his assertion that the Respondent relied upon conduct outside of work in support of the decision to dismiss him. However, in our judgment, that was not unfair, unreasonable or in breach of its own policies. As we have seen, the Respondent's policies quite properly and reasonably placed restrictions on certain aspects of its' employees' private dealings and conduct, most notably within the social media policy (which explicitly applied to private life as well as working life) and the data policy, wherein sharing Land Registry data as the Claimant did, even if within the context of a private, non-work dispute

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or issue, only served to compound the breach of policy in accessing the data in the first place.

175. The evidence of Mr Mudford (at Paragraph 45 of his witness statement) and of RT (at Paragraph 44 of her witness statement) confirmed that consideration was given in the disciplinary decision-making process of whether a sanction less than dismissal should be imposed. It was also clear from Mr Mudford's written decision that consideration was given to whether a sanction less than dismissal was appropriate, as follows (at [1003] of the Bundle):

Your actions are regarded as gross misconduct for which the appropriate penalty is dismissal. In all the circumstances, I do not think there is mitigation that reduces the appropriate penalty from that of dismissal. I therefore consider that dismissal is the appropriate sanction and that I am entirely justified in arriving at that decision.

176. Mr Brown also reviewed and revisited on appeal whether dismissal was an appropriate sanction (per Appeal Point C in the appeal decision letter at [1783] of the Bundle), concluding as follows at [1784]):

I consider the disciplinary outcome (summary dismissal without notice or payment in lieu of notice) was commensurate with the Deciding Officer's assessment of gross misconduct and that this penalty was not too severe in the circumstances. I am also satisfied that the Deciding Officer considered all relevant information and evidence, including the mitigating factors you described. Therefore, this appeal point is not upheld.

177. As such, it was clear that the Respondent reasonably and properly considered whether, in light of the Claimant's conduct, a sanction less than dismissal should be imposed. There was nothing unfair or untoward in both Mr Mudford and Mr Brown concluding that this was not a case which warranted a sanction short of dismissal.

178. Drawing all those factors together, the Tribunal did not find that the Respondent conducted an unfair disciplinary process or unreasonably failed to follow the ACAS Code or its own disciplinary policy, in a manner that rendered the process as a whole unfair.

Unfair dismissal: human rights issues

179. The Claimant also alleged that the decision to dismiss and the disciplinary processes undertaken by the Respondent unlawfully breached his rights under Articles 8 and 10 of the ECHR. As noted above, unlawful interference with a Convention right is likely to render a dismissal unfair for the purposes of section 98 of the ERA 1996.

180. The Claimant's arguments in respect of Article 8 related to allegations that the disciplinary process and the reasons for the decision to dismiss him unlawfully interfered with his private life rights.

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181. The Tribunal had a number of issues with those submissions:

181.1. It was difficult for the Claimant to rely on his right to respect for privacy in his communications when those considered and relied on by the Respondent were inherently not private. They were sent by the Claimant, variously, to a Facebook group, a school and multiple individuals. Mr Mudford specifically excluded any consideration of what could be properly termed as private communications.

181.2. The right to respect for privacy was also of little assistance to the Claimant in respect of accessing data in breach of the Respondent's data policy.

181.3. The Claimant alleged that the Respondent contacting South Wales Police was a breach of his right to respect for his private life and that Ms Daniels should have sought his permission first. However, we repeat that this was in the context of a number of serious allegations that the Claimant himself had utilised his employed role to bolster and influence a dispute taking place in his private life. In addition, Ms Daniels' purpose for finding out if there was an on-going police investigation was to prevent any such investigation being prejudiced by the Respondent's investigation and avoid any conflicts of interest. That was not an interference in the Claimant's private life. It was about ensuring that any police investigation was not prejudiced, which protected the positions of the Claimant and the police. In any event, the enquiry by the Respondent of South Wales Police and the information, such as it was, provided by South Wales Police had no bearing whatsoever on the disciplinary decision and did not inform any of the allegations of misconduct.

181.4. Given the Claimant's decision to apply for and accept employment with the Respondent, aware as he was of the various codes and policies in force, the extent to which he could have had a reasonable expectation of privacy in respect of his social media posts and any conduct which brought the Respondent into disrepute was limited. That was all the more so where:

181.4.1. The Claimant volunteered in public posts the information that he was "a government lawyer", which was anathema to the right to respect for his private life;

181.4.2. The Claimant shared posts with groups and copied posts to multiple people, thereby moving them into a public domain, again anathema to the right to respect for his private life; and

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181.4.3. Mr Mudford explicitly disregarded emails which were solely between the Claimant and one other person (usually Ms Williams), regarding them as part of the Claimant's private life and outside the purview of the disciplinary process.

181.5. Any interference with the Claimant's right to respect for his privacy was also justified in circumstances where the Claimant was fully aware of the social media policy (which applied to his private life), data policy (which included prohibitions on accessing and sharing data held by the Respondent), the Civil Service Code and the Respondent's code of conduct. Those policies and the principles behind them (to protect data held by private individuals as to their ownership and dealings in their private property, and the requirement for trust and confidence in public sector employees) met and fulfilled the criteria for lawful interference, namely it was in accordance with law (being aspects of the Claimant's contract of employment) and was necessary for the economic well-being of the country and the protection of the rights and freedoms of others (namely, those whose data is held and managed by the Respondent).

181.6. In addition, all the codes and policies are necessary in a democratic society for the protection of the rights and freedoms of others, most notably the public in having trust and confidence in civil servants not to abuse their power, and to maintain the respect and support of the public in the undertaking of their duties and functions.

182. The Tribunal had similar misgivings in respect of the Claimant's submissions that the disciplinary process and his dismissal were an unlawful interference with his rights to free expression, enshrined in Article 10 of the ECHR:

182.1. Again, by choosing to be a civil service employee, the Claimant knowingly made himself subject to the social media policy, the Civil Service Code and the Respondent's code of conduct. Those policies placed limits on employees' rights to freedom of expression. All civil service employees have the choice to stop working for the civil service and stop being subject to the Civil Service Code and the social media policy. None of these restrictions are enforced on an employee by the state. Rather, they are a consequence of choosing to be a civil service employee.

182.2. In addition, both the Civil Service Code & the social media policy (which are in accordance with the law, as they form part of the terms of employment) are necessary in a democratic society for the protection of the reputation or rights of others and for

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preventing the disclosure of information received in confidence, most notably in ensuring that the public maintained trust and confidence in civil servants not to abuse their power, and to maintain the respect and support of the public in the undertaking of its duties and functions.

183. Having regard to the Claimant's ECHR rights, we found that the Respondent acted reasonably both in how it undertook the disciplinary process and in concluding that dismissal was with range of reasonable responses. We did not find that there were any interferences in those rights, as submitted by the Claimant or at all.
184. In any event, and for the sake of completeness, the Respondent was able to justify any interference (if there had been any), in circumstances where the Claimant was subject to Civil Service Code and the Respondent's code of conduct and facing serious allegations of accessing confidential data, bringing the Respondent into disrepute, and by bringing his work life into his private life by referring to himself as "a government lawyer" and accessing confidential work-related data to deploy in his private dispute.
185. We were only concerned with whether the decision to dismiss the Claimant was or involved any unlawful interferences with the Claimant's rights under the ECHR. For the reasons we have explained, we did not find that there were any unlawful interferences, as claimed or at all.

Unfair dismissal: conclusions

186. We reminded ourselves that the assessment of fairness is an holistic exercise, where procedural fairness is not to be considered separately but as part of the overall analysis. As explained by the Court of Appeal in Taylor v OCS Group Limited [2006] EWCA Civ 702, at [48]:

...it may appear that we are suggesting that ETs should consider procedural fairness separately from other issues arising. We are not; indeed, it is trite law that section 98(4) requires the ET to approach their task broadly as an industrial jury. That means that they should consider the procedural issues together with the reason for the dismissal, as they have found it to be. The two impact upon each other and the ET's task is to decide whether, in all the circumstances of the case, the employer acted reasonably in treating the reason they have found as a sufficient reason to dismiss. So for example, where the misconduct which founds the reason for the dismissal is serious, an ET might well decide (after considering equity and the substantial merits of the case) that, notwithstanding some procedural imperfections, the employer acted reasonably in treating the reason as a sufficient reason to dismiss the employee. Where the misconduct was of a less serious nature, so that the decision to dismiss was nearer to the borderline, the ET might well conclude that a procedural deficiency had such impact that the employer did not act reasonably in dismissing the employee...

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187. The conduct for which the Respondent dismissed the Claimant (and for which it held a genuine belief on reasonable grounds) was serious. Indeed, it justified a decision to dismiss summarily and the Respondent was reasonably entitled to categorise it as gross misconduct.
188. Standing back and looking at the process as a whole, having regard to the reasons shown by the Respondent for dismissing the Claimant, the size and resources of the Respondent, the equity and substantial merits of the case and the allegations regarding the Claimant's ECHR rights, we concluded that the decision to dismiss was both substantively and procedurally fair.
189. It was, therefore, a fair dismissal, the claim of unfair dismissal was not made out and it is dismissed.

Wrongful dismissal

190. Section 86 of the ERA 1996 affords rights of notice to employees, the length of which is determined by their period of continuous employment with their employer. Any failure by the employer to give correct notice constitutes a breach of the employee's contract of employment, save where either the employee waives his rights to, or accepts payments in lieu of, notice.
191. In addition, an employer is entitled to dismiss an employee without notice where satisfied that the employee's conduct amounted to a repudiatory breach of the employment contract and discloses a deliberate intent to disregard the essential requirements of that contract. The employer faced with such a breach by an employee can either affirm the contract and treat it as continuing or accept the repudiation, which results in immediate dismissal.
192. It was the Respondent's case that the latter applied to the Claimant – that his conduct constituted a fundamental breach of his employment contract. The Tribunal found that the Claimant did engage in the conduct for which he was dismissed and that the Respondent was entitled to conclude that the allegations that he breached various policies and codes of conduct and brought the Respondent into serious disrepute had been made out.
193. The Claimant's behaviour went to heart of the implied term of mutual trust and confidence between employer and employee. In our judgment, the Respondent was quite entitled to consider such behaviour to be gross misconduct and a fundamental breach of the Claimant's employment contract.
194. As such, the Respondent was entitled to dismiss the Claimant without notice, the complaint of wrongful dismissal was not made out and it is dismissed.

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Disability discrimination: reasonable adjustments

195. The provision, criteria or practice ('PCP') relied upon by the Claimant was not in dispute, namely (per Paragraph 6 of the List of Issues, at [83] of the Bundle):

The holding of disciplinary meetings on the Respondent's premises which was what occurred on 2 November 2023.

196. What was in dispute was whether the PCP caused any substantial disadvantage to the Claimant because of his disabilities and whether the Respondent could reasonably have known of any such substantial disadvantage.

197. The Claimant's case was that the PCP placed him at a substantial disadvantage because it was a hostile environment making it difficult for him to process information due to anxiety, stress and distress (per Paragraph 7 of the List of Issues, at [84] of the Bundle).

198. This complaint pertained to the disciplinary hearing on 2 November 2023, which was held in a meeting room at the Respondent's Swansea site (where the Claimant was based).

199. The Claimant attended with his trade union representative. Both the Claimant and his representative were aware in advance that the meeting would take place at the Swansea site and raised no concerns.

200. At start of the meeting, neither the Claimant nor his representative raised any issues with the rooms used being on site in Swansea.

201. The OH report, commissioned by the Respondent to identify any issues with the Claimant's ability to engage in the disciplinary process by reason of his health, did not say in terms that the meeting should not take place at the Swansea site. Rather, it stated that the environment should be calm and neutral.

202. Having regard to the minutes from 2 November 2023, the Claimant was clearly able to engage in the meeting. We found force in Ms Tuck's submission that there was little discernible difference in the level and extent of the Claimant's engagement at the disciplinary meeting at the Respondent's Swansea site on 2 November 2023 compared to other off-site or remote meetings. He had also attended his investigation interview with Ms Daniels at the Swansea site and raised no concerns. To a degree, therefore, the Claimant had some familiarity with the use of the Swansea site in the course of the disciplinary process.

203. Given the Claimant's ability to raise concerns throughout about the process, about the investigation and about the allegations he was faced

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with, it was reasonable to assume that had he believed that the Swansea site would or did create an environment which made it difficult for him to process information, he or his trade union representative would have said so. But they did not.

204. For all those reasons, we did not find that the PCP when applied to the Claimant caused the substantial disadvantage contended for.

205. In alternative, there was a complete failure by the Claimant or his trade union representative to raise any issues, concerns or objections to the meeting of 2 November 2023 being held at the Swansea site, whether before, at the start of or during the meeting. That was in circumstances where the Claimant and his representative had been more than capable of raising other concerns, issues and matters they believed to be relevant. We therefore found that the Respondent could not have known, reasonably or otherwise, that the application of the PCP would cause substantial disadvantage to the Claimant.

206. As such, in the absence of any substantial disadvantage (or in the absence of any reasonable knowledge of the existence of any substantial disadvantage), the Respondent was under no duty to make any reasonable adjustments to the PCP, there as no breach of any duty, the complaint was not made out and it is dismissed.

Disability discrimination: discrimination arising from disability

207. The Claimant alleged that he had been subjected to the following unfavourable treatment (per Paragraph 10 of the List of Issues, at [84] of the Bundle):

207.1. Putting him through the disciplinary procedure;

207.2. Dismissing him; and

207.3. Not taking his disabilities into account in the decision to dismiss him.

208. The Claimant relied upon the emotional lability which arose from his disabilities, which he described as a tendency to become frustrated and easily annoyed when overwhelmed resulting in “meltdown” and “tunnel vision” (per Paragraph 11 of the List of Issues, at [84] of the Bundle).

209. Finally, and as required, the Claimant submitted that the unfavourable treatment set out above was because of his emotional lability (per Paragraph 12 of the List of Issues, at [84] of the Bundle).

210. The Respondent did not dispute that it put the Claimant through the disciplinary process or that it dismissed him. It similarly did not deny that both courses of action constituted unfavourable treatment.

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211. However, the Respondent denied that it did not take the Claimant's disabilities into account in reaching its decision to dismiss him. Given our findings of fact, the Tribunal agreed that the Respondent did take the Claimant's disabilities into account, specifically his emotional lability (the 'something arising', relied upon by the Claimant). As noted above, Mr Mudford concluded that the Claimant had not acted by reason of emotional lability (in respect of the conduct for which he was dismissed) and that his brain injury (and its associated symptoms) did not sufficiently mitigate the severity of his conduct, such as to justify a sanction short of dismissal.

212. The Respondent considered the Claimant's emotional lability both when assessing the conduct in question and when considering mitigation. For those reasons, we did not find that allegation of unfavourable treatment made out.

213. It was not in issue that the Claimant has emotional lability or that the same arose from his disability (namely, his brain injury).

214. We reminded ourselves of the Claimant's oral evidence as to what emotional lability meant to him (as noted above):

214.1. Reacting immediately and in the immediate moment;

214.2. Which is to be contrasted to when the Claimant is able to reflect and reached a considered position; and

214.3. The reference to needing 20 to 30 minutes to adjust to any give situation and the importance to the Claimant of being able to step back and reflect

215. We also had regard to the Claimant's disability impact statement of 5 August 2024, provided in the course of these proceedings, where he addressed the effects of his emotional lability, as follows (Paragraphs 14 & 15, at [1942] of the Bundle):

14. The second complication I suffer from is mood swings/emotional lability. This often results in my emotional states being more extreme than usual with this often resulting in me getting more 'worked-up' over something others would likely consider minor. It also results in me becoming angry when I am put in a situation where I or someone I care for is put in an unfair and/or an unjust situation. Having sought counselling, it has been established that I likely have something called 'justice sensitivity', which essentially means that I have a strong urge to correct any such unfair and/or unjust situations. This was not the case prior to the Accident.

15. The second complication often results in me becoming easily upset, distressed and/or angry in social situations and when somebody is acting unreasonably. For example, I am confident that my dispute with Samantha

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Williams would not have escalated to the degree it had nor would my conduct have been the same had it occurred prior to the Accident, as I would have simply walked away, despite the snide remarks Samantha Williams was making.

216. Did the Respondent put the Claimant through the disciplinary process and dismiss him because of his emotional lability?
217. Not according to Mr Mudford, who included the following in his letter of 6 December 2023, confirming the decision to dismiss the Claimant (at [1001] of the Bundle):

You have spoken throughout this process about reacting to events and I have carefully considered and reflected on your reactions throughout the process. However, it is clear that your actions and negative behaviours that you have shown over a continuous period of months have been methodical and calculating, and have not arisen in consequence of your brain injury.

218. Given our understanding of emotional lability and the Claimant's explanation of what he understood it to be and, more importantly, how it manifested itself in him, we agreed with the Respondent. The conduct which gave rise to Ms Williams' complaint, which instigated the disciplinary process and ultimately led to the decision to dismiss the Claimant was not because of his emotional lability. Rather, the conduct for which he was disciplined and dismissed consisted of considered, calculated and methodical decisions and actions on the part of the Claimant, which were not the result of immediate or impulsive reactions.
219. In addition, the unauthorised accessing of data was never suggested by the Claimant to be because of his emotional lability.
220. It follows that the unfavourable treatment complained of was not because of something arising from the Claimant's disabilities.
221. If we had been required to do so, and for sake of completeness, we concluded that had there been any unfavourable treatment because of the Claimant's emotional lability, it was objectively justified by the Respondent in any event, for the following reasons:

221.1. The Respondent advanced five legitimate aims (per Paragraph 13 of the List of Issues, at [84] – [85] of the Bundle). In his oral evidence, the Claimant agreed that three of the five were legitimate aims, namely:

- (c) maintaining expected standards of performance and conduct and ensure correct process are followed; and/or
- (d) upholding the Civil Service core values of integrity, honesty, objectivity and impartiality; and/or

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- (e) ensuring the public have trust and confidence in the services it provides, including upholding the reputation of the Respondent as a public sector organisation.

221.2. The Tribunal also concluded that the remaining aims relied upon by the Respondent were also properly classified as being legitimate aims:

- (a) managing employees to ensure that they can properly provide the services and work they are required to do as a public sector organisation; and/or
- (b) ensuring public money is managed appropriately and this includes efficient and cost-effective running of a public service;

221.3. Given the conduct for which the Claimant was dismissed, we had no hesitation in concluding that investigating, disciplining and ultimately dismissing the Claimant for that conduct was a proportionate means of achieving those legitimate aims. That was all the more so in circumstances where the Claimant had accessed Land Registry data, shared it with others, breached the Respondent's social media policy, acted in a manner which the Respondent was entitled to conclude breached its own and the Civil Service Codes of Conduct and, by extension, brought the Respondent's reputation into serious disrepute.

222. For all those reasons, the complaint of discrimination arising from disability was not made out and is dismissed.

Time limits

223. As detailed in the List of Issues (Paragraphs 2 – 4, at [82] – [83] of the Bundle), anything that arose before 22 October 2023 was prima facie out of time (given the dates of ACAS Early Conciliation and the date on which the Claimant presented his claim to the Tribunal).

224. However, we found all the complaints we had to determined were presented in time:

224.1. The complaint of unfair dismissal was in time because the effective date of dismissal was 17 November 2023;

224.2. The complaint of wrongful dismissal was in time as the failure to give notice also arose on 17 November 2023;

224.3. The complaint of breach of the duty to make reasonable adjustments was in time because the alleged substantial disadvantage arose on 2 November 2023; and

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224.4. The complaint of discrimination arising from disability was in time, because the decision to dismiss was 17 November 2023 and the disciplinary procedure was a continuing act which concluded in time (upon the Claimant dismissal). It followed that the alleged unfavourable treatment occurred in time.

225. For those reason, the Tribunal had jurisdiction to determine all the issues before us. For the reasons we have given, all the complaints were dismissed on their merits.

Approved by:

EMPLOYMENT JUDGE S POVEY
Dated: 1 October 2025

Order posted to the parties on
02 October 2025

Katie Dickson

For Secretary of the Tribunals

Notes:

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