



EMPLOYMENT TRIBUNALS

Claimant: Mr. Joshua Shaw

Respondent: Dr. Thamber Sabratnam Ravindran, Mrs. Niranjala Ravindran and Dr. Roshan Ravindran trading as East Park Medical Practice.

Heard at: Birmingham

On: 27,28,29,30
and 31 January 2025

Before: Employment Judge Wedderspoon

Members : Mrs. B. Astill
Mr. Tsouvallaris

Appearances

For the claimant: In Person

For the respondent: Mr. Perry, counsel

JUDGMENT

1. The claim of constructive unfair dismissal is well founded and succeeds.
2. The claim of harassment related to disability is not well founded and is dismissed.
3. The failure to make reasonable adjustments is well founded and succeeds.
4. The claim of discrimination arising from disability is well founded and succeeds.
5. The claim of victimisation dated 28 December 2022 is well founded and succeeds. The claim of victimisation dated 6 December 2022 is not well founded and is dismissed.
6. The failure to provide particulars of employment is out of time and fails.
7. The claimant is awarded £10,000 for injury to feelings.
8. Interest is calculated at £2,347.40.
9. A basic award is awarded in the agreed sum of £3,150.
10. Loss of earnings are calculated and awarded at £945 net.
11. Loss of statutory rights of £500 is awarded.

REASONS

1. Oral judgment in this case was given on 31 January 2025. These are the written reasons pursuant to a request from the respondent.
2. By claim form dated 15 February 2023 the claimant brought complaints of constructive unfair dismissal, disability discrimination namely failure to make reasonable adjustments, discrimination arising from disability and harassment related to disability and victimisation. He also seeks an award for a failure to provide him with a statement of terms and conditions.
3. The respondent accepts that the claimant was disabled at all material times by reason of autism spectrum disorder (Asperger's syndrome).
4. The claimant's case is that by reason of cumulative unfair treatment and a breach of the implied term of trust and confidence (including being treated in a discriminatory manner by the respondent) he determined to leave his employment. The respondent disputes that the claimant was discriminated against and contends he resigned because he secured a job in his preferred career.

List of Issues

5. The issues the tribunal will decide are set out below :

Time limits : Discrimination and Victimisation

- 5.1 Given the date the claim form was presented on the dates of early conciliation any complaint about something that happened before 1 October 2022 may not have been brought in time.
- 5.2 Where the discrimination and victimisation complaints made within the time limit in section 123 of the Equality Act 2010? The tribunal will decide
 - 5.2.1 was the claim made to the tribunal within three months plus early conciliation extension of the act to which the complaint relates
 - 5.2.2 not was their conduct extending over a period
 - 5.2.3 if so was the claim made to the Tribunal within three months plus early conciliation extension of the end of that.
 - 5.2.4 If not were the claims made within a further period that the tribunal thinks is just and equitable? The tribunal will decide
 - 5.2.5 why were the complaints not made to the tribunal in time
 - 5.2.6 in any event is it just and equitable in all the circumstances to extend time.

Time Limits : Particulars of Employment

- 5.3 Was the complaint that the respondent failed to provide a written statement as required by either Section 1 or Section 4 of the implement right sat 1996 brought in time? The tribunal will decide
- 5.3.1 what is the claim made to the tribunal within three months plus early conciliation extension of either the effective date of termination or the act complained of
- 5.3.2 if not was it reasonably practicable for the claim to be made to the tribunal within the time limit
- 5.3.3 if it was not reasonably practicable for the claim to be made to the tribunal within the time limit was it made within a reasonable period?

Unfair dismissal

- 5.4 Was the claimant dismissed?

- 5.4.1 Did the respondent do the following things

3.4.4.1 the allegations discrimination set out in paragraphs below

3.4.4.2 On a date between September and 24 October 2022 Ryan Parkes breached the claimant's confidentiality by telling Karen Homfray and Lisa Jones that he had spoken to Dr Thambar Ravindran about his concerns about Ryan Parkes. Ryan Parkes told Karen the claimant had "pissed him off".

3.4.4.3 At the September 2022 meeting/mediation with Ryan Parkes he said that he would make notes of the meeting. Three weeks after the meeting when the claimant asked for them via e-mail he told the claimant to produce them himself. The claimant pointed out that it was he who had promised to make the notes which was reasonable especially for someone process driven like the claimant. Ryan Parkes then accused the claimant of failing to follow a management instruction.

3.4.4.4 Multiple days between September 2022 and 19 December 2022 Ryan Parkes questioned the claimant's ability to complete his role when his performance had not previously been an issue as follows :

3.4.4.4.1 Ryan Parkes telling Roshan Ravindran who later informed the claimant by telephone that his performance had dropped;

3.4.4.4.2 On multiple dates between September 2022 and 19 December 2022 Ryan Parkes rebuked the claimant for finishing NHS fee reports a day or two late unfairly because he knew the claimant had been pulled off his role to do reception duties;

3.4.4.4.3 Told to hang up on patients to answer calls from patients

3.4.4.4 Reprimanded the claimant (a) being on telephone calls for too long and (b) redirecting calls to the reception desk;

3.4.4.5 Told not to get involved in calls from the care home but on 24 November 2022 was requested to deal with an end of life patient referral from a care home

3.4.2 Did that breach the implied term of trust and confidence? The Tribunal needs to decide :

3.4.2.1 Whether the respondent behaved in a way that was calculated or likely to destroy or seriously damaged the trust and confidence between the claimant and the respondent and

3.4.2.2 Whether it had reasonable and proper cause for doing so

3.4.3 Did the claimant resign in response to the breach? The tribunal will need to decide whether the breach of contract was a reason for the claimant's resignation

3.4.4 Did the claimant affirm the contract before resigning? The Tribunal will need to decide whether the claimant's words or actions showed that they chose to keep the contract alive even after the breach

3.5 If the claimant was dismissed, he says the dismissal was discriminatory under section 39 (2)(c) the Equality Act 2010

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

3.7 Was it a potentially fair reason

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

3.9 The tribunal's determination whether the dismissal was fair or unfair must be in accordance with the equity and substantial merits of the case.

4. Remedy for unfair dismissal

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

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

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

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

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

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

4.1.6 What financial losses has the dismissal caused the claimant?

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

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

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

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

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

4.1.12 Did the respondent or the claimant unreasonably fail to comply with it ?

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

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

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

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

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

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

5. Discrimination arising from disability Equality Act 2010 section 15

5.1 Did the respondent treat the claimant unfavourably by :

5.1.1 The disciplinary threat the claimant received from Ryan Parkes on 25 February 2023 for not agreeing to change his hours of work to five days a week

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

5.2.1 The claimant's autism Asperger's meant that he couldn't just agree to change his hours with no notice and consultation?

5.3 Was the unfavourable treatment because of any of those things? Did the respondent threaten to discipline the claimant because he didn't agree to change his hours with no notice or consultation?

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

5.5 The Tribunal will decide in particular

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

5.5.2 Could something less discriminatory have been done instead

5.5.3 How should the needs of the claimant and the respondent be balanced

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

6. Reasonable adjustments Equality Act 2010 sections 20 and 21

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

6.2 a PCP is a provision criterion practice. Did the respondent have the following PCPS: the respondent's requirement that the claimant work A5 day week from approximately 22 February 2022

6.3 did the respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage;

6.4 what steps could have been taken to avoid the disadvantage? The claimant suggests a grace period to consider moving to five days should have been given and another discussion should have taken place to allow the claimant to process the request and raise any concerns

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

6.6 did the respondent fail to take those steps?

7. Harassment related to disability

7.1 Did the respondent do the following things

7.1.1 In August or September 2022 the respondent wanted to change the claimant's working hours by taking away 4.5 hours of fortnightly overtime. The claimant thought that it had become an entitlement over the last four years and protested. Ryan Parkes told the claimant he needed to change the way his mind works after a team meeting in September 2022. The claimant believes this comment was a cruel way to say that he was being stubborn and that he chose his words deliberately knowing that he was autistic

7.2. If so was that unwanted conduct

7.3 Did it relate to disability?

7.4 did the conduct have the purpose of violating the claimant's dignity or creating an intimidating hostile degrading humiliating or offensive environment for the claimant

7.5 if not did it have that effect? The tribunal will take into account the claimants perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

8. Victimisation Equality Act 2010 section 27

8.1 did the claimant do a protected act as follows :

8.1.1 the grievance raised on 24 October 2022 which complained of discrimination

8.2 did the respondent do the following things

8.2.1 in an e-mail of 28 December 2022 the respondent contacted the claimants new employer asking them to release the claimant back to the respondent to complete a hand over

8.3 by doing so did it subject to the claimant to a detriment

8.4 if so was it because the claimant did protected act?

8.5 Was it because the respondent believed the claimant had done or might do a protected act.

9. Remedy for discrimination or victimisation

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

9.2 What financial losses has the discrimination caused the claimant?

9.3Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

9.4If not, for what period of loss should the claimant be compensated?

9.5What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?

9.6Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?

9.7Is there a chance that the claimant's employment would have ended in any event? Should their compensation be reduced as a result?

9.8Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

9.9Did the respondent or the claimant unreasonably fail to comply with it ?

9.10If so is it just and equitable to increase or decrease any award payable to the claimant?

9.11By what proportion, up to 25%?

9.12Should interest be awarded? How much?

Failure to provide terms and conditions

10. Failure provide a written statement as required by Section 1 (4) of Employment Rights Act 1996 section 11 Employment Rights act 1996

10.1 When these proceedings were begun was the respondent in breach of its duty to give the claimant a written statement of employment particulars or of a change to those particulars?

10.2 If the claimant succeeds either exceptional circumstances that would make it unjust or inequitable to make the minimum award of two weeks' pay under section 38 of the Employment Rights Act 2002? If not the tribunal must award two weeks' pay and may award 4 weeks' pay

10.3 Would it be just inequitable toward 4 weeks' pay.

The hearing

11. The Tribunal was provided with a bundle of 390 pages.

12. The Tribunal heard from the claimant and two witnesses for the respondent namely :-

(a) Ryan Parkes, Practice Manager;

(b) Dr. R. Ravindran, doctor partner of the GP Practice.

13. The respondent submitted the statements of Gwion Lockley (grievance investigator) and Dr. T. Ravindran (doctor partner of the GP Practice) as written representations. The Tribunal determined the weight to be attached to the written representations was minimal in the context that the individuals had not attended trial and their evidence had been untested.
14. At the commencement of the hearing, the claimant indicated he received the final bundle on the Friday before the hearing; and the respondent's witness statements on Saturday and he exchanged his witness statement on Sunday. The claimant accepted that he had received a draft bundle in October 2024. There was no clear explanation as to the delay in complying with the Tribunal orders. In the circumstances it was agreed that the claimant needed time to process information, the Tribunal determined that the claimant be given any further time he required in order to participate in the hearing.
15. The Tribunal agreed to put in place the following reasonable adjustments to assist the claimant: regular 10 minute breaks after 50 minutes of evidence and permitting the claimant to get up and walk about to ease any anxiety.
16. The respondent also raised that the claimant's witness statement made allegations beyond the list in the case management order by Judge Childe. The claimant confirmed he wished to rely on these matters and the respondent had no objections to the claimant amending his claim to add these matters because their witnesses already dealt with the issues and there was no prejudice to the respondent. The Tribunal amended the claim by consent and added to the list of issues as set out above.
17. The Tribunal also modified the list of issues with agreement from the parties so that in terms of the discrimination arising from disability claim (the section 15 claim) this was changed to "The disciplinary threat the claimant received from Ryan Parkes on 25 February 2023 for not immediately agreeing to change his hours of work to 5 days a week. The PCP relied on was changed to "the respondent's requirement that the claimant work a 5 day week from approximately 22 February 2022 was imposed at short notice." The disadvantage alleged was that the claimant needed to process information about proposed changes before he can make decisions. These amendments to the list of issues were made with the agreement of the parties and accord with the pleaded case of the claimant and the respondent conceded that his witnesses have dealt with these allegations in their witness statements. The Tribunal, also with agreement of the parties removed the allegation "discriminatory dismissal" following clarification from the claimant that he left his employment (constructive unfair dismissal) because he believed he had been discriminated against; had been subject to discrimination arising from disability; harassment related to disability and the respondent failed to make a reasonable adjustments; all claims fell within both section 39 (2)(c) and (d) of the Equality Act 2010.
18. At the commencement of the hearing the respondent requested that witnesses be permitted to observe the case remotely. Further it requested that some of the

respondent's witnesses be permitted to give evidence remotely namely the doctors. The claimant was given time to consider his responses to these applications. The claimant objected to witnesses giving evidence remotely at an in person hearing but had no objections to them observing the case remotely. The Tribunal determined that the witnesses should attend in person to give evidence bearing in mind that the claimant was a disabled person who describes some challenges in communication; that the case had been listed in March 2024 for an in person hearing and the witnesses should have been able to make arrangements to attend; it was only on the first day of the final hearing that the respondent requested to give evidence remotely.

19. The respondent also requested to lead evidence in respect of its justification defence which had not been pleaded nor provided in accordance with the order of Judge Childe. The respondent should have set out its justification defence by 11 April 2024 (see page 67 and paragraph 13 of Judge Childe's order). The respondent stated it did have a justification defence namely that the requirement for the claimant to attend five days per week at work was an efficient operation of the GP practise and provision of an effective service for the public. The claimant was given time to consider this application and resisted it stating that the respondent had had a long time to set out its justification defence and feels that he would be prejudiced if it were to be allowed to pursue this at this late stage.
20. In considering the respondent's amendment application the Tribunal took into account the Presidential Guidance on case management; the cases of **Selkent; Vaughan v Modality Limited** and the case of **Chaudhry v Cerebrus**. The Tribunal noted that the EAT have direct the Tribunal to look at the practical consequences of such an amendment first. The respondent had not included a justification defence in the witness statements; the respondent would therefore have to call oral evidence to provide justification material or amend its witness statements. The claimant is a litigant in person, has a disability and faces difficulties in processing information. The Tribunal determined that this placed the claimant at a significant disadvantage. If the respondent's proposed amendment was allowed on the first day of the hearing the claimant would have very little time to process the justification defence. The Tribunal accepted in the absence of a justification defence if the claimant succeeds that the respondent would have no defence to the section 15 claim (its prejudice) but the Tribunal weighed the significant disadvantage to the claimant if the amendment was permitted at this late stage (as set out above) and the respondent had been given an opportunity to particularise its justification defence last April and failed to take that opportunity. In the circumstances the Tribunal refused the amendment.
21. On day one of the hearing, by consent the Tribunal added an additional document at page 391 namely the e-mail of 2nd December 2022 to the bundle. On day 2 by agreement of the parties the Tribunal added pages 392 to 395 namely text messages between Nira Ravindran, Manager and Ryan Parkes.
22. On day 2 the respondent notified the Tribunal it intended to call only Mr. Ryan Parkes Practice Manager of the respondent and Dr. Roshan Ravindran. The respondent sought to submit the statements of Gwion Lockley (Grievance chair) and Dr. Thamber Ravindran as written representations. The Tribunal attached

minimal weight to the written witness statements in the circumstances that the claimant had no opportunity to cross examine the witnesses (as set out above).

23. On day 2 following the cross examination of the claimant and on the application of the claimant's partner, an extended period of time was granted to the claimant's partner to prepare cross examination of Mr. Parkes. The claimant was given additional time on day 3 to prepare his oral submissions. The claimant was content to use 2 hours of preparation and invite any questions from the Tribunal following his submissions. The Tribunal asked the claimant for comments as to each issue in the list of issues. The claimant stated he felt he was given a fair hearing.

Facts

24. The Tribunal has found facts proportionately to the issues to be determined in this case.
25. There is no dispute that the claimant was at all material times a disabled person by reason of autism.
26. From 16 February 2016 until 27 December 2022, the claimant was employed by the respondent (a G.P. Surgery), initially as a Receptionist and later in about 2018 following promotion to an Assistant Practice Manager. Early conciliation started on 30 December 2022 and ended on 10 February 2023. The claim form was presented on 15 February 2023.
27. On commencement of the claimant's employment he received a contract of employment (see pages 79- 85) signed and dated 17 February 2016. Following his promotion to the role of Assistant Practice Manager, the claimant did not receive an updated contract of employment. Mr Parkes, Practice Manager was in charge of HR matters but was not able to give an explanation to the Tribunal as to why he failed to provide the claimant with further written particulars upon the claimant's promotion.
28. The claimant had good IT skills and he was requested and agreed to assist Dr. Roshan Ravindran in setting up IT for the doctor's private clinic in Cheshire. He attended the clinic for a period of time to assist the doctor.
29. The claimant and Mr. Parkes previously enjoyed a good and close working relationship. They worked together at Showell (page 89) and Mr. Parkes suggested to the claimant he apply for a job at the respondent. Mr. Parkes was the referee for the claimant's job application. The claimant described Mr. Parkes as a "brother". The claimant was very competent and regarded well in his role. His appraisals did not raise any concerns as to his performance. His latest appraisal only raised as an aside comment at the end of the document that the claimant did not answer all the telephone calls. In about March 2022 the claimant was having a tough time and shared this with Mr Parkes as a result Mr Parkes took some responsibilities temporarily away from the claimant until he could get back on his feet. Text messaging between Mr Parkes and the claimant in 2019/2022 see pages 188 and 192 evidenced a reasonably good working relationship between them.

30. Mr Parkes as Practice Manager was in charge of HR issues. The Tribunal was informed that the respondent had a Diversity Policy, Bullying and Harassment policy and Disciplinary Policy but these policies were not included in the Tribunal bundle. Mr Parkes was aware through the claimant's mother (who previously worked at the respondent's workplace) that the claimant was neurodivergent by reason of autism. Mr Parkes asked the claimant if he needed anything at work by reason of this and the claimant said no but Mr Parkes did not find out anymore about the claimant's autism. He stated that he asked Dr. Roshan Ravindran about the autism but this was inconsistent with Dr. Ravindran's evidence who said he himself spoke directly to the claimant, the Tribunal preferred on this point (Mr. Parkes the Tribunal found did not ask the doctor about autism). Mr. Parkes did not conduct any formal risk assessment to see how the claimant's autism could impact on the way he works and the way that Mr. Parkes should manage him.
31. Mr. Parkes was known for his brusque management style and did not always think about the impact he may have on others (see the statement of Janine White page 116 and the observations of the partners that his communication style could be better). Mr. Parkes style of management directly contrasted with the claimant who was sensitive and could take comments very personally. Further Dr. Roshan stated at page 326 in the appeal outcome letter that *"I accept the communication at times for Mr Parkes could have been better but Mr Parkes denied he did this on purpose.. I don't accept that Mr Parkes was being vindictive or failed to notify you on purpose you acknowledge that he may not have communicated with you on occasions due to work pressures."*
32. Mr. Parkes conceded in his evidence that he was aware that the claimant had autism and that he required time to process information.
33. For a period of time, the claimant and Mr Parkes worked a four day week by compressing their hours. The claimant had Monday off work and Mr Parkes had Friday off work.
34. On or about 22 February 2022 Mr Parkes said to the claimant the partners had asked if the claimant would consider changing his working days to resume a 5 day week. On or about Friday 25 February 2022 Mr Parkes said that if the claimant did not start working 5 days week from next Monday he would take the matter to the partners for disciplinary action. There is a dispute of evidence as to this interaction. The Tribunal preferred the version of events of the claimant for the reasons set out below.
35. In April 2022 Lisa (Jones/Haynes) was appointed alongside the claimant to the role of Assistant Practice Manager. Mr Parkes was involved in the recruitment of Lisa to the position but was unable to inform the Tribunal as to whether there was an application process or whether there was any open and transparent recruitment process. The claimant saw the appointment of Lisa as a personal affront because he perceived (because he was told by Nira) that she had achieved the promotion not on merit but because she agreed to drop a GMC complaint against a partner of the practice (see page 310 BB). Lisa required some support by Mr. Parkes to get up to the required standard in the role so that Mr. Parkes tended to spend a lot of time assisting Lisa. Consequently this meant

that Mr. Parkes had less time with the claimant. Further, Mr. Parkes was also very busy with his work and carrying out two main roles.

36. The claimant described the appointment of Lisa to the Assistant Practice Manager in April 2022 as a trigger for the deterioration of his relationship with Mr. Parkes.
37. In or about August/September 2022, Ryan Parkes sought to remove 4.5 hours of fortnightly overtime from the claimant he had been working over the last four years. The claimant protested and Mr Parkes informed the claimant he needed to change the way he was thinking (see grievance page 127). There is a dispute of evidence about this interaction but the Tribunal preferred this account as set out below.
38. By e-mail dated 14 September 2022 page 193 the claimant messaged Mr Parkes stating *"I'm starting to get concerned that I have done something to upset you as I feel you have seemed a bit off with me at times. If I have totally misjudged then I'll apologise but I just feel that something isn't right with us atm"*. The claimant gave some examples; *"this morning when you questioned why I haven't answered your call when I was on the phone I'll be honest atm I'm scared to move if someone needs in case I miss a call from anyone as this is a recurring comment about phone or diverting to another room if I move. Also when I've said I'm behind with some stuff because of the staffing last week the stuff is still on the To Do List I feel like I've let you down. I know a lot is going on but you just don't seem your normal jokey self around me but I hear you laughing with others and I'm worried now as I've even had staff ask what's going on with us and I just try and brush it off as I don't know what they are on about hope this is not the case and I've done something we can sort it out and that we're still friends as I do love working with you"*.
39. From September 2022 until the claimant's last working day 19 of December 2022 Mr Parkes informed the claimant to hang up on patients to answer calls from partners; stating that the partners were the ones who paid his wages and when they call he should hang up to the patient and take the partners call. The claimant had been tasked with the role of completing calls for the special allocation scheme from challenging patients (including patients that have been removed from the practice due to aggression or threats and would be allocated to the claimant). These patients are at high risk of mental health deterioration and suicide. There was a dispute of evidence as to whether this instruction had been given to the claimant but the Tribunal determined that it had. The claimant was very good with IT and had assisted Dr. Roshan Ravindran with setting up the IT for his private clinic in Cheshire. Mr. Parkes evidence was that the calls from the partners to the claimant were from Dr. Roshan. The Tribunal finds that Dr. Roshan did require the claimant to assist him with IT and therefore gave the instruction he needed to speak to the claimant as a priority. The claimant understood the instruction by Mr Parkes but believed he should take the partners calls without compromising patient care.
40. The claimant's relationship further deteriorated with Mr. Parkes. At the partners insistence a meeting to mediate was set up in September 2022 between the claimant and Mr. Parkes. Dr. Roshan Ravindran requested that Mr. Parkes provide a bullet point record of the meeting so that he was aware about any

point that needed to be taken further. Although the doctor stated in his evidence he was happy for either the claimant or Mr. Parkes to provide the bullet points, the Tribunal found on the balance of probabilities it was more likely than not that it was envisaged (from this instruction) that Mr. Parkes, the senior manager who was leading the meeting would take notes. It is agreed that following this meeting both Mr. Parkes and the claimant felt the meeting was a success. The claimant felt reassured that things would improve between him and Mr. Parkes.

41. Three weeks after meeting, the claimant requested the notes of the meeting with Mr. Parkes. Mr. Parkes told the claimant to produce the notes himself. The claimant stated it was he who promised to make the notes which was reasonable especially for someone process driven like him. Mr Parkes replied on 6 October 2022 page 157 *"can I confirm that you are refusing to follow through on an instruction from me to write up some minutes from this meeting."*
42. The claimant was delegated (along with Mr Parkes) to deal with patients under the national workforce reporting service.
43. At a point between September 2022 and 19 December 2022 Mr Parkes informed Dr. Roshan Ravindran the claimant's performance had dropped and Dr. Roshan informed the claimant of this.
44. The respondent is required to submit enhanced services submissions to the NHS. The submissions are required to be submitted by the 5th of the following month for the three months previously. The consequences of submitting submissions late, results in a delayed payment to the practice. The claimant was delegated the task by Mr Parkes. The claimant submitted some of the NHS submissions on 3 and 4 of October 2022 but went on sick leave between 6 October 2022 and 20 of October so some submissions were not submitted in a timely manner.
45. Mr. Parkes accepted that he did speak to the claimant about this. The Tribunal found that the claimant was reprimanded about the lateness of a submission for NHS fees. The Tribunal found that when Mr Parkes raised the issue of the October fee submission with the claimant he did rebuke the claimant. However the claimant had been placed on reception where there were staff shortages (see page 142) which the Tribunal accepts is a very busy place dealing with phone calls and patients in person. The claimant would not have been able to conduct the fee work whilst he was on reception.
46. At a point between September and 24 October 2022 Ryan Parkes spoke to Karen Homfray and Lisa Jones that the claimant had spoken to Dr Thambar Ravindran about his concerns about Mr Parkes. Mr Parkes told Karen that the claimant *"had pissed him off"*.
47. From 6 October 2022 to 20 October 2022 (page 208) the claimant was on sick leave by reason of work related stress. On his return to work Mr Parkes did not carry out a return to work meeting and could not provide any reason as to why he had failed to do this.
48. On 5 October 2022 (page 366) the claimant attended his GP and stated that he felt he was being bullied by his manager and had tried to raise the issue at work

but does not feel much was being done at this point of time. He was on 100mg of sertraline. By 18 October 2022 the claimant's dose of sertraline was increased to 150 mg.

The grievance

49. By e-mail dated 24 October 2022 (see page 127) the claimant raised a complaint of unfair treatment and disability discrimination. The respondent appointed Gwion Lockley to investigate the grievance. His investigation was commenced on 26 October 2022. His investigation was delayed by reason of the fact that the investigator had some serious personal issues regarding the health and hospitalisation of one of his children shortly before Christmas 2022 and into the New Year of 2023. His terms of reference were to investigate the allegations made by the claimant in terms of inappropriate non-professional communications; feeling and being harassed and bullied within the workplace; and with no lessons learned and no reflective practise (see the grievance investigation report (from page 112).
50. By e-mail dated 31 October 2022 (page 212) the claimant had had some discussions with his trade union about his grievance. Due to the fact that the claimant had not always been a member of the trade union and paid subscriptions they could only provide him with limited advice. He did not ask the trade union nor did they advise about taking an employment tribunal claim and he was unaware of time limits. He did not conduct any research into Tribunal claims or time limits.
51. The claimant was informed by Mr. Lockley by e-mail dated 9 November 2022 (page 221) and an e-mail dated 22 November 2022 (at page 242) that he should not discuss the contents of the grievance or the investigation with colleagues or divulge information obtained during the course of the investigation to anyone else including his colleagues. The claimant was permitted to be accompanied by his trade union representative and was at liberty to discuss the grievance with his representative.
52. On 24 November 2022 the Practice was contacted by a care home about a patient concerning end of life care. The claimant's colleague Lisa declined to do it because she was on site but over her shift hours. Both Mr Parkes and Dr Ravindran asked the claimant to complete the patient referral but the claimant refused to do the referral because Lisa had said she had to go as her husband gets paid more than her and also he had previously been told by Mr. Parkes not to do any work for the care home.
53. On 24 November 2022 (page 167) the claimant emailed Dr. Ravindran and partners stating he wished to bring to their attention a further instance which occurred due to Ryan's inconsistent communication and subsequent behaviour. He raised at this stage the referral end of life care for the patient. The claimant stated at page 167 he advised Ryan that he had previously been reprimanded when carrying out work for New Bridge East Park so he declined; he noted that the instruction was contradictory and not part of his work at East Park. He stated *"I would like to make it clear that I declined this request as this simply is not my role"* (see page 168

54. By e-mail dated 24 November 2022 Dr Sabaratnam (page 235) accepted the claimant's e-mail and asked Mr. Lockley to consider it as part of the grievance.
55. By e-mail dated 29 November 2022 (page 237) the claimant resigned his employment. He stated *"Due to the deteriorating situation at the practise with my line manager I have decided to tender my resignation. I would like to apologise that I am not able to submit this in person due to my notice period timescale, however I will see you in person upon your return out of courtesy."* The claimant also placed his resignation in a letter at page 239 of the same date stating that *"in accordance with the period of notice agreed within his previous contract my last day will be 27 December 2022 he stated he would like to take this opportunity to thank you all for the opportunities presented to me within the period of my employment I had enjoyed my time working at East Park Medical Practice however in the best interests of my career and used the continuing deterioration of the relationship between my line manager and myself I feel that the time is right to move on."*
56. By e-mail dated 29 November 2022 Dr. Subaratnam Ravindran (page 240) accepted the claimant's resignation stating *"will be sad to see you leave and wish you the best for your future"*.
57. On 1 December 2022 (page 241) the claimant confirmed to the grievance investigating officer Mr Lockley that he had resigned his employment.
58. On 6 December 2022 the claimant was invited to a disciplinary meeting (page 252) on the basis of two allegations namely that (1) On 24 November 2022 Dr Ravindran asked you to take over a call from Lisa Jones following an urgent referral for a patient end of life care you refused and (2) you have discussed the contents of your confidential grievance with individuals other than those authorised. It has come to our knowledge that you have discussed your grievance with Brooklyn's Pharmacy; this is in contravention to the grievance and disciplinary policies and the clear instruction given to you in emails from Mr Lockley dated 9 November and 22nd November 2022. Mr Lockley was to conduct the investigation meeting.
59. The claimant's evidence to the Tribunal was that he mentioned his grievance to the Pharmacist in the context of a confidential discussion about changes in his medication. The claimant mentioned that he was in a grievance process with his employer. The Tribunal accepted the evidence of the claimant. It would appear that the Pharmacist reported that back to the GP surgery and the GP surgery then requested the claimant attend a disciplinary hearing to deal with an alleged breach of alleged confidentiality of the grievance process.
60. On 6 December 2022 page 245 Dr Sabaratnam Ravindran confirmed that Mr Parkes would continue to line manage the claimant to minimise any contact. Lisa will act as a conduit.
61. A disciplinary investigation meeting was held on 8 December 2022 chaired by Mr Lockley. The claimant asked who when and where he was not able to answer the allegation concerning discussion of his grievance because he said he was not aware of what he was being accused of (see page 270). He did not in the

meeting state that he was having a confidential conversation with the Pharmacist.

62. Following this Mr. Lockley sent an e-mail to the claimant on 13 December 2022 (page 266) stating “please clarify whether you spoke with any staff member at the Brooklyn Pharmacy after 9 November 2022 regarding the issues raised in your grievance; what the claimant discussed; the reasons why, bearing in mind you have been informed that the grievance was confidential you felt the need to discuss the contents of your grievance with staff at Brooklands's pharmacy”.
63. By e-mail dated 15 December 2022 page 273 the claimant responded to Mr Lockley stating “you have not returned with these specific questions or anything near that original request not being able to answer a broad allegation asked in such context is not being evasive questions have also been added around rationale for alleged disclosure and also I felt the need to disclose?” The claimant requested information again what have I allegedly disclosed to whom has this been allegedly disclosed when was this alleged to have taken place date.
64. By e-mail dated 13 December 2022 (page 276) the claimant had been selected as the preferred candidate for the position of senior officer IT facilitator at Black Country Integrated Care Board and they requested Mr Parkes for a reference (page 276).
65. On 28 December 2022 the respondent contacted the claimant's new employer to request them to release him back to complete the handover. The claimant's stated in evidence that he had already completed a handover where requested and emailed Lana Podkaine giving the requested information (see page 288).
66. The grievance investigation concluded on 8 March 2023 and Mr. Lockley sent out his report on 13 March 2023. He found there was insufficient evidence to substantiate the allegations of harassment, bullying or unprofessional behaviour of Mr. Parkes. He recommended that training for all managerial staff take place in effective communication, conflict resolution and supporting neurodiverse employees.
67. By e-mail dated 19 March 2023 the claimant appealed the grievance outcome. The claimant edited the grievance investigation reports starting at page 310A to indicate his areas of dispute. A meeting to hear the appeal was to take place 24 April at 3:30 p.m. by video by teams.
68. At the meeting on 24 April 2023 the claimant's representative, Mr. Evans said he had not had a chance to review the material because it was only sent by Dr. Ravindran 1.5 hours before the start of the meeting. The claimant had managed to go through it but not in any detail. In the circumstances it was rescheduled until the 27th of April 2023.
69. By letter dated 10 May 2023 (page 325) the grievance appeal decision rejected the claimant's appeal.

The Law

Constructive unfair dismissal

70. Section 95 (1)(c) of the Employment Rights Act defines constructive dismissal as arising when the employee terminates the contract under which he is employed with or without notice in circumstances in which he is entitled to terminate without notice by reason of the employer's conduct.
71. The conduct must amount to a breach of an express or implied term of the contract of employment which is of sufficient gravity to entitle the employee to terminate the contract in response to the breach. In this case the breach of contract relied upon is a breach of the implied term of trust and confidence.
72. A repudiatory breach is a significant breach going to the root of the contract **Western Excavating ECC v Limited v Sharp (1978) ICR 221**. It is not enough that the employer has behaved unreasonably. In the EAT judgement of **Woods v WM call services Peterborough Limited 1981 IRLR 347** the court explained that it is clearly established that there is implied in the contract of employment a term that the employers will not without reasonable and proper cause conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee. Any breach of this implied term is a fundamental breach amounting to repudiation of the contract since it necessarily goes to the root of the contract. To constitute a breach of this implied term it is not necessary to show that the employer intended any repudiation of the contract. The Employment Tribunals function is to look at the employer's conduct as a whole and determine whether it is such that its commutative effect judged reasonably and sensibly is such that the employee cannot be expected to put up with it.
73. In respect of the final straw this was considered in the Court of Appeal judgement in **London Borough of Waltham Forest v Omilaju 2005 IRLR 35**. In order to result in a breach of the implied term of trust and confidence a final straw not itself a breach of the contract but must be an act in a series of earlier acts which cumulatively amount to a breach of the implied term. The act does not have to be of the same character as the earlier acts. It is an essential quality that when taken in conjunction with the earlier acts on which the employee relies, it amounts to a breach of the implied term of trust and confidence. It must contribute something to that breach although what it adds may be relatively insignificant so long as it is not utterly trivial. The final straw viewed in isolation need not be unreasonable or blameworthy conduct. However an entirely innocuous act on the part of the employer cannot be a final straw even if the employee genuinely but mistakenly interprets the act as hurtful and destructive of his trust and confidence in the employer. The test of whether the employees' trust and confidence has been undermined is objective.
74. As regards the objective nature of the test in the Court of Appeal judgement in **Bournemouth University Higher Education Corporation v Buckland 2010 IRLR 45** it was stated the conduct of an employer who is said to have committed a repudiatory breach of the contract of employment is to be judged by an objective test rather than a range of reasonable responses test. Reasonableness may be one of the tools in the employment tribunals factual analysis in deciding whether there has been a fundamental breach but it cannot be a legal requirement.

75. In **Wright v Ayrshire Council UKEATS 0017/13** Langstaff P endorsed a test first set out by Elias P in **Abbey Cars W Horndon Limited v Ford UKEAT/0472/07** namely the crucial question is whether the repudiatory breach played a part in the dismissal. It follows that once a repudiatory breach is established if the employee leaves and even if he may have done so for a whole host of reasons he can claim that he has been constructively dismissed if the repudiatory breach is one of the factors relied upon.
76. An employee must not delay their resignation too long or do anything which indicates acceptance of the changed basis of their employment see **WE Cox Toner International Limited v Crook 1981 ICR 823**.

Discrimination arising from disability

77. Section 15 of the Equality Act 2010 provides that
- (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.
78. The question of whether the treatment is unfavourable involves identifying the relevant treatment and asking whether that is unfavourable. If the relevant treatment involves conferring a benefit on a disabled person it is not unfavourable treatment to fail to treat them even more favourably in respect of that benefit; see **Trustees of Swansea University of Pension and Assurance Scheme v Williams 2019 1 WLR 93**.
79. The test of causation for the purposes of a section 15 claim requires the Tribunal to determine two questions namely (i) whether the claimant was treated unfavourably because of an identified something and (ii) whether that something arose in consequence of B's disability. The first question requires an examination of the putative discriminator's state of mind; the second is a question of objective fact for the ET to decide in the light of the evidence; **Sheikholeslami v University of Edinburgh (2018) IRLR 1090**.
80. There can be more than one link between the something that causes unfavourable treatment and disability. The statutory purpose of section 15 is to provide protection where the consequences or effects of disability lead to unfavourable treatment. The more links there are the harder it is likely to establish the requisite connection as a matter of fact see **Pnaiser v NHS England 2016 IRLR 170**.

Failure to make reasonable adjustments

81. Section 20 of the Equality Act 2010 provides that :

- (1) where this Act imposes a duty to make reasonable adjustments on a person this section, section 21 and 22 and the applicable schedule apply; and for those purposes a person whom the duties imposed is referred to as A.
- (2) The duty comprises the following three requirements.
- (3) The first requirement is a requirement where a provision criterion or practise of aids 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 is reasonable to have to take to avoid the disadvantage.

82. Paragraph 20 schedule 8 of the Equality Act 2010 provides that

- (1) a is not subject to a duty to make reasonable adjustments if they does not know and could not reasonably expect it to know –
 - (b) in any case referred to in Part 2 of this schedule that an interested disabled person has a disability and is likely to be placed at the disadvantage referred to in the first second or third requirement.

83. The focus of the Tribunal is on the practical result of the measures which can be taken. It is an error for the focus to be on the process of reasoning by which a possible adjustment was considered; see the case of **Royal Bank of Scotland v Ashton 2011 ICR 632**.
84. The concept of a reasonable adjustment is an entirely practical one. There must be an objective assessment of how the steps proposed would have been effective to enable the disabled person or be it is sufficient if there was a prospect of the disadvantage being alleviated even if the adjustment would not have been properly effective; **FirstGroup Limited v Paulley (2017) IRLR 258**.
85. The concept of a PCP carries the connotation of the state of affairs indicating how similar cases are generally treated or how a similar case would be treated if it occurred again. It does not apply to every act of unfair treatment of a particular employee; **Ishola v the Transport for London 2020 ICR 1204**.
86. The function of the PCP in a reasonable adjustments context is to identify what it is about the employers management of the employee or its disabled person that causes substantial disadvantage to the disabled employee. What must be justified is not the disadvantage that the claimant suffers but the PCP under by or in consequence of which the disadvantageous act is done; **Ishola**.
87. The fact that a disabled and non-disabled person are treated equally and may both be subject of the same disadvantage when absent for the same period of time does not eliminate the substantial disadvantage suffered by the disabled person if the PCP bites harder on the disabled because the disability leads to disabled related absences that would not be the case with the able bodied; **Griffiths v Secretary of State for Work and Pensions 2017 ICR 60**.
88. For the purposes of limitation the duty to make reasonable adjustments arises as soon as there is a substantial disadvantage to the disabled employee from a

PCP and failure to make the adjustment is a breach of the duty once it becomes reasonable for the employer to have to make the adjustment; see **Fernandes v Department of Work and Pensions 2023 IRLR 967**.

89. Even if there has been a failure to make reasonable adjustments at an earlier point in time there can come a time when it would not be reasonable to take the step proposed by the employee because it would have no prospect of removing the disadvantage complained of; **Parnell v Royal Mail Group (2024) EAT 130**.
90. Tribunals should have regard to any relevant provisions of the Code of Practice on Employment issued by the Equality and Human Rights Commission which came into force on 6 April 2011 ("the code").

Harassment

91. A person A harasses another B, if (a) engages in unwanted conduct related to a relevant protected characteristic and (b) the conduct has the purpose or effect of (i) violating their dignity or (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
92. It is not sufficient that the unwanted conduct occurs; it must be shown to be related to the relevant protected characteristic.
93. Harassment does not have to be deliberate to be unlawful. If the unwanted conduct related to the relevant protected characteristic was deliberate and is shown to have had the purpose of violating B's dignity or of creating an intimidating hostile degrading humiliating or offensive environment for B; the definition of harassment is made out. The Tribunal must consider the factors set out in section 26 (4) of the Act namely (a) the perception of B and (b) the other circumstances of the case (c) whether it is reasonable for the conduct to have that effect.
94. Not every adverse comment or conduct may constitute a violation of a person's dignity. In **Richmond Pharmacology v Dhaliwal** Tribunals were advised not to encourage a culture of hypersensitivity by imposing liability on every unfortunate phrase so not to cheapen the significance of the meaning of the words used in the statute i.e. "intimidating hostile degrading" which were an important control to prevent trivial acts causing minor upset being caught in a concept of harassment. Even if there is a conduct which is sufficient to attract the necessary epithets, the conduct must still be related to the protected characteristic.
95. The Tribunal had regard to the principles summarised in paragraphs 85 to 89 of **Pemberton v Inwood 2018 ICR 1291** and to chapter 7 of the code which deals with harassment.

Victimisation : section 27 of the Equality Act 2010

96. Pursuant to section 27 of the Equality Act 2010 "A person A victimises another person B if A subjects B to a detriment because (a) B does a protected act or (b) A believes that B has done or may do a protected act."

97. The Equality Act 2010 asks the question in respect of causation as to whether B is subject to a detriment because of the protected act applying **Greater Manchester Police v Bailey (2017) EWCA Civ 425**. In the case of **Chief Constable of West Yorkshire Police v Khan (2001) UKHL 48 paragraph 16** The primary object of the victimisation provisions is to ensure that persons are not penalised or prejudiced because they have taken steps to exercise their statutory rights or are intending to do so.
98. In **Durrani v London Borough of Ealing UKEAT/0454/2012** “it is not necessary that the complaint referred to (race) using that very word. But there must be something sufficient about the complaint to show that it is a complaint to which at least potentially the act applies.”

Time limits

99. Section 123 of the Equality Act 2010 provides that
- (1) subject to section 140B proceedings on a complaint within section 120 may not be brought after the end of –
- (a) the period of three months starting with the date of the act to which the complaint relates, or
- (b) such other period as the employment tribunal thinks just and equitable.
100. Section 140B of the act permits an extension of time where access early conciliation is undertaken in certain circumstances. HHJ Tayler in the case of stated “strictly speaking section 123 EQA does not set out a primary time limit that may be extended but a time limit of three months or “such other period as the employment tribunal thinks just and equitable”. Where the employment tribunal decides that a period other than three months is just next well that is the time limit. Nonetheless the use of the term primary time limit for the three months period (with an extension for access early conciliation where appropriate) is a useful shorthand. It remains a common practise for those who assert that the primary time limit should not be extended to rely on the comments of Auld LJ at paragraph 25 of **Bexley community centre (t/a Leisure Link) v Robertson (2003) EWCA Civ 576** the time limits in the Employment Tribunal exercise strictly in employment cases and that a decision to extend time is the exception rather than the rule as if they were principles of law. Where these comments are referred to out of context this practise should cease. Paragraph 25 must be seen in the context of paragraphs 23 and 24:

23. I turn now to the second issue. The decision by the employment tribunal not to exercise its discretion to consider the claim on just and equitable grounds. There are a number of basic propositions of law to which Miss. Outhwaite has referred us which governed the way in which this exercise has to be undertaken. If the claim is out of time there is no jurisdiction to consider it unless the tribunal considers that it is just and equitable in the circumstances to do so. That is essentially a question of fact and judgement for the tribunal to determine as it here having reconvened for the purpose of hearing argument on it.

24. The tribunal when considering the exercise of its discretion has a wide ambit within which to reach a decision. If authority is needed for that proposition it is to be found in **Daniel v Hamilton Hospital Trust** in the judgement of Gibson LJ at Page 3 where he said

“the discretion of the tribunal under section 68 (6) is a wide one. This court will not interfere with the exercise of discretion unless we can see that the tribunal erred in principle or was otherwise plainly wrong.

25. It is also important to note that the time limits are exercised strictly in employment and industrial cases. When tribunals consider their discretion to consider a claim out of time on just and equitable grounds there is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse. A tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time. So the exercise of discretion is the exception rather than the rule. It is of a piece with those general propositions that an Appeal Tribunal may not allow an appeal against the tribunal's refusal to consider an application out of time in the exercise of its discretion merely because the Appeal Tribunal if it were deciding the issue at first instance would have formed a different view. As I have already indicated such an appeal should only succeed where the Appeal Tribunal can identify an error of law or principle making the decision of the tribunal below plainly wrong in this respect.

101. HHJ Tayler went on to state that the propositions of law for which Robertson is authority or that the employment tribunal has a wide discretion to extend time on just and equitable grounds and that appellate courts should be slow to interfere. The comments of old LJ relate to the employment law context in which time limits are relatively short and makes the uncontroversial point that time limits should be complied with. But that is in the context of the wide discretion permitting an extension of time on just and equitable grounds.

102. And **Chief Constable of Lincolnshire Police v Caston (2009) EWCA Civ 1298** Wall LJ stated

24. Mr Rose placed much reliance on paragraph 25 of Auld LJ's judgement which reads as follows

...this paragraph has in turn been latched onto by commentators as offering guidance as to how the judgement under the just and equitable provisions of the Race Relations Act and DDA fall to be exercised. In my judgement however it is in essence an elegant preposition of well-established principles relating to the exercise of a judicial discretion. What the case does in my judgement is to emphasise the wide discretion which the ET has-see the dictum of Gibson LJ cited above and articulate the limited basis upon which the EAT and the court can interfere.

Sedley LJ stated

31. In particular there is no principle of law which dictates how generously or sparingly the power to enlarge time is to be exercised. In certain fields (the lodging of notices of appeal at the EAT is a well known example) policy has led

to a consistently sparing use of the power. That has not happened and ought not to happen in relation to the power to enlarge the time for bringing ET proceedings and Auld LJ is not to be read as having said in Robertson that it either had or should. He was drawing attention to the fact that limitation is not at large : there are statutory time limits which will shut out an otherwise valid claim unless the claimant can displace them.

103. Judge Tayler also referred to the case of **Abertawe Bro Morgannwg University Local Health Board v Morgan (2018) EWCA Civ 640** as follows :

17. The boards other grounds for appeal all seek to challenge the decisions of the employment tribunal that it was just and equitable to extend the time for bringing (a) the claim based on a failure to make adjustments and (b) the claim alleging harassment by Ms. Keighan. Before turning to those grounds the following points may be noted about the power of a tribunal to allow proceedings to be brought within such. As it thinks just and equitable pursuant to section 123 of the Equality Act 2010.

18. First it is plain from the language used (“such other period as the employment tribunal thinks just and equitable”) that Parliament has chosen to give the employment tribunal the widest possible discretion. Unlike section 33 of the limitation act 1980, section 123 (1) of the Equality Act 2010 does not specify any list of factors to which the tribunal is instructed to have regard and it would be wrong in these circumstances to put a gloss on the words of the provision or to interpret it as if it contains such a list. That’s although it has been suggested that it may be useful for a tribunal in exercising its discretion to consider the list of factors specified in section 33 (3) of the limitation act 1980 (see **British Coal Corporation v Keeble 1997 IRLR 336**), the Court of Appeal has made it clear that the tribunal is not required to go through such a list, the only requirement being that it does not leave a significant factor out of account; see **Southwark London Borough Council v Afolabi (2003) ICR 800**, paragraph 33. The position is analogous to that where a court or tribunal is exercising the similarly worded discretion to extend the time for bringing proceedings under Section 7(5) of the Human Rights Act 1998; see **Dunn v Parole Board (2009) 1 WLR 728**.

19. That said factors which are almost always relevant to consider when exercising any discretion whether to extend time are : (a) the length of and reasons for the delay and (b) whether the delay has prejudiced the respondent (for example by preventing or inhibiting it from the investigating the claim while matters were fresh).

25. As discussed above the discretion given by section 123 (1) of the Equality Act 2010 to the employment tribunal to decide what it thinks just and equitable is clearly intended to be broad and unfettered. There is no justification for reading into the statutory language any requirement that the tribunal must be satisfied that there was a good reason for the delay let alone that time cannot be extended in the absence of an explanation of the delay from the claimant. The most that can be said is that whether there is any explanation or apparent reason for the delay and the nature of any such reason are relevant matters to which the Tribunal ought to have regard.

Submissions

104. The respondent provided a written submission and supplemented this with oral submissions. The respondent submitted the claimant's evidence was inconsistent and the claimant was wrong to suggest there was any disciplinary threat made on 25 February 2022. The Tribunal was referred to the case of **Williams v Trustees of Swansea University Pension and Assurance Scheme (2018) UKSC 65**; To assess whether something is unfavourable there must be a measurement against an objective sense of that which is adverse as compared to that which is beneficial. Further it was submitted in accordance with the case of **Ishola v Transport for London 2020 EWCA Civ 112** the term PCP generally connotes some form of continuum in the sense that is the way in which things generally are or will be done. In the circumstances there was no PCP here. The respondent did not and could not reasonably have known but the claimant suffered a disadvantage due to anxiety or confusion.
105. Further it was submitted that the discrimination claims are out of time following **Adedeji v University Hospitals Birmingham NHS Foundation 2021 EWCA Civ 23** in particular taking into account the length of and the reasons for the delay. There is no continuing active discrimination bearing in mind there's a significant period of 8.5 months out of time with no satisfactory explanation as to why the claim was not issued before. It was submitted that there was no harassment related to disability in the circumstances someone who the claimant says treated him like a brother would have treated him in this way.
106. The respondent submitted that the alleged breaches of contract do not objectively calculate or likely destroy or seriously damaged trust and confidence so that none of the matters alleged by the claimant individually or collectively could even come close to amounting to a repudiatory breach of contract.
107. Further respondents admitted that the claimants victimisation claims are entirely transparent and should be dismissed. The respondent has been proactive in dealing with the claimants grievance and appointing an independent investigator.
108. The claimant and his partner were given time to process the respondent's written submission (2 hours) before making submissions. On return it was submitted that the claimant found that there was a lot of information to process. The Judge enquired whether the claimant would like time overnight to reflect on the case before completing his submissions. He was given this time.
109. The claimant submitted that in respect of resuming 5 day weeks he was subject to a disciplinary threat on 25 February. He submitted that the evidence of the respondent was inconsistent and cruel; and the threat of going to the partners was inferred for a disciplinary. He submitted that there was a failure to make any reasonable adjustments. He felt there was an ongoing campaign against him and he just wanted it to stop. Latterly he sought legal advice. He said he could not recall certain events. However he submitted that Mr. Parkes was not a credible witness and breached his confidentiality. The meeting was to clear the

air. The Dr. said he asked Ryan to bullet point the meetings. The claimant was not required to do so.

110. He submitted there was a conversation between the claimant and Rosh that his performance had dropped. He submitted he was rebuked for late NHS fee reports; his manager knew with multiple roles the claimant was not able to get the work done. His role is full time and the reception role is extremely intense.
111. The claimant was told to hanging up calls to patients to take calls from the partners; that was not patient care. He was dealing with difficult patients.
112. He was also reprimanded for being on telephone calls for too long and redirecting calls to the reception desk; the claimant said he can't sit by a phone 24/7. The claimant submitted he was subject to contradictory instruction. He was told not to get involved with the care home. Another time to get involved with it. He submitted he struggled to process that change.
113. He said he was harassed namely to change the way his mind works. He submitted this was cruel because he can't change the way he thinks. He submitted it was inappropriate to contact his new employer. He was never asked for a handover. It was retaliation. They could have contacted the claimant between 27 December to 9 January but did not. The claimant said he was invited to a disciplinary where they were fishing. If the Pharmacist put it in writing and who made the allegation.
114. The claimant said he had to resign (see page 239) due to the continuing deterioration of the relationship between his line manager and himself.

Conclusions

Credibility

115. The Tribunal found the claimant to be highly intelligent and very competent at his job with the respondent. The claimant spoke with passion about his work for the respondent and his abilities were well respected by the respondent's team. The Tribunal also found the claimant genuinely believed he had been badly treated by the respondent but had exaggerated some of his treatment because the claimant was sensitive. The claimant conceded himself that he was very sensitive and could take things very personally. The Tribunal did not draw any adverse inference in respect of the claimants credibility where there were some discrepancies of dates within his allegations. In respect about the comment about changing the way he was thinking in the course of the grievance investigation conducted in November 2022 page 135 the claimant dated this at some point in late spring or early summer 2022. He informed the tribunal that he did agree the note at page 135 at the time and did not dispute the actual date or what was noted he said. He explained at the time he was anxious and he may have made some mistakes. The Tribunal believes that the claimant was genuine when he stated this; his deterioration in mental health is detailed in the GP notes in October 2022 and this the Tribunal finds sufficiently explained that the claimant had made mistakes in recollection about dates. The thrust of the claimant's evidence was genuine and honest.

116. The claimant did not expressly raise in his detailed written grievance dated 24 October 2022 the allegation concerning an alleged threat of disciplinary action for failing to agree a change of hours to his working week. However there was a reference in the grievance document at page 129 (also attached to his ET1) that Mr. Parkes closed any discussion with a threat of the partners and disciplinary action if he did not comply with his unreasonable requests and demands.
117. The Tribunal also found there was a discrepancy between the claimant's allegation in his witness statement and claim form (which was the same as his grievance) in respect of the changing back to 5 working days. He said in his witness statement that Mr. Parkes said he needed the claimant to "change the way his mind works" (contained in the claimant's witness evidence) and his written grievance (page 127) that he said the claimant "needed to change the way he was thinking". The Tribunal concluded that the claimant reflected back on his treatment and had embellished this part of his evidence. On the balance of probabilities the Tribunal found that Mr. Parkes did say to the claimant in the context of changing back to 5 days the claimant "needed to change the way he was thinking."
118. In oral evidence the claimant confirmed he rejected conducting a referral concerning a patient at end of life care for two reasons because (a) he said he had been told off before doing this work (that is any work dealing with the care home) and (b) Lisa was leaving work and was not doing the referral as her husband was paid more. This matter was subject to a disciplinary investigation. He developed this point further in cross examination that he could not process the request at short notice but this was not something he raised when directly questioned by the Judge. The Tribunal determined that the claimant refused to conduct the referral for reasons (a) and (b) as stated in his oral evidence and it was appropriate in the circumstances for the claimant to have dealt with the referral so that a refusal for lack of patient care was fairly subject to investigation by the respondent.
119. The Tribunal found that Mr. Parkes was a very loyal employee of the respondent's practice as its Practice Manager and that he was not entirely open about his treatment of the claimant or about the events which occurred at the practice. Mr Parkes informed the Tribunal that he did not accept there were any communication problems with the claimant but in respect of not taking notes of the September meeting he had classified this as miscommunication . Further he suggested in his evidence that he had given the claimant about 10 days to consider returning to 5 days on or about 15 February. The Tribunal did not accept the evidence of Mr. Parkes that he raised the issue of change of hours on or about 15 February 2022 (page 393) because this was not a change due to COVID. By this point in February 2022 all staff were back in 5 days save for the claimant and Mr. Parkes.
120. The Tribunal also found concerning that Mr. Parkes evidence was that he knew the claimant stated he was not returning to Monday working via Nira. On his evidence, he proposed, rather than discussing the issue with the claimant directly to just state to the claimant on the Friday before the proposed working day change the following Monday; "see you Monday" (see page 393). In the context that he was aware that the claimant had autism and required time to

process information, it was incredible that Mr. Parkes could suggest this was appropriate management of the claimant.

121. The Tribunal found that Mr. Parkes management style was brusque with sharp communication (see Janine White's description page 116) and his communication was not the best (see Lisa Hayne's description at page 116) and he did have a temper as evidenced by Janine White where he was alleged to have torn her to shreds. Mr Parkes admitted that he did it deliberately (page 180) *"to make an example in front of other staff as he considered it was not acceptable behaviour.. He was 50/50 as to whether he was right or not in doing it that way.* Janine White said that she was often ended up being the person trying to calm the claimant down after interactions with his manager when the claimant had been visibly upset see page 310 H. Karen Homfray page 310 H hadn't actually overheard Mr Parkes speak to the claimant in an inappropriate way but had seen the aftermath of conversations and the claimant being upset. Mr Parkes acknowledged that his communication may make the claimant believe that he's ignoring him or being vindictive see page 310 J. Both Nira and Ravi confirm that the claimant had brought the communication issues between him and Mr Parkes their attention see page 310O.
122. The Tribunal did not accept Mr. Parkes suggestion that he was not obliged to make notes of the mediation meeting with the claimant in September 2022. There was an expectation by Dr. Ravindran that he provide bullet points of the meeting. Further Mr. Parkes management style on 6 October 2022 page 157 *"Can I confirm that you are refusing to follow through on an instruction for me to write up some minutes from this meeting?"* was wholly disproportionate.
123. Mr. Parkes' management of the claimant as a disabled person was casual, informal and blasé. Mr. Parkes had high regard for the claimant and knew him for a long time but had not fully appreciated (but should have) the disability of the claimant could impact the way he should manage the claimant in part because the claimant was so competent. Mr. Parkes was in charge of HR but failed to provide the claimant with a new contract upon his promotion in about 2018. When the claimant returned to work following a two week period of absence for work related stress, he failed to conduct a return to work interview and preferring to ask the claimant informally is everything ok. Mr. Parkes said he sought advice from Dr. Ravindran about the claimant's autism. Dr. Ravindran said he directly asked the claimant about anything he needed at work and did not advise Mr. Parkes about any reasonable adjustments. The Tribunal did not believe in the context of his management style that he made enquiries with either the claimant or Dr. Ravindran about the claimant's autism.
124. Mr. Parkes told us he was involved in the recruitment process of Lisa to the role of Assistant Practice Manager. His evidence was there was no advert or interview. This directly contradicted the evidence of Dr. Ravindran who stated that it was internally advertised and Lisa was the only applicant. On the balance of probabilities the Tribunal found that as Mr. Parkes was in charge of HR issues and said he was involved in the recruitment of Lisa to the role he would have been aware of any process; it appeared there was no open transparent process adopted. The Tribunal preferred the evidence of Mr. Parkes.

125. Dr Roshan Ravindran stated he did not recall informing the claimant but Mr Parkes had informed him that the claimant's performance had dropped over the last four months since Lisa's promotion. The Tribunal preferred the claimant's version of events and it was included in the claimants grievance meeting at page 143 in November 2022
126. Dr. Ravindran was conducting some work at a private clinic in Cheshire and relied heavily on the management team to manage the Practice. The Tribunal concluded that the doctor attempted to give the impression he knew more about the day to day running of the practice than he actually did.
127. The Tribunal deals with the list of issues.

Analysis

Discrimination arising from disability Equality Act 2010 section 15

6.1 did the respondent treat the claimant unfavourably by :

6.1.1 The disciplinary threat the claimant received from Ryan Parkes on 25 February 2022 for not immediately agreeing to change his hours of work to 5 days a week

The Tribunal determined on the balance of probabilities that Mr. Parkes did threaten the claimant implicitly for not immediately agreeing to change of hours. The Tribunal noted that the claimant did raise in his grievance interview on 10 November 2022 (page 141) that in respect of the weekday shift changes the claimant was required to work Mondays again and he stated he would need time to think about it. Mr Parkes was alleged to have stated that he would need to take it to the partners and couldn't guarantee that nothing would come of it as it was the partners instruction in the first place. In respect of the phrase "taking it to the partners" the Tribunal determined that this implied it would be taken as a matter of disciplinary action.

In respect of the timing of this conversation about change of working days, the Tribunal preferred the claimant's account. Mr. Parkes did say he had mentioned the change of working days on or about 15 February to the claimant and he relied upon a text conversation with Nira, a manager at the practise. On 14 February 2022 Nira (page 392) messaged Mr Parkes discussing various matters about the claimant and then went on to state "also Rosh says he only gave Mondays off for COVID purposes and needs to go back to normal hours now. I will talk to you later this week when you are less busy I'm at KLNK today and tomorrow." The Tribunal was not persuaded by Mr Parkes suggestion that he had sufficient information in this message from Nira to discuss the change of a working week with the claimant. The Tribunal found it more likely in accordance with the claimant's account Mr Parkes stated "the partners have asked if you would consider changing your working days to resume a 5 day week". Mr Parkes evidence to the Tribunal is that he knew that the claimant required time to process information.

However the Tribunal finds that on 22 February Ryan stated the partners have asked that the claimant resume 5 days week.

On 25 February Mr. Parkes said “see you Monday”. The claimant said what if I don’t agree. The Tribunal found that Mr. Parkes responded if the claimant didn’t start the five day week from next Monday the matter would be taken to the partners (for disciplinary action; see above). The Tribunal makes this finding because in the text messaging between Mr Parkes at page 393 Nira informs Mr Parkes that the claimant said he won’t be at work on Monday. Mr Parkes says don’t worry I leave it until I’m leaving and I’ll say that I’ll see him on Monday and see what he says.” Mr Parkes planned to say this to the claimant knowing that he had already refused to come in on the Monday and that he needed time to process any significant change to his working week; in the context of this poor behaviour by Mr Parkes the tribunal finds that he did indeed threaten the claimant implicitly with disciplinary action.

6.2 Did the following things arise in consequence of the claimants disability ?

6.2.1 The claimant's autism Asperger's meant that he couldn't just agree to change his hours with no notice and consultation. Mr. Parkes accepted from the Judge's questions he was aware that the claimant required time to consider changes so to process information. By requiring the claimant to make a decision immediately or very soon after the proposal was raised was very difficult for this claimant to process and would have and did cause him anxiety.

6.3 Was the unfavourable treatment because of any of those things? Did the respondent threaten to discipline the claimant because he didn't agree to change his hours with no notice or consultation?

On the balance of probabilities, The Tribunal determined that the respondent did threaten to discipline the claimant because he did not agree to change his hours with no notice or consultation.

The claim for discrimination arising from disability succeeds.

The Tribunal notes that this allegation dates back to February 2022 and the claimant brought proceedings in February 2023. Prima facie this claim is out of time. However, the claimant did raise his concerns about this matter in his grievance interview in November 2022. Mr. Parkes has been able to give evidence and directly deal with the allegation. There is no evidential prejudice to the respondent if this allegation is found to be in time but if disallowed this claimant will have no redress for this discriminatory treatment. The Tribunal finds that the allegation is made out and it is just and equitable to extend time.

7. Reasonable adjustments Equality Act 2010 sections 20 and 21

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

There is no dispute that the respondent was aware that the claimant had autism at all material times.

7.2 Did the respondent have the following PCP: the respondents requirement that the claimant work a five day week from approximately 22 February 2022 imposed short notice.

The Tribunal determined that the respondent did have a PCP to require that the claimant work a five day week (a contractual change) imposed at short notice. The Tribunal takes into account the judgement of Lady Justice Simler (as she was) in the case of a **Ishola**. The Court of Appeal stated that a PCP will only be established where there is some form of continuum in the sense of how things generally are or will be done by an employer. Although this will apply to some, one off acts in the course of the dealings with an individual employee it will not apply to one off acts where there is no indication that the same decision would apply in the future. The Tribunal finds that requiring immediate contractual changes or changes with little consultation or notice is the way that matters are generally done by this employer. The Tribunal infers this from the short notice that the respondent gave in providing information at short notice (grievance appeal hearing). The Tribunal rely upon the way that the removal of the claimants 4.5 hours was communicated to him by his manager. Mr Parkes knew the claimant needed time to process, yet he did not offer him any extra time to consider the proposal of returning to five days per week. The Tribunal determined that it is likely that this employer would make changes to the claimant's employment contract or others and require an immediate response from the employee. The Tribunal rejects the evidence that had the claimant asked for more time he would have been given it.

7.3 Did the respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage

The evidence of Mr Parkes who managed the claimant was that he was aware that the claimant needed time to process information. The Tribunal concludes that Mr. Parkes knew or ought to have known when giving the claimant little notice to change from a 4 to a 5 day working week it would cause the claimant anxiety as a disabled person with autism. The Tribunal notes that the claimant had been previously (but not at the time) working elsewhere within the NHS service on a Monday but that is not the disadvantage that this claimant relies upon namely giving up that job nor does the Tribunal find that that was in the mind of the claimant.

7.4 What steps could have been taken to avoid the disadvantage? The claimant suggests a grace period to consider moving to five days should have been given and another discussion should have taken place to allow the claimant to process the request and raise any concerns and

was it reasonable for the respondent to have to take those steps and when

The Tribunal finds that it would have been a reasonable adjustment to have provided the claimant a grace period to consider moving to five days and also had a further discussion to allow the claimant to process the request and raise any concerns that he had about changing the hours of his working week. If Mr. Parkes had provided this reasonable adjustment the claimant would have been saved the anxiety of an immediate change to his working week.

7.6 Did the respondent fail to take those steps?

The respondent did not take those steps.

The claim for a failure to make reasonable adjustments is well founded and succeeds. This act is dated 25 February 2022 and is prima facie out of time. The Tribunal has a wide discretion to extend time on a just and equitable basis. Mr. Parkes has been able to give evidence and directly deal with the allegation. There is no evidential prejudice to the respondent if this allegation is found to be in time but if disallowed this claimant will have no redress for this discriminatory treatment. The Tribunal finds that the allegation is made out and it is just and equitable to extend time.

8. Harassment related to disability

8.1 Did the respondent do the following things?

8.1.1 In August or September 2022 the respondent wanted to change the claimant's working hours by taking away 4.5 hours of fortnightly overtime. The claimant thought that it had become an entitlement over the last four years and protested. Ryan Parkes told the claimant he needed "to change the way his mind works" after a team meeting in September 2022. The claimant believes this comment was a cruel way to say that he was being stubborn and that he chose his words deliberately knowing that he was autistic.

The claimant was working fortnightly on a Sunday for 4.5 hours. The respondent decided to move the shift to a Saturday. Mr. Parkes says he is going to offer those hours to everybody. The claimant objected as he had worked the hours for 4 years and believed he should get them automatically. The Tribunal found that Mr. Parkes said "the claimant needed to change the way he was thinking".

The Tribunal rejected the allegation that Mr. Parkes said to the claimant he needed to change the way his mind works; that was an embellishment by the claimant in his witness statement.

8.2. If so was that unwanted conduct

On the balance of probabilities accepted Mr. Parkes said to the claimant you need to “*change the way he was thinking*” and this was unwanted conduct. In reaching this conclusion the Tribunal takes into account the EAT’s decision in **Thomas Sanderson Blinds Limited v English EAT 0316/10** where it was held unwanted conduct means conduct unwanted by the employee. Here the comment was unwelcome/uninvited by the claimant.

8.3 Did it relate to disability?

At the grievance meeting the claimant stated at page 135 he didn't know whether Mr Parkes statement was meant in a derogatory way but he feels that to say that to someone with his condition is unfair. The Tribunal notes that the question of whether conduct is related to a protected characteristic is a matter for the appreciation of the Tribunal (see **Tees Esk and Wear Valleys NHS Foundation Trust v Aslam 2020 IRLR 495**). The Tribunal found this comment did not relate to the claimant’s disability because Mr. Parkes was trying to encourage the claimant not to assume he simply got the overtime because he had been doing it before.

8.4 Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating hostile degrading humiliating or offensive environment for the claimant

8.5 If not did it have that effect? The Tribunal will take into account the claimant’s perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

The claimant concedes he was very sensitive and takes things personally. Objectively the Tribunal determined that such a comment could not reasonably be considered to have the proscribed effect.

The claim for harassment related to disability is not well founded and is dismissed.

Victimisation Equality Act 2010 section 27

9.1 Did the claimant do a protected act as follows by lodging a grievance raised on 24 October 2022 which complained of discrimination

There is no dispute that the claimant raised a grievance on 24 October 2022 (see pages 127-9). This complained about disability discrimination. It was a protected act within the meaning of section 27 (2)(d) of the Act.

9.2 Did the respondent do the following things namely :

9.2.1 In an e-mail of 28 December 2022 the respondent contacted the claimant's new employer asking them to release the claimant back to the respondent to complete a hand over

Dr Sabaratnam emailed the claimant on 28 December 2022 at 13.14 (page 294) stating "on another note do you want me to ask your line manager to release you for you to come and hand over to Ryan and Lisa.". He did not appear to get any response (within half an hour) from the claimant knowing that the claimant needed time to process information and 30 minutes later the doctor contacted the claimant's new employer on 28 December 2022 at 1343 (see page 294), stating" as Josh has joined you guys now can we ask him to return the Eastpark laptop and could you release him for the handover at your convenience. Ryan tried his best with no positive outcome."

The claimant had provided notice to the respondent of his resignation and he did not start his new job until 9 January 2023. The Tribunal did not hear any evidence from Dr Sabaratnam senior as to the reasons why he required the claimant to do a handover at this time. It would be unusual to conduct a handover once you have left the employment of an employer even though there may be some umbrella relationship via the NHS of the respondent and the new employer. When the claimant provided notice on 29 November 2022 he gave one months' notice. The evidence of Dr. Rosh Ravindran was that there was an expectation that the claimant would do a hand over on the last week of his employment but the claimant went on sick leave for the last week so that a handover could not be completed. The Tribunal was not persuaded by this explanation. There had been no suggestion prior to the e-mail 28 December 2022 of the claimant conducting any handover to any members of the respondent's team. It was highly unusual to require an employee to provide a handover once they have left the respondents employment. The Tribunal heard no explanation from Dr. Sabaratnam as to why he felt this was necessary. The Tribunal did not hear direct evidence for an explanation from him as to why this was appropriate or necessary.

The Tribunal concluded the reason for the treatment was that the claimant had lodged a disability discrimination grievance against the respondent and it was an act of victimisation to request him to return to conduct a handover. Further Tribunal relies on the unnecessary and gratuitous comment by the doctor included in his communication with the claimants employer that "*Ryan tried his best with no positive outcome*". This displayed a mindset of vindictiveness against the claimant.

This allegation of victimisation is well founded and succeeds.

9.2.2 Inviting the claimant to an investigatory disciplinary meeting.

By letter dated 6 December 2022 (page 252) the respondent invited the claimant to investigatory meeting for the following reasons

(1) On 24 November 2022 asked the claimant to take over the call from Lisa Jones following an urgent referral for a patient end of life care. The claimant refused and

(2) You have discussed the contents of your confidential grievance with individuals other than those authorised. It has come to our knowledge that you have discussed your grievance with Brooklands Pharmacy. This is in

The claimant relied in his evidence on what he considered was inconsistent treatment between himself and Mr Parkes. Following Lisa leaving the practice Mr Parkes used her login details on the system to obtain a referral for the end of life of the patient. The doctor was asked about this and he said in the scheme of things it was so important to conduct a referral he would not criticise Mr Parkes for getting on with the role; he accepted strictly Mr. Parkes should not have used the login details of Lisa. The Tribunal took this evidence into account and considered there was a difference between what the claimant did (refused to conduct the referral) and what Mr Parkes did (got on with an urgent case referral).

In respect of the first matter, the Tribunal having heard the evidence of Dr. Rosh Ravindran accepted his account of the circumstances of 24 November 2022 as an urgent referral for a patient requiring end of life care. Patient care should be paramount and personal emotions of an employee should not interfere with this focus in the respondent's workplace. The Tribunal found based on the claimant's evidence that he had been taken off dealing with the care home historically by his manager Mr Parkes. In that context the claimant refused to conduct the instruction given to him by his manager and also by a doctor partner in the practice to carry out the urgent referral. Although the claimant developed in cross examination it was a result of inconsistent instructions which caused him to decline the request, the Tribunal found the claimant's oral evidence was that he refused the request first because he had previously been taken off such work and secondly because Lisa was going home and therefore did not do it. The claimant can be justifiably criticised for failing to prioritise patient care on this particular occasion because he allowed his personal emotions about Lisa and the fact that the responsibility had previously been removed from him to affect his decision making on this particular occasion. The respondent was justified to invite the claimant to a disciplinary investigation meeting to discuss this serious issue. The Tribunal does not find a causative link between the protected act and the respondent inviting him to a disciplinary investigation. This conduct was serious; it went against patient care and it had nothing whatsoever to do with the claimant lodging a grievance. It was imperative to conduct a referral and the doctor was justified in determining that it was not appropriate to investigate Mr Parkes for using a colleague's login to conduct this important referral. The claimant on the other hand had point blank refused on two occasions to undertake a management instruction which

would have assisted a dying patient. The tribunal determines therefore that this allegation fails.

In respect of the second matter, the Tribunal has not been provided with a disciplinary procedure but notes from the letters of the grievance investigation to the claimant on 9.11 page 221 and on 22.11 page 242 the claimant was made aware that he should not discuss the contents of his grievance or the investigation with any colleagues and to ensure he should not divulge any information obtained during the course of the investigation with anyone else including colleagues. However it then says "you are at liberty to freely discuss with each other of course". The previous e-mail referred to the fact that the claimant could discuss matters with his trade union representative.

The respondent was informed via Lisa who had been told by someone in the pharmacy that the claimant had discussed his grievance in the pharmacy. The team of the pharmacy have a good business/friendship relationship with the respondent surgery and actually go out for Christmas meals together. Doctor Rosh Ravindran was unaware of the particulars of the information provided by the claimant to the pharmacy and the grievance investigator was unable to provide information to the claimant about what he said or to who. The claimant's evidence to the Tribunal was that in a context of a consultation with the pharmacy when he was increasing his medication he had mentioned it was by reason of the grievance process. If this is correct the pharmacy would appear to have breached the confidentiality of the claimant. However that could have been established with an investigation with the claimant.

The Tribunal did not find that the claimant was invited to a disciplinary hearing on this allegation by reason of making/doing a protected act but by reason of the fact that he had been warned not to discuss the grievance and he had done so with the Pharmacy.

These claims of victimisation are not well founded and are dismissed.

Time

Given the date the claim form was presented on the dates of early conciliation any complaint about something that happened before 1 October 2022 may not have been brought in time.

The acts of discrimination upheld include a failure to make reasonable adjustments dated 22 February 2022; section 15 claim 25 February 2022; and the discriminatory treatment formed part of the reason for his decision to resign with notice on 29 November 2022 (his effective constructive dismissal dated 27 December 2022) and he was subject to victimisation on 28 December 2022. The Tribunal determined it was just and equitable to extend time as set out above on the basis of just and equitable principles. The discretion of the Tribunal in extending time is wide. The claimant who is neurodivergent did not obtain advice on time limits and his mental health was affected by his treatment necessitating an increase in medication. Of significance is the lack of prejudice by the respondent in extending time; it has been able to call evidence of a direct

witness to events (and had the availability to call other witnesses if it chose to do so) and defend its position. If time is not extended for this claimant he will have no redress for his discriminatory treatment.

Unfair dismissal

127.1 Was the claimant dismissed?

127.1.1 Did the respondent do the following things :

3.4.4.1 Discriminated against the claimant

The Tribunal has already determined above that the claimant was subject to discrimination arising from disability and was subject to a failure to make reasonable adjustments. The Tribunal finds that these discriminatory acts seriously damaged the relationship of trust and confidence between the claimant and his employer and there was no just cause to unlawfully treat the claimant in this way.

3.4.4.2 On a date between September and 24 October 2022 Ryan Parkes breached the claimant's confidentiality by telling Karen Homfray and Lisa Jones that he had spoken to Dr Thambar Ravindran about his concerns about Ryan Parkes. Ryan Parkes told Karen the claimant had pissed him off.

The Tribunal determined that Ryan Parkes did inform Karen and Lisa that the claimant had spoken to the Dr about him and that had pissed him off. The Tribunal determined that it was unprofessional and inappropriate that a senior manager speak to junior employees about the claimant's concerns about him. This conduct did breach the confidentiality of the claimant and undermined the claimant; this would seriously damage the trust and confidence between the claimant and the respondent. The fact that Karen, the receptionist may have been aware that there were issues between the claimant and Mr. Parkes did not justify Mr. Parkes discussing this matter with her.

3.4.4.3 At the September 2022 meeting/mediation with Ryan Parkes he said that he would make notes of the meeting. Three weeks after the meeting when the claimant asked for them via e-mail he told the claimant to produce them himself. The claimant pointed out that it was he who had promised to make the notes which was reasonable especially for someone process driven like the claimant. Ryan Parkes accused the claimant of failing to follow a management instruction.

This meeting was set up to discuss concerns that the claimant had about his manager. From the witness statement of Dr. Ravindran (see Para 11) had asked Ryan to send him bullet points of the meeting. Although Dr Ravindran said under cross examination he did not mind who provided the notes the Tribunal finds that there was an expectation

that Ryan would complete the minutes and the Tribunal finds he told the claimant that.

On 5 October 2022 page 159 the claimant asked for a copy of the minutes of the meeting stating that Mr Parkes had typed them up on the day. Mr Parkes in his response disputed that saying I wasn't taking minutes at the time he requested that the claimant provide minutes. The claimant responded at page 158 on 6 October 2022 that as the manager had informed him about the meeting and was regarding his concerns he didn't feel it was appropriate that he should be expected to take his own minutes for a meeting he was leading. Furthermore he stated he hadn't been told that he should take minutes. Mr Parkes said can I confirm that you are refusing to follow through on an instruction for me to write up some minutes from this meeting. The claimant responded he wasn't refusing to follow a reasonable instruction but the instruction hadn't been given to him on the day. Mr Parkes then stated I understand the miscommunication neither of us took minutes and it was an informal meeting (the doctor) had asked for a note of what was discussed just bullet point so that he understands what was discussed he then went on to ask the claimant to draft the first version.

The Tribunal determined that in the context of the expectation that the manager should provide bullet points to the doctor and Mr. Parkes was leading the meeting, to require the claimant to provide his own minutes and then suggest to the claimant he was refusing to follow an instruction (by the claimant not taking notes) was in the Tribunal's judgement disproportionate and inappropriate. Mr Parkes went on to describe it as a miscommunication. The Tribunal found this to be gratuitous, unfair and unjustified particularly in the context that Mr Parkes knew of the claimant's disability and that he may have some communication difficulties. This conduct would seriously damage the trust and confidence between them and there was no just cause for this conduct. The Tribunal were unpersuaded by Dr Ravindran's suggestion that Mr Parkes was seeking to deescalate matters. Mr Parkes conduct towards the claimant was aggressive on this occasion.

3.4.4.4 Multiple days between September 2022 and 19 December 2022 Ryan Parkes questioned the claimant's ability to complete his role when his performance had not previously been an issue as follows :

3.4.4.4.1 Ryan Parkes telling Roshan Ravindran (who later informed the claimant by telephone) that his performance had dropped;

This was contested by both Mr. Parkes and the Doctor. The claimant complained at page 128 of his grievance he was also informed that his performance had dropped which had never been raised in his appraisals save some comment about answering the phones. The claimant repeated this allegation at page 143 to the grievance investigator when he stated that Rosh stated that the claimant's performance had dropped over the last four months since the Lisa promotion. The claimant was taken aback a little at this as nothing had been mentioned to him by Mr. Parkes his line manager.

On the balance of probabilities the Tribunal accepted this was said to him by Dr. Roshan Ravindran as informed by Mr. Parkes and the doctor was mistaken in disputing this matter. The claimant's evidence has been consistent in his grievance and grievance interview and the Tribunal have no reason to disbelieve his account.

3.4.4.4.2 On multiple dates between September 2022 and 19 December 2022 Ryan Parkes rebuked the claimant for finishing the NHS fee reports a day or two late unfairly because he knew the claimant had been pulled off his role to do reception duties.

Mr. Parkes accepted that he did speak to the claimant about this. The Tribunal found that the claimant was reprimanded about the lateness of a submission for NHS fees. The respondent is required to submit enhanced services submissions to the NHS. The submissions are required to be submitted by the 5th of the following month for the three months previously. The consequences of submitting submissions late results in a delayed payment to the practice. The claimant was delegated the task by Mr Parkes; the claimant was required to submit these on a quarterly basis and the submission concerning months July August and September have to be submitted by no later than 5 October. The claimant submitted some of the NHS submissions on 3 and 4 of October 2022 but went on sick leave between 6 October 2022 to 20 of October; some submissions had not been submitted.

The Tribunal found that Mr Parkes raised the issue of late submissions with the claimant. However the claimant had been placed on reception which he knew and the Tribunal accepted is a very busy place dealing with phone calls (some 4 phone lines) and patients in person. The claimant would not have been able to conduct the fee work within the timescales whilst he was on reception. He was also to deal with special cases of patients (as set out above).

The Tribunal determined to rebuke the claimant was conduct which would seriously damage the trust and confidence between them; particularly so as Mr Parkes knew that the claimant was working on reception could not do the fee notes at the same time. The Tribunal in this context considered that the rebuke of the claimant had no just cause.

3.4.4.4.3 Told to hang up the calls from patients to answer calls from partners

The claimant was competent in IT. Consequently he was requested by doctor Rosh and the claimant accepted to set up the system for doctor Rosh's private clinic in Cheshire. The Tribunal accepted the evidence of Mr Parkes when he informed the Tribunal that the calls were from Dr Rosh who wished to contact the claimant to assist him with IT issues at his private clinic. The GP practice was busy. The claimant agreed at the request of the respondent to use his personal mobile telephone at work so that he could be contacted. The claimant was also delegated to deal with challenging patients who could spend a lot of time on the telephone

to the claimant. On the balance of probabilities, the Tribunal finds that Mr Parkes did instruct the claimant to prioritise calls from Dr. Rosh as they pay his wages even if that meant hanging up calls from patients to answer calls from Dr Rosh. The focus of employees at the practise was patient care. In this context on the balance of probabilities Mr. Parkes did ask the claimant to do this. This conduct would seriously damage the trust and confidence between them where Patient care should be paramount and telling the claimant to hang up on them, could in those circumstances, have no just cause.

3.4.4.4.4 Reprimanded for (a) being on telephone calls for too long and (b) redirecting calls to reception desk

Mr. Parkes did tell the claimant he was spending too long on telephone calls and told the claimant not to redirect calls to reception.

The Tribunal determined that it was reasonable for Mr. Parkes as line manager to direct the claimant not to be on telephone calls for too long and not to redirect calls to the reception desk as a reasonable management instruction. The claimant took this as a reprimand because he did tend to take matters very personally. However the Tribunal did not consider these to be unreasonable requests; and as a management instruction would not damage the relationship of trust and confidence between employee and employer. In any event the Tribunal determines that the respondent had just cause in giving this reasonable management instruction.

3.4.4.4.5 Do not get involved with calls from care home; instructed 24 November to deal with call to the care home

The Tribunal accepted that the claimant had been told not to get involved with calls from the care home. On 24 November 2022 a request came in from the care home for an urgent referral for end of life care. Lisa had to leave due to care commitments and she was already over her time by 20 minutes at the surgery. The claimant was asked to complete the referral by Mr Parkes and one of the dr partners but refused. The Tribunal found that in the context that this concerned an urgent referral for end of life care, it was a reasonable instruction and the severity of refusing the instruction had significant implications on the patient. Such an instruction to the claimant would not seriously have damaged the relationship between employee and employer and in any event there was just cause in the context of the serious nature of the referral for the claimant to be requested in his circumstances to complete it.

3.4.3 did the claimant resign in response to the breach? The Tribunal will need to decide whether the breach of contract was a reason for the claimants resignation.

The Tribunal determined that the culmination of discriminatory treatment; breaching the claimant's confidentiality and telling a junior employee the claimant pissed him off; accusing the claimant of failing to follow a management instruction (not producing a note of the meeting); telling Dr. Ravindran the claimant's performance had dropped; reprimanding the claimant in November 2022 about late submissions (when it was known the claimant had reception duties too); told to hang up calls with patients and to prioritise the calls to the doctors was sufficient to breach the implied term of trust and confidence and the claimant determined to resign in response to the breach.

3.4.4 did the claimant affirm the contract before resigning? The tribunal will need to decide whether the claimant's words or actions showed that they chose to keep the contract alive even after the breach.

This point was not pursued by the respondent.

The Tribunal found that the claimant was unfairly constructively dismissed. Further the Tribunal accepted his dismissal was discriminatory since part of the reason for his resignation was by reason of the discriminatory treatment he was subjected to.

128. Failure provide a written statement as required by Section 1 (4) of Employment Rights Act 1996 section 11 Employment Rights Act 1996

128.1 when these proceedings were begun was the respondent in breach of its duty to give the claimant a written statement of employment particulars or of a change to those particulars?

128.2 If the claimant succeeds either exceptional circumstances that would make it unjust or inequitable to make the minimum award of two weeks pay under section 38 of the employment rights act 2002? If not the tribunal must award two weeks pay and may award 4 weeks pay

128.3 would it be just inequitable toward 4 weeks pay.

128.4 was the complaint that the respondent failed to provide a written statement as required by either Section 1 or Section 4 of the Employment Rights Act 1996 brought in time? The tribunal will decide

128.4.1 what is the claim made to the Tribunal within three months plus early conciliation extension of either the effective date of termination or the act complained of

128.4.2 if not was it reasonably practicable for the claim to be made to the tribunal within the time limit

128.4.3 if it was not reasonably practicable for the claim to be made to the tribunal within the time limit was it made within a reasonable period?

129. At the commencement of the claimant's employment with the respondent he received a contract of employment (page 79-85). Mr. Parkes who had responsibility for HR did not provide the claimant with new terms and conditions when he received a promotion in about 2018 to the role of APM and could not give any reason to the Tribunal as to why this was not done. However this complaint was not raised by the claimant within three months of the end of his employment and was discussed at the case management on 14 March 2024. The date of the issue of this claim is the date of the amendment, not the date of the original claim (see **Galilee v Commissioner of Police of the Metropolis UKEAT/0207/16**). The Tribunal considered it would have been reasonably feasible for the claimant to have made this claim at the time of the issue of his claim. It is out of time and fails.

Compensation

The Tribunal will now go on to deal with the issue of compensation. The relevant issues are set out in the case management order of Judge Childe dated 14 March 2024 as follows :-

Remedy for unfair dismissal

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

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

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

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

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

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

4.1.6 What financial losses has the dismissal caused the claimant?

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

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

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

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

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

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

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

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

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

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

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

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

130. Remedy for discrimination or victimisation

131. 10.1 Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?

132. 10.2 What financial losses has the discrimination caused the claimant?

133. 10.3 Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

134. 10.4 If not, for what period of loss should the claimant be compensated?

135. 10.5 What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?

136. 10.6 Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?

137. 10.7 Is there a chance that the claimant's employment would have ended in any event? Should their compensation be reduced as a result?

138. 10.8 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

139. 10.9 Did the respondent or the claimant unreasonably fail to comply with it by [specify breach]?

140. 10.10 If so is it just and equitable to increase or decrease any award payable to the claimant?

141. 10.11 By what proportion, up to 25%?

142. 10.12 Should interest be awarded? How much?

Evidence on remedy

143. A medical assessment on 8 June 2022 page 367 noted that the claim was on 100 milligrams of sertraline. On 5 October 2022 the claimant was still on 100 milligrams of sertraline he feels his mood has been more variable wanting to increase his dose. He described the main perpetuating factor was an assistant practise manager he feels he's being bullied by the manager and has tried to raise issues at work but doesn't feel much is being done. He felt much better when he was away from work. He described getting thoughts of not wanting to be there but had no active suicidal ideations at this time he asked for an increase in medication. On 6 October 2022 the claimant described to his GP the add a further bad day at work with ongoing issues related to stress at work and felt he needed some time off he was issued with a medical certificate for two weeks.
144. On 18 October 2022 the claimant had no suicidal thoughts he was off work and felt much better in mood and was apprehensive about going back to work he felt the high dose of sertraline had helped him. On 16 November 2022 (page 365) the claimant had no suicidal thoughts he had been on 150mg sertraline for about 5 to 6 weeks and was doing well on the dose. He felt he was managing work stresses better and that work had backed off since he put in his grievance and he was looking for work elsewhere.
145. Between 16 November 2022 to April 2023 the claimant did not attend his GP.
146. On 26 April 2023 the claimant described he was still having some work related issues as he had left his previous employment; found a new job but had an ongoing grievance with his former employers who had said he had made-up the disability which was getting him down. He said he felt let down. He said he felt stressed because of the whole process. He was finding it difficult to sleep at times and can wake early. He was working from home that day because he didn't want to leave the house. He was enjoying the new job but said that his previous employer had contacted the new employer and tried to cause issues for him. He wanted to continue on the 150 milligrams.
147. On 8 June 2023 the claimant described a lot of stress; not sleeping; waking constantly and worrying. He felt aggrieved at the previous employer. He was increasing his dose to 200mg at times and wanted an increase until the court proceedings were complete.
148. The claimant described having separated from his partner in September 2023 and moved in with his parents as a direct consequence of his treatment by the respondent. He said the treatment had a catastrophic effect on his relationship so that he separated from his partner for a period of time because he was unable to process everything. He was forced to contact the Samaritans. He lost his job with new employers on 29 August 2023.

149. In April 2023 (page 390) he attended his G.P. His sertraline was increased at about that time. The claimant described that he found the process of litigation stressful including the contesting of his autism diagnosis.
150. From February 2023 the claimant was earning £1,672 which is more than he was earning whilst employed by the respondent.

Submissions

151. The claimant requested that the Tribunal take into to account his remedy statement page 389 to 390.
152. The respondent submitted that loss of statutory rights should amount to £500. The injury to feelings award should be limited to consider what the actual impact of the discriminatory treatment was. The claimant was subject to one off comments; an award should be no greater than the bottom of the mid bottom band. The claimant's upset was more to do with litigation not the discrimination. The claimant walked straight into his dream job.

Conclusions

153. The Tribunal awarded a basic award at the agreed sum of £3,150.
154. There was a difference of net pay for the period between the end of his employment on 27 December 2022 and when he started new employment on 9 January 2023. The Tribunal calculated this at £900 net.
155. There was an ongoing loss of wages for a period of three months calculated at a total of £45 net.
156. The Tribunal awarded the claimant loss of statutory rights at £500.
157. In respect of the injury to feelings award, the Tribunal took into account the claimant's evidence, the medical material and the submissions. The Tribunal also takes into account Judge Clarke's detailed analysis of the authorities on injury to feelings awards in the case of **Eddie Stobart v Graham 2025 EAT 14** in particular at paragraphs 30 to 52 and the Presidential Guidance on Injury to Feelings awards. The Tribunal notes that an award to injury to feelings is compensatory and should bear some broad general similarity to the range of awards in personal injury cases; awards should not be too low so to diminish respect for the policy of the anti-discrimination legislation; tribunals should remind themselves of the value of everyday life of the sum they have in mind and be cognisant to the need for public respect for the level of awards made (see **Armitage Marsden and HM Prison Service v Johnson 1997 IRLR 162**). The higher courts have made it clear that the manner of the discrimination is neither determinative of nor a proxy for the seriousness of the claimant's injury. However the Tribunal is entitled to take account of the acts of discrimination/victimisation namely a failure to make reasonable adjustments; discrimination arising from disability resulting in a discriminatory dismissal plus one act of victimisation.
158. The evidence of the injury is set out in the claimant's witness statement at pages 389 to 390. The claimant did not attend his GP in February 2022. He began

developing stress in October 2022 at about the same time as his grievance was lodged and on 18 October he received a higher dose of medication (see page 365) for a period of six weeks and in June 2023 he increased the dosage to 200 milligrams (page 363). The Tribunal notes there has been a culmination of treatment by the respondent which has affected the claimant's personal relationships. The claimant's case is that the treatment had a significant impact on him which continues to cause him upset including ongoing litigation. The Tribunal is careful to consider the effect of the discriminatory treatment as opposed to any stress from the litigation process itself. The Tribunal also notes that the claimant has lost another job following his dismissal from the respondent which was also likely to be stressful and his relationship broke down. However the claimant is clear that the relationship breakdown was related to his treatment and dismissal from the respondent.

159. The claimant's evidence which the Tribunal accepted is that the duration of the consequences of the treatment have been long and continue to affect him.
160. The discriminatory treatment affected his enjoyment of his work at the respondent's; he required time off work; and it also affected his enjoyment of his new employment as well as his personal life.
161. The Tribunal having taken all these matters into account, determined that an award of £10,000 for injury to feelings was appropriate taking into account the significant effect the treatment had upon him and the claimant's personal life.
162. The Tribunal determined not to make an award of an ACAS uplift for the delay in any grievance outcome. The grievance investigator had unfortunately several personal problems at the time and did his best to set up the meetings and investigate as soon as possible.
163. Interest is calculated over a period of 1071 days at a rate of 8% totalling £2,347.40.

Employment Judge Wedderspoon
Date: 29 May 2025

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