EMPLOYMENT TRIBUNALS

Claimant: Mr. R.A.Tyler

Respondent: Bedigitaluk LTD (First Respondent)
Mr. P Matthews (Second Respondent)
Mr. G Davies (Third Respondent)

Heard at: Mold law courts
On: 1 to 9 December 2025. In Chambers: 19, 24 and 31 March 2026.

Before: Employment Judge Othen and Mr. Fryer and Ms. Farley (non-legal members)

Representation
Claimant: Mr. Sellwood (Counsel).
Respondent: Mr. Probert (Counsel).

RESERVED JUDGMENT ON LIABILITY

The unanimous judgment of the Employment Tribunal is that:

1. The claims of discrimination arising from disability:
    a. are upheld against the First Respondent and the Second Respondent in respect of the allegations set out at paragraphs 10.3.2, 10.3.3 and 10.3.6; and
    b. fail in respect of all other allegations.
2. The claim of failure to make reasonable adjustments:
    a. succeeds against the First Respondent in respect of the allegation set out at paragraph 12.1.3; and
    b. fail in respect of all other allegations.
3. The claims of victimisation are not well-founded and fail.
4. The claimant's dismissal was discrimination contrary to section 39 of the Equality Act 2010.
5. All the claims against the Third Respondent fail and are dismissed.

REASONS

Background

1. The claimant commenced in employment for the first respondent (**R1**) as a Senior Services Manager on 1 May 2017. He later became a statutory board member (along with the second and third respondents (**R2** and **R3**) and shareholder. R2 was/is Managing Director for R1 and R3 is/was Sales and Marketing Director for R1. Put in as neutral terms as possible, the claimant's relationship with all respondents started to break down from 2023. On 3 June 2024, the claimant submitted a first claim with the Employment Tribunal, alleging disability discrimination (s.15 EqA), reasonable adjustments (s.20 EqA) and unlawful deductions from wages (s.13 ERA). This was recorded by the Case Management Order of EJ Ryan on 4 September 2024 which also set out the basis of the claimant's claim for unlawful deductions from wages which depended upon the parties' respective interpretations of the claimant's contract of employment.

2. The claimant resigned on 11 October 2024 and then applied to amend his claim on 16 December 2024 (by way of Amended Grounds of Claim (page 63-82 bundle)) to add:

   2.1. Further allegations of disability discrimination (s.15 EqA) - paras. 57(6) and (7) Amended Grounds of Claim (**AGOC**);
   2.2. Victimisation (s.27 EqA) - para. 57A AGOC;
   2.3. Constructive unfair dismissal (ss.94, 95(1), 98 ERA) - paras. 59A - 59C AGOC ; and
   2.4. Wrongful dismissal (breach of contract).

3. Permission for the amendment was granted by EJ Macdonald on 20 December 2024 (page 84, para.12). EJ Macdonald also determined that the claimant was a disabled person at the material times (page 92).

4. On or around 21 October 2024, the respondents conceded the claimant's unlawful deduction from wages claim.

5. Following this, the Tribunal (EJ Sharp) allowed an application by the claimant for strike out of the respondents' defence to the claims of Constructive Dismissal and Wrongful Dismissal (on the basis of the unlawful deductions point only) on 24th October 2025.

6. On the first day of this hearing therefore, some time was spent clarifying the remaining issues to be determined as the hearing bundle did not appear to contain an up-to-date list of those issues. As such, the agreed issues appear below, such issues having been copied as accurately as possible from the

"agreed list of issues" dated 7 April 2025 which appeared at page 141 onwards of the bundle. Where appropriate, I have substituted the word "Respondent" or "Respondent's" with either "Respondents" or "Respondents'" or "R1" or "R1's". This was to seek to clarify which claims are brought against which respondent where these have not been made clear by this list of issues or by the parties or their representatives. Such substitutions have been underlined for clarity.

List of issues.

9. Disability

9.1. It is accepted that the claimant was disabled at the material time because of Autism Spectrum Disorder and Attention Deficit Hyperactivity Disorder.

10. Discrimination arising from disability.

10.1. Did the First Respondent know, or ought it reasonably to have known, that the Claimant was disabled for purposes of section 6 of the EqA? If so, from what date?

10.2. Did the following arise in consequence of the Claimant's disability (the "something") (see paras. 4 and 5 of the Grounds of Claim (the "GoC")):

10.2.1. Difficulties with interpersonal skills, including in understanding emotional reactions, communication skills (such as struggling to understand others, interrupting people, struggling with small talk, and appearing blunt or uninterested in interacting with others);

10.2.2. Displays of physical or mental restlessness, including difficulties sitting still, focusing, and with organisational skills;

10.2.3. Difficulties in dealing with stress, and stress exacerbating the above symptoms and making the same more prevalent;

10.2.4. Symptoms of anxiety.

10.2.5. Adjustments that had historically been made by the First Respondent to accommodate the Claimant's disability and the impact this had on his working style, including in: referring to the Claimant by his longstanding moniker and initials ('RAT'); permitting the Claimant's casual dress at work; and, in acknowledging and accepting the Claimant's use of legal and non-psychoactive cannabidiol to calm his anxiety?

10.3. Did the Respondents subject the Claimant to the following unfavourable treatment (see para. 57 of the GoC):

10.3.1. The Respondents' design or intention to remove the Claimant from BeDigital's employment, as first communicated to the Claimant on 21 November 2023 and which intention and design has continued to date;

10.3.2. The Respondents' removal of the Claimant's access to information he was entitled to as an employee and director of BeDigital from 1 December 2023 onwards;

10.3.3. The Respondents' decision to remove the Claimant from the workplace, first on 29 December 2023 by purporting to unilaterally extend the Claimant's sabbatical and then on 30 January 2024 by suspending him;

10.3.4. BeDigital and Mr Matthews' (R1 and R2's) notification to the Claimant of disciplinary allegations, which the Claimant will allege were untrue and/or manipulated for improper means, on 30 January 2024 and the disciplinary process which has since been pursued against him, and including the notification of unidentified and unparticularised "new allegations" on 27 February 2024;

10.3.5. The Respondents' further decision to remove the Claimant from BeDigital's management team on or before 6 February 2024;

10.3.6. The Respondents' further decision to unlawfully deduct and fail to resolve the unlawful deduction of the Claimant's wages at any point from March 2024 onwards, despite the Claimant's grievance and appeal expressly raising the same;

10.3.7. The Respondents' failure to resolve the Claimant's grievances in a timely manner, and either adequately or at all?

10.4. Did the Respondents subject the Claimant to that unfavourable treatment because of the "something" arising in consequence of the Claimant's disability?

10.5. If the Respondents treated the Claimant unfavourably because of something arising in consequence of his disability, can the Respondents show that the treatment was a proportionate means of achieving a legitimate aim? The Respondents rely on the matters set out at paragraphs 46 - 52 of the Grounds of Resistance, in summary the need to ensure the appropriate standards of conduct and the application of the disciplinary policy.

11. Victimisation.

11.1. It is accepted that the Claimant did a protected act(s) by:

11.1.2. Raising grievances on 6 February 2024 and 29 February 2024;

11.1.3. Issuing his first claim at the Employment Tribunal on 3 June 2024.

11.2. Did the Respondents subject the Claimant to the following detriments (see paras. 57(6) and 57(7) and 57A of the GoC):

11.2.1. The Respondents' further decision to unlawfully deduct and fail to resolve the unlawful deduction of the Claimant's wages at any

point from March 2024 onwards, despite the Claimant's grievance and appeal expressly raising the same;

11.2.2. The Respondents' failure to resolve the Claimant's grievances in a timely manner, and either adequately or at all?

11.3. Subject to the Tribunal's findings in respect of the issue (10) above, did the Respondents subject the Claimant to those detriments because he had done a protected act(s)?

12. Reasonable Adjustments (Equality Act 2010 sections 20 & 21)

12.1. Did the First Respondent operate the following provisions, criteria or practices ('PCPs')? (see para. 58 of the Grounds of Claim (the "GoC")):

12.1.1. Refusing to provide employees with information to which they are personally entitled, including HR records and contractual documentation;

12.1.2. Refusing to hear or address (adequately, promptly or at all) grievances raised by employees;

12.1.3. Refusing to hear or address grievances relating to disciplinary allegations and processes until the disciplinary process has concluded;

12.1.4. Not considering or reconsidering the appropriateness of managers to conduct formal processes, including disciplinary and grievance processes, where there is good reason for a manager not to conduct such processes.

12.2. In respect of each of the PCPs identified above, was the Claimant put to a substantial disadvantage compared to someone who did not share his disability? In particular, the Claimant relies upon the following substantial disadvantages:

12.2.1. Heightened difficulty in dealing with the stress caused by the internal processes.

12.2.2. Heightened difficulty in dealing with and understanding processes which were mismanaged and/or refusal of requests to which he was entitled to expect a different response.

12.2.3. Caused heightened stress, which exacerbated the other symptoms of his disability and made the same more prevalent.

12.2.4. Caused and/or exacerbated symptoms of anxiety.

12.3. Did the First Respondent know, or ought it reasonably to have known, that the Claimant was disabled and is likely to be placed at the disadvantage by the PCPs as set out above?

12.4. Did the First Respondent fail to comply with a duty to make such adjustments as were reasonable to the PCPs to seek to avoid or minimise the disadvantage to the Claimant? In particular, the Claimant claims that the below adjustments were reasonable and ought to have been made by the First Respondent:

12.4.1. Providing the Claimant with access to documents to which he was entitled;

12.4.2. Addressing the Claimant's grievances promptly, appropriately and without delay;

12.4.3. Suspending the disciplinary process until the Claimant's grievances were dealt with;

12.4.4. Removing Mr Matthews from involvement in the disciplinary and/or grievance processes and continuing the same with neutral decision-makers.

13. Discriminatory Dismissal.

13.1. Was the Claimant's dismissal discriminatory in breach of sections 39(2)(c) and 39(7)(b) EqA?

Preliminary Issues.

14. On the first day of the hearing, the claimant's representative made an application to adduce a witness statement from Ceri Prichard and for her to give evidence, by video, on behalf of the claimant. This was opposed by the respondents. Ms Prichard was an employee of R1 for approximately two years until 2019. Her evidence was relevant to the issue of the respondents' knowledge of disability. Her witness statement was very short, concerned one or two minor incidents involving R3 and was sent to the respondents on 19 November 2025.

15. The respondents' objection mainly focused on the potential prejudice to it; as it related to events of many years ago, R3 could not remember the incident and as it had been disclosed very late, it would not be possible for it to be fairly responded to.

16. I decided to allow the claimant to rely on this evidence. It had very limited relevance given that the issue of knowledge was relevant to a very limited number of issues in any event (for the reasons explained in detail below). In addition, I was of the view that if R3 could not remember the incident about which Ms Prichard gave evidence because it was too long ago, disclosing her witness statement earlier would have made no difference in any event. Sufficient account could be taken of its late disclosure, by the Tribunal when considering what weight to place on this evidence in all the circumstances.

General approach to evidence.

17. The claimant required adjustments for the hearing because of his disability. Again, these were discussed in detail on the first day of the hearing.

18. Because of the effect of the hearing on the claimant's ability to manage his anxiety and to regulate his emotions, he required regular rest breaks. In addition, the claimant wished to be referred to by an acronym comprising his initials R.A.T. rather than by his first or second names. In addition, one of the

respondents' witnesses, Mr Thrower, also had ASD and required adjustments for his communication and emotional regulation needs.

19. In this case, as in many others, the evidence touched on a wide range of issues. Where the Tribunal makes no finding, or a finding without the depth in which the point was discussed before the Tribunal, that is not an oversight or omission. It is a reflection of the extent to which the point was truly of assistance to the Tribunal. There were many disagreements of fact between the claimant and the respondents' witnesses on a number of the events about which the Tribunal heard, either by way of background or matters of decision. The Tribunal gained no assistance when determining the factual and legal issues in this matter from some such disagreements. It is not the Tribunal's role to adjudicate on each and every matter of disagreement unless it is necessary to the fair and just disposal of the claims that are brought. Where the Tribunal has not directly addressed any such disagreements, that is not (as has been said) an oversight by the Tribunal. It is a reflection of the fact that the Tribunal must focus on resolving the matters that are factually and legally relevant to the dispute and to do so in a proportionate manner.

The evidence heard.

20. The claimant gave evidence and called evidence from Mr T Baker and Ceri Pritchard (by video). Both were previous colleagues of the claimant. The Tribunal heard evidence from seven witnesses for the respondents: R1, R2, R3, Amy Stevenson (Head of People and Operations), Ben Thrower (previous employee of R1 and co-lead of Information Technology Asset Management (**ITAM**)), Juliet Simpson (Business Consultant engaged by R1 at the material time), Richard Morton (employee of R1) and Mark Nutter (non-executive board member for R1).

21. Documentary evidence was considered by way of two bundles of 2277 pages and 1017 pages (the latter expressed as the "CB" bundle). Given the volume of documents, it was agreed that the Tribunal may only consider those bundle contents to which it was specifically referred but would not be bound to do so if it had need to consider other documents of its own volition.

Credibility and reliability of witnesses.

22. The Tribunal place limited weight on the witness evidence of Ceri Prichard for the reasons stated above.

23. The Tribunal found all witnesses to be generally honest. However, it was clear to the Tribunal that on any version of events, the dispute that arose between the parties became extremely bitter and emotional. This had the potential to impact the understanding and perception of relevant events. There was a series of events on which there was a direct conflict of evidence. On some of those issues, there were limited, contemporaneous documents to assist the Tribunal in its findings. For these reasons, the Tribunal found it necessary to

consider some general conclusions regarding the credibility of evidence given by individual witnesses.

24. The Tribunal found the evidence of Mr Ben Thrower to be particularly helpful. Mr Thrower was no longer employed by R1. He had no reason to lie. His evidence appeared consistent, balanced, quietly confident and credible. He considered each question that was put to him carefully and appeared to make concessions when appropriate, but to hold firm when he was sure.

25. The Tribunal also found the evidence of Amy Stevenson and Juliet Simpson to be generally helpful and credible. It took into account the employment/contractual arrangements between those witnesses and the respondents but despite this, the evidence from these witnesses also appeared to be consistent and balanced.

26. The evidence of R3 was not as helpful as some of the other witnesses. He could not remember many details. The Tribunal found that this was consistent with the fact that he appeared to take a backseat in the dispute between the parties and left much of this dispute to R2.

27. The Tribunal found that the evidence given by R2 was honest and his version of events was subjectively truthful, however, it did find that his perception was sometimes affected by his strength of feeling about the claimant and the dispute which arose with him.

28. The evidence of the claimant was particularly challenging to assess. The Tribunal was aware of his disability. It was aware of the potential effect of this disability on his ability to regulate his emotions and to communicate. It took into account the guidance contained in the Equal Treatment Bench Book regarding the difficulties encountered by parties with ASD and ADHD and the effect of the claimant's disability in his individual case. It experienced these difficulties in the claimant's evidence on numerous occasions. The claimant clearly appeared to struggle in regulating his emotions. This resulted in angry outbursts and inappropriate language (swearing). He took frequent breaks and the third hearing day had to finish early because he was unable to cope with further cross examination. The volume and tone of his voice also appeared to be affected on a consistent manner, becoming loud, blunt and on occasions aggressive or sarcastic towards respondents' counsel and the other witnesses.

29. His difference in communication and understanding also appeared evident, namely his literal understanding and use of language. He required very specific, and at times lengthy definitions of particular terminology, particularly language which was capable of subjective interpretation. His answers to cross examination questions were also very lengthy. At times, this appeared to be a result of his different interpretation of language but it was also the view of the Tribunal that he sometimes chose not to give direct answers to questions put, and instead, chose to provide other information which although he considered relevant, was often not.

30. Despite the effects of his disability on his evidence, there were times at which the Tribunal did not consider the evidence of the claimant to be credible. This was particularly the case for the issue of the claimant's alleged drug use.

31. Examples of the above findings are set out in detail in the paragraphs below.

32. Where there was a dispute on the evidence, the Tribunal's findings of fact have all been made on the balance of probabilities and informed by the Tribunal's assessment of the credibility and/or reliability of the witnesses as set out above.

Findings of fact.

33. R1 provides IT services to the public and private sectors. Its ITAM practice deals with cost optimisation and the management of software assets within large companies. The claimant became Transformation Director from 2020 and a board member from May 2021. The unchallenged evidence of R2 was that there was an intention, from 2022 onwards, to grow R1 from a family business to a major, independent ITAM UK provider.

The claimant's disability.

34. The claimant has ASD and ADHD. In his witness statement, he describes his symptoms of difficulty in communication and social interaction, managing and expressing emotions, inattention, impulsivity and difficulties with coping with stress and anxiety, amongst other things. He explains that he can be blunt, can talk over people and can appear belligerent and argumentative. He explains that stress can exacerbate these features. The Tribunal accepts this evidence as it was clearly evident throughout the Tribunal hearing process. In addition, it is largely consistent with the medical evidence from pages 1825 to page 1985 of the bundle, to which the Tribunal was not referred in detail.

35. The evidence regarding the respondents' knowledge of the claimant's disability is discussed from paragraph 93 below.

Coping mechanisms.

36. The claimant explained that he prefers to be called RAT (comprised from his initials R-A-T) rather than by his given name. This is because prefers to mask behind this identity as it helps to manage his feelings resulting from the above symptoms. It was not in dispute between the parties that this seemed/was important to the claimant.

37. It was also agreed that the claimant preferred informal, casual dress. He likes wearing T-shirts and jeans, or similar.

38. The claimant also gave evidence that he self-medicated with legal, non-psychoactive cannabidiol ("**CBD**") products. The Tribunal has no reason to disbelieve this. The respondents and their witnesses dispute knowing about this.

39. The respondents and their witnesses also consistently dispute that the above behaviour amounted to adjustments made by R1 or any of its employees because of the claimant's disability. In particular, the evidence of Juliet Simpson, who had known and worked with the claimant (in other workplaces) for approximately 22 years, was that she was unaware that these issues arose from his neurodivergence. She reported that in other work environments, these did not appear to be important issues to him. During cross examination, in particular, on specific questioning from me, the claimant admitted that he had never told Juliet Simpson that his identity as RAT and his clothing style was an adjustment for his disability. He said that RAT was his mask and that he told her "I do not feel comfortable wearing a shirt and tie.

40. The Tribunal finds that the above were not adjustments made by any of the respondents for the claimant's disability, due to the volume of corroborating witness evidence to this effect.

Claimant's alleged drug use.

41. As referred to at paragraph 38 above, the claimant's evidence was that he smoked and used CBD at work. His evidence was that this was with the full knowledge of the respondents and their employees.

42. The respondents and their witnesses dispute this. In general, all of the respondents' witnesses consistently assert that they were aware of the claimant regularly smoking non-legal cannabis ("**cannabis**"). The extent of that awareness differed from witness to witness. R2 asserted that he smoked cannabis socially and at work social events. He said that the claimant had shown him his home-grown cannabis plants. He commented that the claimant had told him to keep his voice down when they were shared with him. He said that he was not aware, until the disciplinary investigation that the claimant smoked cannabis at work and this is consistent with the evidence given by R3.

43. Richard Morton gave clear and consistent evidence with regard to the claimant's use of cannabis. He said that he worked quite closely with the claimant. He explained his own, extensive, personal use of cannabis in the past which resulted in periods of mental ill-health for him. He said that the claimant told him openly that he habitually smoked cannabis, that he saw him smoking roll-ups which he could smell as containing cannabis during the workday outside work and that he also saw him smoking it on work social occasions.

44. Ben's Thrower gave evidence, which was consistent with this and in particular, talked about his experience of the claimant's behaviour both before and after smoking what he had thought was cannabis. He explained that this clear difference amounted to his observations about productivity and coherence beforehand but afterwards, he could not be/was not productive or coherent.

45. Juliet Simpson, who had known the claimant for over two decades said that for the majority of this time, she had known him to smoke cannabis.

46. The claimant was cross examined extensively regarding his use of cannabis. His evidence was inconsistent. He was referred to some "coaching notes" made by Juliet Simpson in 2023 at page 418 of the bundle. This referred to his use of cannabis and a discussion about its impact on his ability at work, which he denied. In cross examination, the claimant denied that these notes were accurate. He disputed that he had started smoking cannabis at this time and said that this started after he went on his sabbatical. He responded that he has occasionally used cannabis but that he doesn't like it because it gives him paranoia. His clear evidence was that at this time (in 2023) he was not smoking cannabis.

47. This was inconsistent with the answer given to me after he had given evidence when I had asked him how long he had smoked cannabis for. In answer to that question, he replied that he had smoked it (very irregularly) for approximately 30 years, starting in his early twenties.

48. The Tribunal finds that the claimant did smoke cannabis throughout the material period and that this was known to the respondents and their witnesses. There is a consistent volume of corroborating evidence to this effect and the claimant's evidence about this was inconsistent. The claimant may have smoked/used CBD as well, however, he did not make this known to the respondents or R1's employees. Instead, his use of cannabis was open and it was reasonable to believe that he was using it during work social events and/or sometimes during the working day. The tribunal also find that it was perceived to have affected the claimant's behaviour to the extent specifically set out below.

<u>Introduction of Juliet Simpson and James Smith</u>.

49. Juliet Simpson began work for R1 from the beginning of 2023 as a self-employed business consultant. She was introduced by the claimant and was his friend and previous colleague. Her evidence and that of the respondents was that she noticed a lack of structure and professional behaviour within R1 and that there was a need to address these issues.

50. She undertook one-to-one and companywide consultancy and coaching. There is an ambiguity about the extent to which these activities were or should have been confidential, especially regarding the claimant whose clear evidence was that he regarded many of his discussions with Juliet Simpson to have been private and confidential. To the extent that this was relevant to the Tribunal's findings of fact, this is specifically referred to.

51. James Smith was appointed as non-executive board adviser to chair board meetings from approximately May 2023.

52. Both introductions took place with a view to growing R1 ready for sale or management buyout.

ITAM Team Meeting 25 May 2023.

53. The evidence of Paul Matthews was that the claimant's behaviour towards Ben Thrower and Richard Morton during this meeting was disrespectful, uncooperative, and unnecessarily critical. His evidence is that he addressed this with the claimant after the meeting. This meeting is not specifically addressed by either of these employees in their witness statements but both witnesses explain, with specific and numerous examples, the difficulties they experienced with day-to-day interactions with the claimant. The consistent difficulties can be summarised as finding him unnecessarily argumentative, dismissive of other views, abrasive and on occasions unproductive, especially when under the influence of cannabis.

54. On balance, the Tribunal accepts the evidence of Mr Matthews on this issue, given the consistent evidence of Mr Thrower and Mr Morton.

28 June 2023.

55. A board meeting took place on this date at which R2 was appointed as Managing Director. In the evening, there was a team dinner, attended by, amongst others, the claimant, the respondents and two other employees called Craig Langley and Steve Warbrick. R2 gave evidence that at this dinner, the claimant got drunk, smoked cannabis and his behaviour became erratic. He explained in particular that his language towards Steve and Craig became offensive, calling them expletives such as "C**t salesperson" and "arse hole salesman". He said that he informed the claimant that he thought he was behaving unacceptably but that the claimant ignored him and carried on drinking. He then spoke to the claimant the next morning to explain that this use of language was an acceptable but that he did not want to escalate matters further.

56. The claimant did agree that he used this language and agreed that he was reprimanded by R2 the next morning. He agreed not to repeat this language and apologise to both Craig Langley and Steve Warbrick. He disputes being drunk, smoking cannabis or causing offence.

5 July 2023.

57. On this date, dinner took place with employees and previous colleagues, including a consultant called Mel Jones. The purpose of the dinner was to discuss potential work for the Home Office. R2's evidence is that the claimant drank to excess and used inappropriate language towards Mel Jones. He said that Craig commented that the claimant should not be brought to any future meetings and that Juliet Simpson told him that Mel Jones had been offended by his behaviour. This evidence is corroborated by the evidence of Juliet

Simpson. The claimant's evidence was that this was banter between and friends and he was told as much by Mel Jones the following day.

58. The Tribunal accept the respondents' evidence, owing to the consistency and corroboration. Mel Jones did not give evidence on behalf of the claimant.

25 July 2023.

59. A senior management dinner took place on this date. Those present included the claimant, R2 and Juliet Simpson. Again, the evidence of R2 was that the claimant was drunk, smoked cannabis and used inappropriate language towards Juliet Simpson. In particular, he allegedly referred to her as a "cold-hearted bitch". In cross examination, the claimant said that this was in jest. Juliet Simpson accepted in her evidence that the boundaries between banter and professional relations can sometimes become blurred but on this occasion, he had used this term of abuse to insult her. She found this to be undermining and derogatory and was offended and hurt. Again, because of the consistency of evidence between the respondents' witnesses, and the fact that the claimant did not deny using this language towards Juliet Simpson, the Tribunal accepts the respondents' evidence about the claimant's behaviour and language on this date.

Board meeting: 10 August 2023.

60. The evidence from R2 about this meeting was that it was the most unconstructive board meeting R1 had ever had and that the reason for this was that the claimant was combative, argumentative and challenging things for the sake of it. R3 gave similar evidence and said that he felt uncomfortable in raising concerns or expressing opinions and that the claimant made it difficult to progress. The claimant could not remember this meeting in detail. All parties accepted that R2 spoke to the claimant after the board meeting, expressing concern and disapproval at the claimant's behaviour. The claimant was due to go on holiday, which he then did. He apologised to R2 and R3 and sent R2 a case of wine by way of an apology. His evidence was that he didn't know why he was apologising and that he sent R2 a case of wine to "get back in his good books", in lieu of a Christmas gift.

61. James Smith was also present at the meeting and subsequently provided a statement about it as part of the later disciplinary process. This statement is at page 725 of the bundle. This statement reports that the interactions of the claimant were confrontational and aggressive, using expletives despite being challenged by R3 on his conduct, as well as belittling other team members.

62. Due to the consistency of evidence between R2 and R3, supported by the written statement of James Smith (on which the Tribunal has placed limited weight because of his lack of sworn witness evidence) the Tribunal accepts the respondents' evidence about the claimant's behaviour and conduct during this board meeting, particularly because the claimant subsequently apologised for

it. On the balance of probabilities, the Tribunal does not find that the claimant would have apologised, if he did not think he had in anything wrong, given his normal behaviour of openly expressing and advocating his views when he feels vindicated.

63. It was clear that by the time the claimant went on holiday in August 2023, there were concerns with all parties about the working relationship between them. R2 reports an on-going concern about the claimant's behaviour and professionalism and the claimant reports feeling anxious and stressed.

12 September 2023.

64. A lunchtime meeting took place between the claimant and R2 on this date. R2's evidence is that he expressed concerns about the claimant's professionalism, drinking, drug use, bad language and his insistence on the use of RAT. He says that he asked for "significant efforts to modify his behaviour going forward". On the subject of the use of RAT, he referenced concerns raised by clients about the professional appearance of a director representing R1 using this naming convention rather than a name and he asked the client to change it with external clients and contacts. The claimant evidence is that no concerns were raised with him other than his style of dress and use of RAT. Both parties agreed that the claimant would not use RAT in public; the claimant reluctantly so.

65. There is no contemporaneous documentation concerning this meeting. On balance, the Tribunal accepts the evidence of R2 that issues regarding the claimant's behaviour, drinking, drug use and bad language were raised by R2, because of the previous evidence about the respondents' unhappiness with this conduct (as corroborated by other witnesses such as Juliet Simpson) and the fact that they had been previously addressed with him. The board meeting on 10 August 2023 appears to have been particularly difficult for all parties and it would have been more likely than not for these things to have been addressed on the claimant's return from annual leave.

13 September 2023.

66. The claimant met with Ben Thrower on the above date. The claimant's evidence is that there were concerns about Ben, shared by him, R3 and Juliet Simpson, that he was effectively acting above his authority. The claimant discussed this a little via Teams chat with R3 (CB 719-722) and asked to discuss with Juliet Simpson in person, to gain her "insights into Ben" (CB 685). He says that when preparing in consultation with R2, R3 and Juliet Simpson, he suggested using two specific phrases: "losing the dressing room" to explain how Ben's behaviour was causing concern and "no man is an island" to explain how his behaviour could be modified.

67. Juliet Simpson's evidence regarding this preparation is very different. She explained that as Ben was autistic, the right tone, language and structure would

be important. Her evidence is that she specifically told him not to use phrases such as "losing the dressing room" because of the risk that they would be taken literally. She commented that she found that the claimant was often dismissive of Ben's neurodivergence, commenting that he would "play on" his autism.

68. There is no evidence within the Teams chat to suggest that R3 had specific concerns of the manner suggested by the claimant, about Ben Thrower. In fact, on page CB721, R3 suggests that the claimant limits his discussion with Ben "otherwise things will get confusing".

69. The claimant reports that at the meeting with Ben, he raised the concerns and told him that "you're in danger of losing the dressing room" which then resulted in an "extensive conversation" about why this was. He drew the conversation to a close at lunchtime as he felt that it was becoming unconstructive, despite Ben trying to further query this on a number of later occasions that day.

70. Ben Thrower's evidence about this meeting was clear and unequivocal. He said that he had anticipated that the meeting would be regarding the difficulties that the claimant was having at that time with another employee but shortly into meeting, the claimant said that he wanted to have a 1:1 with him (which took him aback as he had not planned for this). He then reported that the claimant told him that he "had lost the dressing room" and that he "needed to stay in [his] lane and not upset people". He was extremely upset by this. He said that he asked for clarification at which point the claimant would become confused "go outside and get stoned and then come back even more confused". He stated that he had told the claimant that they had been supposed to talk about delivery methods and cost optimisation and "what actually happened was a 1:1 and, according to you, apparently nobody likes me. I've taken it terribly badly".

71. Ben Thrower spoke to R2, R3 and Juliet Simpson immediately after this meeting (either on the same evening or the next morning). All parties agree that Ben was very upset. The evidence of both Ben and Juliet was that he thought he was going to lose his job and felt the need to apologise to his colleagues, which he then did by telephoning them, during which they informed him that he had not trespassed into "their lanes". Juliet Simpson stated that she was so concerned about the effect on Ben and how serious relations had become in general that she requested that R2 "step in".

72. R2 reports that he was shocked by the claimant's approach with Ben which he regarded as "rogue" and which damaged a relationship with a valued employee. He also became aware of Ben's concerns about the claimant's cannabis use and his erratic and confrontational behaviour.

73. The bulk of witness and documentary evidence regarding this incident report the version of events is presented by the respondents' witnesses. There is little if anything to corroborate the claimant's version of events. As such, the Tribunal finds that the claimant was not asked to speak to Ben Thrower in the

terms suggested and to the contrary, was advised not to. Ben Thrower's version of the meeting is accepted, as is the effect on him.

74. Shortly after this, on 14 September 2023, there was a board meeting at which R2 says there was an agreement that the ITAM team should report to R2 thereafter. This was not addressed by the claimant in his witness evidence.

19 September 2023.

75. A key meeting took place between the claimant, R2 and R3 on this date, at the request of R2. There are major differences between the witness reports on its intended purpose and content.

76. In summary, the claimant's recollection is that he was consistently, personally criticised by both respondents and was told by R2 that the ITAM team would move to him (which he said was a shock). He then reports that he had an ASD meltdown, feeling overwhelmed and that the rest of his memory of that day is blurred. At approximately 5 PM, they continued to the hotel/pub where the claimant and R2 were staying that evening and at which the conversation continued. The claimant denies that:

    76.1. any misconduct concerns were raised by the respondents with him; and

    76.2. he drank excessively; and

    76.3. he smoked cannabis.

77. R2's version of this meeting was that its intention was to be a "clear the air meeting" with a specific agenda (page 1640). A discussion regarding the ITAM team move did continue on this day with the claimant voicing his opposition. The claimant became angry and swore at both respondents, refusing to listen to any other point of view, accusing them of attacking and undermining him. After moving to the hotel/pub, the claimant began to drink and smoke cannabis and the conversation deteriorated even more. At one point, the claimant said that they "had to be careful about the f**cking mess [they] are making and the consequences". His view was that the claimant's deteriorating behaviour was due to his alcohol and cannabis consumption. He reports that the meeting was the worst day of his professional career.

78. R3's evidence is brief but reports that he found the claimant defensive and incoherent and that he left the pub early (at approximately 8 PM) because the discussion had become unproductive.

79. On page 491 of the bundle is an email from R2 to Juliet Simpson dated 20 September 2023. He reports "my overriding view of the situation is that RAT has entrenched himself in his view of what is happening which is in essence he has been sidelined by Gareth and me and we are not listening to anything he has to say and more to the point openly obstructs anything he tries to do". He felt that the start of the "entrenchment" was the move of the ITAM team to him

which the claimant saw as undermining him. He then reports that the claimant became angry. He reports his "smoking!!!!! And drinking" and the threat made to them about the "f***ing mess" there were making. He reports a message sent to him by the claimant afterwards, that he feels battered and that trust has been damaged. He says that "my first priority at the moment is to ensure that RAT is mentally and physically OK" and ends by saying that he had asked R3 to read the email to ensure that he was happy and had not misrepresented the conversation, to which R3 apparently responded that it was a fair representation although he may have understated the claimant's incoherence.

80. Juliet Simpson reported that R2 had told her that he had felt the claimant was so angry at one point that he felt physically threatened. The claimant visited her at her home after the meeting to discuss it and the first thing that he said to her on arrival was "I've really f***ed up this time" and asked if he thought R2 would ever forgive him. The rest of the conversation was in confidence as friends but she was concerned about the claimant's welfare and advised him to seek medical help; an issue which she reported to R2.

81. A brief informal discussion took place the following day between the claimant and R2 during which, amongst other things, his welfare and health was discussed. On 21 September 2023, the claimant said to R2, by way of a Teams chat message "on a person note, wanted to say thank you for being my friend and I hope we still can be".

82. The Tribunal finds that the most accurate version of the interactions between the parties on 19 September 2023 was represented by the email from R2 to Juliet Simpson at page 491. It was sent soon afterwards. It is generally consistent with the subject matter which all parties agreed was discussed. It appears credible and is generally corroborated by the evidence of R3. As such, it is accepted that the claimant's behaviour that day was at times incoherent, aggressive, threatening and confrontational. The Tribunal finds it likely that this behaviour was influenced by alcohol and cannabis use, as well as the effect of anxiety and its symptoms arising from his disability. This is corroborated also by Juliet Simpson's evidence about the claimant's expressions of regret immediately thereafter and the attempts of the claimant to express gratitude to R2 on 21 September 2023. There is no evidence that misconduct concerns were raised formally with the claimant by either respondent on this date.

83. What is abundantly clear is that the relationship between the claimant and respondents had broken down and that neither party trusts the other.

<u>25 September 2023</u>.

84. The claimant met with R2 and R3 by Teams to progress matters. On CB 110, by way of Teams chat, Juliet Simpson asked R2 if he was prepared for the discussion. In response, he replied: "I think so. Ultimately I don't want to get into a long conversation with RAT. I've discussed it with Gareth and our thoughts are that there are 2 scenarios, either he accepts he needs to change

(and identifies what that means) and take some time off to allow him to do that or he leaves the business. Sounds very cold when I put it in writing but I think that's where we are at the mo".

85. All parties agree that during this meeting, it was agreed that the claimant should take some time out as a sabbatical. The evidence from R2 is that the purpose of this was so that they could all reassess the working relationship and this terminology would be used "purely for the optics of the wider team". Notes from this meeting (and/or from the days preceding it) made by R2 from pages 493 to 495 note the claimant apologising and saying that he knows he has behaviours that need to change and that he would/should also: "get a diagnosis of what I am". The claimant's evidence was that there was some discussion during the meeting about "neurodiversity" and that he was going to see a psychiatrist. The Tribunal accepts this evidence as it is consistent with the concerns about his mental health during this time and the note about getting a "diagnosis" which is specific clinical/medical terminology.

86. A letter was sent (from Amy Stephenson but for R2) to the claimant following this meeting confirming his "…approved sabbatical leave from 25 September 2023 until 31 December 2023". It said that there was no expectation for him to complete any work during this time and its purpose was him to recharge and pursue academic endeavours. R2's evidence is that they could not "reasonably have been any doubt" in the claimant's mind that although this absence was termed as a sabbatical, it in fact amounted to a suspension. The Tribunal does not accept this. There is no evidence of any discussion at that time between the respondents and the claimant regarding formal conduct allegations, or disciplinary procedures, or suspension. Particularly given the claimant's literal understanding of language in addition, it is not reasonable to have assumed that he understood this to have been a suspension.

87. There is no evidence adduced by the claimant, or otherwise, that he made any assertions or indicated in any way at that time that he regarded his treatment by the respondents to have been discriminatory. Indeed, this remained the case for the following two months, while the claimant was absent on his sabbatical; no allegations of discrimination or poor treatment in connection with his (alleged) disability were made.

<u>21 November 2023</u>.

88. While the claimant was on sabbatical, there was little contact. A meeting was planned for 21 November between him, R2 and R3. The parties are in dispute about their respective intentions from that meeting. The claimant alleges that the respondents intended to "remove him from R1's employment" (in other words to dismiss him) from that date. The respondents deny this. The Tribunal finds that the most accurate reflection of the view of the respondents going into that meeting is represented by the Teams message from R2 to Juliet Simpson dated 25 September in paragraph 84 above. Essentially, the employment relationship had broken down and there were two possible outcomes to

discuss: either that the claimant changes his behaviour or that he leaves employment. The Tribunal does not find that the respondents intended to dismiss him. Considering and intending to discuss the possible termination of employment with the claimant is not the same as intending to dismiss him. The former reflects a mutual discussion; the latter, a unilateral and binary decision.

89. For the claimant's part, he too thought that trust had significantly broken down, as reflected by the message he sent to the respondents after the 19 September meeting. He was clearly unhappy at work, his mental health was suffering and his evidence reflects the fact that while away from work on sabbatical, he felt better. The Tribunal finds it likely that he too, would have gone into the meeting on 21 November with his departure from R1's employment as a possible outcome. This is reflected by the fact that this was, indeed, what was discussed.

90. The claimant alleges that he was effectively ambushed and pressured into resigning and that was the main contribution from the respondents. The respondents deny this, saying that they intended and did discuss a possible termination of the claimant's employment, on mutually agreeable terms. The Tribunal finds that, although the claimant's resignation from employment was discussed, the respondents did not ambush or pressure him to resign for the following reasons:

    90.1. The consistent, corroborating witness evidence from each respondent to that effect;

    90.2. The fact that we consider it unlikely that the claimant would have submitted to such pressure, given his historical conduct when being treated as, what he perceived to be, unfairly. Even when his mental health was compromised, as it was on 19 September 2023, and at the Tribunal hearing, he vociferously stood his ground and forcefully advocated his views. The respondents knew this and were wary of antagonising him. It would have been unlikely that they would have gone into a meeting pushing this outcome and it would have been far more likely that they hesitantly and reluctantly broached the subject of a mutual termination. They knew he was a director, shareholder and key employee. His financial stake R1 and his relationship with the respondents was significant. It is not credible to conclude that they thought they could browbeat him into resignation without significant collateral damage;

    90.3. The respondents valued the claimant's expertise. They had had a close working relationship for years before this and had consistently promoted him to director and shareholder. In addition, although, by now, there was significant mistrust and animosity, there was still concern for the claimant, as evidenced by R2's comment in paragraph 79 above about his health being a priority;

90.4. The correspondence following the meeting is consistent with a mutual discussion and bilateral negotiation, not with coercion of the claimant. That correspondence is further discussed in the paragraphs below.

Termination Negotiations and disability disclosure.

91. A letter was sent by R2 as MD to the claimant on 30 November 2023, with an offer, in principle, to him, to be concluded by way of a settlement agreement (page 2100/524).

92. The claimant responded the next day, rejecting the offer. He also then stated that because of the "..situation that arose prior to the meeting on 19th September and the acute response I had to the pressures placed on me during the meeting of the 19th September I have sought psychiatric assessment/treatment and have received a diagnosis of ADHD and ASD…"(page 524).

93. The respondents deny knowing that the claimant had these conditions before this date and/or that he was disabled. The claimant does not assert that he told any of the respondents that he had ADHD or ASD specifically, until this date. To that extent, the parties are agreed. He does, however, assert that the respondents would or should have been aware that he was disabled because of ADHD and/or autism before 1 December 2023. In his witness statement, he refers to use of the name RAT as being a mask, openly referring to being different, making jokes about ADHD, wearing clothing referring to neurodiversity and the fact that his son has ADHD and his similarities to him. He also refers to:-

93.1. the coping mechanisms set out at paragraphs 36 to 38 above, and

93.2. his behavioural profile, as described in general above, and

93.3. the decline in his mental health

as amounting to evidence of his disability. Further, he seeks to rely on an assertion made by Ceri Prichard in evidence that she could remember an (undated) comment made by R3 in which he used the claimant as an example of a successful person with ADHD.

94. All the respondents' witnesses deny knowing that the claimant had ADHD or ASD, either for the reasons stated above or otherwise. Their evidence is all consistent. They knew that the claimant was highly intelligent, different and "quirky". Juliet Simpson, for example, who had known the claimant for over 20 years felt that his behaviour was consistent with many other, senior, businesspeople with whom she has worked.

95. The Tribunal accepts the evidence from the respondents that they did not have actual knowledge that the claimant had ASD or ADHD until 1 December 2023. The evidence on this was consistent in all witnesses. It does not place much

weight on the evidence of Ceri Prichard, given its late disclosure and vague and historic nature.

Claimant's information access.

96. The claimant contacted Amy Stephenson to ask for access to his HR folder on 1 December 2023. This was provided straight away (1679-1681). She then contacted R2 by email (pg 527) to voice concern that he was on sabbatical leave and may work if he had access to email and systems access. She drew an analogy with employees on sick leave who have continued to work and with whom they have discussed removing access if they continue to work. R2 replied to tell her that he would inform the claimant that his access would be removed until after his sabbatical. Thereafter, from 4 December 2023, there followed a series of correspondence between R2 and the claimant in which the latter expresses his concern and disapproval with his access being blocked, asking why this has been done and stating the reasons why he requires access, and R2's replies which are ambiguous (pg 527-540). On 14 December 2023, R2 again queried the reasons why access is required, without addressing the claimant's concerns or questions. It is not clear when/if IT access was finally provided but the claimant was still asking for information about his employment and directorship until 15 January 2024 (page 557). The Tribunal finds that the reasons why access was not permitted by R2 at this time was a mixture of mistrust and concern for the claimant. Although there is no clear explanation by R2 about this, the evidence and context suggest that R2 was mindful of the claimant's mental ill health, his volatile moods and the breakdown of the working relationship, which was now the subject of commercial negotiation.

Sabbatical extension.

97. During December 2023, negotiations were ongoing regarding the claimant's departure but the parties could not agree on terms. The claimant emailed R2 on 11 December 2023 to indicate his intention to return to work on 2 January 2024 if a settlement cannot be reached by 24 December 2024 and confirmed this on 22 December 2023 (pages 531 and 543). In response, R2 wrote back on 29 December 2023 to "extend" his sabbatical until 31 January 2024. It is not in dispute between the parties that the claimant expressed his clear objection to this decision and a request to return to work (for example on 4 January 2024 pg 551).

98. The respondents then found themselves in the position that they could not agree settlement terms with the claimant but felt that they could not tolerate his return to work because of the previous problems with him and the total breakdown in their relationship. Emails from R2 dated 8 January 2024 (page 554) explain this, saying that the reason for the "sabbatical" had been his disciplinary conduct but as he was unable to address these issues at the time, this term had been used to effectively save his face.

99. At the same time, in January 2024, it became clear to the respondents that their conduct concerns about the claimant needed to be addressed formally and properly. As such, R2 commenced an investigation, gathering evidence from the events of 2023 about which he had concern. Again, it is not in dispute that he contacted various parties, asking them to provide details or statements.

Disciplinary Invitation.

100. On 30 January 2024, an invitation to a disciplinary hearing was sent to the claimant by R2 (page 572). This:

100.1. Stated that his sabbatical was in fact a suspension (on full pay); and

100.2. Listed the disciplinary allegations, which can be summarised as:

100.2.1. using offensive language;

100.2.2. adopting an inappropriate/obstructive/bullying approach at board meetings;

100.2.3. inappropriate management of ITAM team;

100.2.4. use of illegal drugs and excessive alcohol; and

100.3. gave examples, dates and details of the alleged misconduct either in the letter itself or by attachments to it.

101. The examples/dates listed, correspond to those listed in the subheadings above.

102. This letter opened a period of voluminous correspondence and document creation between/by the parties in the months until the claimant's resignation. It is not proportionate to record all details and the facts that follow are most relevant to the disputed issues.

103. During cross-examination, it was put to R2 that these disciplinary allegations were effectively fabricated to try and remove the claimant from employment or to make him a "bad leaver" for the purposes of other commercial agreements. He denied this. He admitted that the claimant's conduct had been a problem for a while but that nothing was confirmed in writing; that he wished he could go back in time and change that and record things thoroughly. The Tribunal accepts this evidence. The Tribunal does not conclude that the respondents' previous failure to invoke the disciplinary procedure was because there were no conduct concerns and that the disciplinary allegations were manipulated or untrue. There is consistent evidence from all the respondents' witnesses about all these allegations. The claimant even admits some of them and apologised for them at the time. The Tribunal has found that the claimant did use cannabis during work events. It is far more likely that no formal action was taken at the time because of the difficulty in addressing them with the

claimant in a small business where he was a key employee and director. For all his challenges, he was well respected and had built a close relationship with all those involved. To raise any conduct concerns with him would have been perceived as confrontational. When his behaviour started to be discussed informally, by way of meetings on 19 September and 21 November 2023, it resulted in significant escalation and the breakdown of the employment relationship. In the circumstances therefore, although it may have been ill-advised for the respondents to turn a blind eye and ignore the problems, it was somewhat understandable.

Claimant's grievance and response to disciplinary allegations.

104. This was sent on 6 February 2024 (page 586/612/589).

105. The grievance grounds can be summarised as alleging:

105.1. Historic instances of bullying, discrimination and harassment regarding disability, similar to the allegations raised in this claim;

105.2. The "manufacture" of a suspension and disciplinary charge of gross misconduct;

105.3. Unreasonable/bad faith behaviour; and

105.4. Failure to provide access to information and documents.

106. The claimant's response to the disciplinary allegations is in tabular format, in great detail, over 22 pages. In summary, he disputes/questions the authenticity, accuracy and true motivation of all the allegations.

Removal of Claimant from R1 website.

107. In the covering email to the claimant's grievance (page 586) the claimant noted that he had been removed as a member of the management team from R1's website. During cross examination on this subject, Amy Stevenson explained that the claimant was one of a few other people who was taken off the website on or around that time (including Richard Morton). Apparently, the whole website was undergoing redevelopment in an attempt to slim it down and the people in charge of that project were Juliet Simpson and another employee called "Carys". Apparently, Carys was unaware of the problems concerning, and disciplinary proceedings against the claimant. This was corroborated by the witness statement of R2 (paragraph 128). The Tribunal accept the witness evidence of Amy Stephenson on this issue as it appeared credible and was corroborated.

R1's disciplinary and grievance process.

108. Disciplinary hearings took place on 7 and 9 February 2024 with R2 as chair. Amy Stephenson took notes and the claimant was accompanied by a companion. During cross examination, R2 was challenged about the fact that he both conducted the disciplinary investigation and the hearings. His witness evidence referred to the fact that R1 is a small business, with approximately 18

employees, and the claimant was one of the most senior of these, being one of its directors.

109. On 13 February 2024, R2 emailed the claimant to inform him that some further investigation was required, which would be shared with him in due course and that the reconvened disciplinary hearing would then take place. In addition, he acknowledged receipt of his grievance which he said would be addressed separately, about which: "I will be in touch…. in due course" (page 715). The claimant then complained, for example, in emails dated 17 and 19 February 2024, about the failure to deal with his grievance in accordance with the staff handbook and without delay (page 737/735). In response, R2 stated on 19 February 2024 that his grievance would be dealt with after the disciplinary process (page 734).

110. In his witness statement at paragraph 14, R2's evidence was that the claimant's grievance was largely regarding the disciplinary process. He explained that the Employee handbook "clearly states that you cannot bring a grievance about a disciplinary procedure" and cites page 402 of the bundle.

111. R1's grievance procedure, in its employee handbook, starts at page 401 of the bundle. At page 402, paragraph 10.2.2.2 it states: "This grievance procedure should not be used to complain about dismissal or disciplinary action. If you are dissatisfied with any disciplinary action, you should submit an appeal under the appropriate procedure which is available from a Manager or Director".

112. The Tribunal finds that R2's evidence regarding the employee handbook wording is inaccurate. The handbook does not state that employees should not bring a grievance about a disciplinary procedure. It states that a grievance should not be used to complain about "dismissal or disciplinary action". In context, the Tribunal finds that the word "action" should reasonably be understood to mean "sanction" or "penalty". This makes sense as the appropriate process to challenge any disciplinary sanction (whether dismissal or short of dismissal) would be an appeal. This is consistent with R1's disciplinary procedure at page 410 which states that if it is felt that disciplinary action is wrong or unjust, an employee should appeal against it.

<u>Further evidence for the disciplinary process</u>.

113. In mid-February 2024, R2 prepared and gathered some statements as part of a further investigation for the disciplinary process. These included statements from James Smith, Juliet Simpson and R3 as well as his own statement. The statement from Juliet Simpson included details about complaints from Ben Thrower about the claimant's alleged drug use, amongst other things. These statements were sent to the claimant on or around 16 February 2024 and the claimant issued written responses to them. (A reconvened disciplinary hearing took place on 20 February 2024).

114. It is agreed between the claimant and Juliet Simpson that he sent her a WhatsApp message on 16 February 2024 regarding the statement that she had provided. Her evidence is that she found the message "incredibly threatening" and when she gave evidence about this, she became tearful. The claimant deleted the message shortly after sending it. She subsequently raised this with R2 and provided a further statement for the disciplinary process (dated 28 February 2024: Page 848) which says that the message from the claimant stated, to the best of her recollection "I will ask this once and will accept your answer. Is this your statement and when I have your answer, I'll decide how I will deal with you".

115. The claimant cannot remember the wording of the message but denies that it was threatening.

116. The Tribunal accepts the evidence of Juliet Simpson regarding the message. She was clearly very upset on receiving it. She has no other motivation to lie about this. The claimant clearly felt regret on sending the message as he deleted it straightaway and that is consistent with an understanding that the message was inappropriate in content. The Tribunal does not have to find whether the intention of this message was to threaten, but it accepts that this was how Juliet Simpson reasonably perceived it.

117. On 27 February 2024, R2 emailed the claimant to inform him that there had been new allegations raised, the details of which would be provided to him as soon as practical. He did not explain what those allegations were. (These allegations related to the new evidence provided by Juliet Simpson).

118. On 28 or 29 February 2024 (the date is unclear) the claimant sent to the Directors of R1 a further grievance complaining about:

118.1. Unreasonable delay in dealing with his grievance.
118.2. Unfair disciplinary process in breach of ACAS guidelines.
118.3. Various breaches of statutory employment obligations.
118.4. Further allegations of disability discrimination.

119. He also submitted a fit note on 29 February 2024 stating he was unfit for work until 26 March 2024 (1475). He remained off sick until his resignation. Various notes in his GP records on page 1908-9 evidence mental health illness because of reported "stress at work" and the claimant's witness statement is consistent with this.

120. In response to this, on 5 March 2024, R2 confirmed that the disciplinary process would be paused and that he would be paid sick pay in accordance with his contract of employment, being 10 days full pay and SSP thereafter (855) (he was paid SSP from 13 March 2024). The claimant replied to the same day to confirm that he wanted the grievance process to continue.

121. The claimant's solicitor wrote to R1 on 28 March 2024 complaining, amongst other things, about the reduction of his pay to SSP, alleging that this

was an unlawful deduction from wages (**the Pay Allegation**). They clearly explained the legal reason for this, provided an authority, and asked for reinstatement of full pay and payment of back pay owed. In summary, the operative reason for the claimant's absence was suspension and not sickness, and that he should therefore receive full pay, in accordance with his contractual terms regarding suspension and not sick pay.

Grievance Progress.

122. Grievance meetings took place on 21 May and 4 June 2024. Amy Stephenson was appointed to hear the grievance. The respondents' evidence is that she was asked to do so by R2 because the claimant's grievance largely concerned the decisions and actions of him and R3. As such, it would have been inappropriate for R2 to hear the grievance, albeit that R2 admitted in cross examination that this was a decision made after challenge by the claimant's solicitor and after legal advice. Given the nature of the allegations, it required someone with sufficient working knowledge of R1 to conduct a detailed investigation and that at the time, she had also taken on HR as one of her duties. It was put to R2 in cross examination that an independent, third-party organisation could have been appointed to deal with both the disciplinary and grievance procedures and that this would have been fair in all the circumstances. R2 did not accept this.

123. A grievance outcome report was issued by her on 9 August 2024. It was 16 pages in total and considered, what she reported as 13 grievance grounds (1150). The grievance investigation included interviews with R2, R3 and Juliet Simpson, as well as a review of three letters of grievance from the claimant and 17 other documents. Almost none of the claimant's grievance grounds were upheld. With regard to the Pay Allegation, she recommended that this matter should be referred by R1 for legal advice.

124. A grievance appeal was submitted by the claimant on 16 August 2024 and was similarly detailed, amounting to 15 pages in total (page 1170). Mark Nutter was appointed as the grievance appeal manager and grievance appeal hearings were held on 9 and 10 September 2024. A grievance appeal outcome was issued on 27 September 2024 and was extremely lengthy and detailed (page 1390). It was in tabular format and amounted to 44 pages in total. It considered the grievance appeal point by point. It upheld a series of points raised in the grievance and recommended some future action. These largely concerned:

124.1. making all the disciplinary allegations clear to the claimant;

124.2. providing financial information to the claimant regarding his directorship;

124.3. considering the claimant's disability during the future disciplinary process and referring him for occupational health assessment;

124.4. "The company's solicitors are to write directly to Richard with regards to the matter of salary payment versus sick pay whilst on suspension" (the Pay Allegation).

125. He did not accept that there was any evidence of prior knowledge of disability (before disclosure of his diagnostic assessment) or of harassment, bullying, intimidation or discrimination.

126. On 11 October 2024, the claimant resigned with immediate effect (page 1443). His resignation letter stated the Pay Allegation and his discriminatory treatment as the reasons for his resignation with the grievance appeal outcome and its alleged failure to properly address his grievance, appeal and the Pay Allegation, being the final straw.

The relevant law

127. The list of issues which is set out from paragraph 9 above summarises the relevant legal questions which must be answered in this case in accordance with the following law:

Discrimination arising from disability.

128. Section 15 Equality Act 2010 ("**EQA**") provides:

"(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."

129. Unfavourable treatment is not defined in EQA. The Equality and Human Rights Commission's Code of Practice (2011) (**EHRC Employment Code**) states that the disabled person must have been put at a disadvantage. In Williams v Trustees of Swansea University Pension and Assurance Scheme and anor ICR 230 SC, it was held that little was likely to be gained by seeking to draw narrow distinctions between the word "unfavourably" in s.15 and analogous concepts such as "disadvantage" or "detriment" found in other provisions in EQA, or between an objective and a subjective/objective approach. Although the EHRC Employment Code could not replace the statutory words, it provided helpful advice as to the relatively low threshold of disadvantage which was sufficient to trigger the requirement to justify under s.15(1)(b).

130. Basildon & Thurrock NHS Foundation Trust v Weerassinghe UKEAT/0397/14 provides the Tribunal should identify two separate causative steps in Section 15 claims (per Langstaff J, then the President of the EAT):

"The current statute requires two steps. There are two links in the chain, both of which are causal, though the causative relationship is differently expressed in respect of each of them. The Tribunal has first to focus upon the words "because of something", and therefore has to identify "something" – and second upon the fact that that "something" must be "something arising in consequence of B's disability", which constitutes a second causative (consequential) link. These are two separate stages."

131. Pnaiser v NHS England & anor [2016] IRLR 170 sets out the approach to be followed in Section 15 claims (paragraph 31):

131.1. A Tribunal must first identify whether there was unfavourable treatment and by whom: in other words, it must ask whether A treated B unfavourably in the respects relied on by B. No question of comparison arises.

131.2. The Tribunal must determine what caused the impugned treatment, or what was the reason for it. The focus at this stage is on the reason in the mind of A. An examination of the conscious or unconscious thought processes of A is likely to be required, just as it is in a direct discrimination case. Again, just as there may be more than one reason or cause for impugned treatment in a direct discrimination context, so too, there may be more than one reason in a section 15 case. The 'something' that causes the unfavourable treatment need not be the main or sole reason, but must have at least a significant (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason for or cause of it.

131.3. Motives are irrelevant: The focus of this part of the enquiry is on the reason or cause of the impugned treatment and A's motive in acting as he or she did is simply irrelevant.

131.4. The Tribunal must determine whether the reason/cause (or, if more than one), a reason or cause, is "something arising in consequence of B's disability". That expression 'arising in consequence of' could describe a range of causal links.

131.5. This stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator.

131.6. The statutory language of section-on 15(2) makes clear that the knowledge required is of the disability only, and does not extend to a requirement of knowledge that the 'something' leading to the unfavourable treatment is a consequence of the disability.

131.7. It does not matter precisely in which order these questions are addressed. Depending on the facts, a Tribunal might ask why A treated the claimant in the unfavourable way alleged in order to answer the question

whether it was because of “something arising in consequence of the claimant's disability”. Alternatively, it might ask whether the disability has a particular consequence for a claimant that leads to ‘something’ that caused the unfavourable treatment.

132. There need only be a loose causal connection between the "something" that led to the unfavourable treatment and to a claimant's disability. The EHRC Employment Code gives the example of a woman who is disciplined for losing her temper at work, but whose behaviour is out of character and is a result of severe pain caused by cancer, of which her employer is aware. The Code states that the disciplinary action would be unfavourable treatment because it is because of something which arises in consequence of the worker's disability, namely her loss of temper. Moreover, in the case of Risby v London Borough of Waltham Forest UKEAT0318/15, the claimant was a paraplegic who lost his temper with a colleague. A Tribunal found that his short temper was a personality trait not related to his disability, however, the EAT disagreed, finding that there was a sufficient link between his disability, his loss of temper and his employer's treatment of him. It reasoned that had he not been paraplegic, he would not have been angered by his employer's actions in his particular case.

133. In respect of S15 (1) (b), the Tribunal must objectively balance whether the conduct in question is both an appropriate and reasonably necessary means of achieving the legitimate aim. In Birtenshaw v Oldfield [2019] IRLR 946, the EAT held that the Tribunal's consideration of that objective question should give a substantial degree of respect to the judgment of the decision-maker as to what is reasonably necessary to achieve the legitimate aim provided he has acted rationally and responsibly.

134. The EHRC Employment Statutory Code of Practice advises that employers must "*do all they can reasonably be expected to do*" to find out whether a relevant employee is disabled and any substantial disadvantage which may arise because of his/her disability. Further, "*What is reasonable will depend upon the circumstances. This is an objective assessment. When making enquiries about disability, employers should consider issues of dignity and privacy and ensure that personal information is dealt with confidentially*". In Department of Work and Pensions v Hall UKEAT/0012/05 (among other cases) the EAT upheld a Tribunal's decision that an employer should have known about an employee's disability even though she had not specifically informed the employer that she was disabled.

Reasonable adjustments.

135. Sections 20 and 21 EqA provide as follows:

"20 Duty to make adjustments.

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

(2) The duty comprises the following three requirements.

(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage."

...

"21 Failure to comply with duty.

(1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.

(2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person."

136. Paragraph 20(1) of Schedule 8 provides that a person is not subject to the duty to make reasonable adjustments if he or she does not know, and could not reasonably be expected to know that a disabled person:

136.1. has a disability; and

136.2. is likely to be placed at a disadvantage by the employer's provision, criteria or practice (PCP).

137. Under section 39(5) EqA a duty to make reasonable adjustments applies to an employer. A failure to comply with that duty constitutes discrimination: EqA section 21.

138. Section 20 EqA provides that the duty to make reasonable adjustments comprises three requirements, set out in sections 20(3), (4) and (5). This case is concerned with the first of those requirements, which provides that where a provision, criterion or practice of an employer's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, the employer must take such steps as it is reasonable to have to take to avoid the disadvantage. Section 21(1) provides that a failure to comply with this requirement is a failure to comply with the duty to make reasonable adjustments.

139. The Tribunal must consider first of all, the PCP applied by the employer, secondly the identity of non-disabled comparators (where appropriate) and thirdly the nature and extent of the substantial disadvantage suffered by the Claimant. (Environment Agency v Rowan 2008 ICR 218, EAT). The question whether the proposed steps were reasonable is a matter for the ET and has to be determined objectively.

140. The EHRC Employment Code provides that the meaning of “PCP” should be widely construed so as to include and formal or informal policies, rules, practices, arrangements, criteria, conditions. Prerequisites, qualifications or provisions.

141. In United First Partners Research v Carreras 2018 EWCA Civ 323, CA, the Court of Appeal held that Tribunals should not adopt an overly technical approach to what constitutes a ‘practice’ for the purpose of showing that a PCP has been applied.

142. Ishola v Transport for London [2020] IRLR 368 provides guidance on what can amount to a PCP (per Lady Justice Simler) from paragraphs 35:

"The words "provision, criterion or practice" are not terms of art, but are ordinary English words. I accept that they are broad and overlapping, and in light of the object of the legislation, not to be narrowly construed or unjustifiably limited in their application. I also bear in mind the statement in the Statutory Code of Practice that the phrase PCP should be construed widely. However, it is significant that Parliament chose to define claims based on reasonable adjustment and indirect discrimination by reference to these words, and did not use the words "act" or "decision" in addition or instead. As a matter of ordinary language, I find it difficult to see what the word "practice" adds to the words if all one-off decisions and acts necessarily qualify as PCPs, as Mr Jones submits. Mr Jones' response that practice just means "done in practice" begs the question and provides no satisfactory answer. If something is simply done once without more, it is difficult to see on what basis it can be said to be "done in practice". It is just done; and the words "in practice" add nothing.

The function of the PCP in a reasonable adjustment context is to identify what it is about the employer's management of the employee or its operation that causes substantial disadvantage to the disabled employee. The PCP serves a similar function in the context of indirect discrimination, where particular disadvantage is suffered by some and not others because of an employer's PCP. In both cases, the act of discrimination that must be justified is not the disadvantage which a claimant suffers (or adopting Mr Jones' approach, the effect or impact) but the practice, process, rule (or other PCP) under, by or in consequence of which the disadvantageous act is done. To test whether the PCP is discriminatory or not it must be capable of being applied to others because the comparison of disadvantage caused by it has to be made by reference to a comparator to whom the alleged PCP would also apply. I accept of course (as Mr Jones submits) that the comparator can be a hypothetical comparator to whom the alleged PCP could or would apply.

In my judgment, however widely and purposively the concept of a PCP is to be interpreted, it does not apply to every act of unfair treatment of a particular employee. That is not the mischief which the concept of indirect discrimination

and the duty to make reasonable adjustments are intended to address. If an employer unfairly treats an employee by an act or decision and neither direct discrimination nor disability related discrimination is made out because the act or decision was not done/made by reason of disability or other relevant ground, it is artificial and wrong to seek to convert them by a process of abstraction into the application of a discriminatory PCP.

In context, and having regard to the function and purpose of the PCP in the Equality Act 2010 , all three words carry the connotation of a state of affairs (whether framed positively or negatively and however informal) indicating how similar cases are generally treated or how a similar case would be treated if it occurred again. It seems to me that "practice" here connotes some form of continuum in the sense that it is the way in which things generally are or will be done. That does not mean it is necessary for the PCP or "practice" to have been applied to anyone else in fact. Something may be a practice or done "in practice" if it carries with it an indication that it will or would be done again in future if a hypothetical similar case arises. Like Kerr J, I consider that although a one-off decision or act can be a practice, it is not necessarily one."

Victimisation.

143. Section 27 EqA provides as follows:

"(1) A person (A) victimises another person (B) if A subjects B to a detriment because—

(a) B does a protected act, or

(b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act—

(a) bringing proceedings under this Act;

(b) giving evidence or information in connection with proceedings under this Act;

(c) doing any other thing for the purposes of or in connection with this Act;

(d) making an allegation (whether or not express) that A or another person has contravened this Act."

144. Where a claimant alleges (whether expressly or otherwise) that the respondent or another person has contravened the EqA 2010, this may amount to a protected act (section 27(2)(d)). However, the asserted facts must be capable of amounting to a breach of the EqA 2010 and must be sufficiently clear (Fullah v Medical Research Council and another UKEAT/0586/12; Beneviste v Kingston University UKEAT/0393/05).

145. When considering whether the claimant was subjected to a detriment "because" of a protected act, the reason for the treatment should be assessed by asking "why" the respondent acted as it did (St Helens Borough Council v Derbyshire and others [2007] IRLR 540). The protected act must be more than simply causative of the treatment (in the "but for" sense). It must be a real reason (Chief Constable of Greater Manchester Police v Bailey [2017] EWCA Civ 425.

Dismissal

146. Section 39 EQA provides:

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

……

(c)by dismissing B;"

147. A dismissal includes a constructive dismissal. This enables claimants to complain:

147.1. That the original discrimination (besides being a fundamental breach of the trust and confidence term) was a detriment which breached section 39 in its own right; and

147.2. That a further contravention of section 39 occurred when the employee resigned in response to the breach.

148. Where discriminatory constructive dismissal is alleged, the test is whether or not the discrimination materially influenced the fundamental breach of contract: *Lauren De Lacey v Wechseln Ltd ta The Andrew Hill Salon: UKEAT/0038/20/VP.*

Conclusions.

149. The Tribunal applied the above legal tests (as summarised in the list of issues as set out from paragraph 9 above) to its findings of fact as below. If some of those issues were considered out of sequence, it was in the interests of efficiency and proportionality and where it was legally appropriate to do so.

Discrimination arising from disability.

150. Did the First Respondent know, or ought it reasonably to have known, that the Claimant was disabled for purposes of section 6 of the EqA? If so, from what date?

151. The Tribunal finds that R1 did not know that the claimant has ADHD or ASD before 1 December 2023, when he disclosed his diagnosis to them. This is for the reasons set out in paragraph 95 above.

152. The Tribunal finds that R1 ought reasonably to have known that the claimant was disabled from 25 September 2023. As set out in paragraph 85 above, the claimant met with R2 and R3 on this date, following the extremely

difficult meeting on 19 September 2023. By then, the respondents were aware of the precarious nature of the claimant's mental health and were concerned about it. There were specific discussions on this date about the claimant's behaviour and the difficulties with it. The Tribunal has found that there was discussion about the claimant's intention to seek medical diagnosis to confirm what "I am". The Tribunal finds that, in accordance with the EHRC Employment Statutory Code of Practice, this evidence was a reasonable basis upon which R1 should have taken reasonable steps to find out more about the claimant's possible health, cognitive or neurodevelopmental conditions, via occupational health physicians or otherwise. The Tribunal does not find that R1 ought reasonably to have known that the claimant was disabled before 25 September 2023. The evidence from all the respondents' witnesses that they thought that the claimant's behavioural differences were due to his personality, his alcohol and cannabis use or for other reasons was consistent and credible. In addition, the claimant's email as referred to in paragraph 92 indicates that the incentive to obtain a diagnostic assessment has arisen as a result of recent problems, not to confirm a longstanding and shared knowledge of his neurodivergent status.

153. Did the following arise in consequence of the Claimant's disability (the "something") (see paras. 4 and 5 of the Grounds of Claim (the "GoC")):

153.1.1. Difficulties with interpersonal skills, including in understanding emotional reactions, communication skills (such as struggling to understand others, interrupting people, struggling with small talk, and appearing blunt or uninterested in interacting with others);

153.1.2. Displays of physical or mental restlessness, including difficulties sitting still, focusing, and with organisational skills;

153.1.3. Difficulties in dealing with stress, and stress exacerbating the above symptoms and making the same more prevalent;

153.1.4. Symptoms of anxiety.

153.1.5. Adjustments that had historically been made by the First Respondent to accommodate the Claimant's disability and the impact this had on his working style, including in: referring to the Claimant by his longstanding moniker and initials ('RAT'); permitting the Claimant's casual dress at work; and, in acknowledging and accepting the Claimant's use of legal and non-psychoactive cannabidiol to calm his anxiety?

154. The Tribunal has taken into account the required loose causal connection between behaviour and disability, set out by the EHRC Code and case law[1].

155. The Tribunal accepts that all of the above symptoms 1 to 4 arose in consequence of the claimant's disability. This is consistent with the claimant's witness evidence, with the medical evidence and with the Tribunal's

[1] Eg Risby v London Borough of Waltham Forest UKEAT0318/15

observations about the claimant's behaviour during the hearing, as set out, including his symptoms and history.

156. With regard to the fifth paragraph, the Tribunal does not find, as set out in paragraph 40 above that permitting the use of RAT or casual dress were adjustments for the claimant's disability. Further, it found, as set out in paragraph 48 above, that the respondents were not aware of the claimant's CBD use. Notwithstanding, the Tribunal accepts that these behaviours arose from the claimant's disability for the same reasons set out in paragraph 155 above.

157. Did the Respondents subject the Claimant to the following unfavourable treatment (see para. 57 of the GoC):

157.1. *The Respondents' design or intention to remove the Claimant from BeDigital's employment, as first communicated to the Claimant on 21 November 2023 and which intention and design has continued to date;*

157.2. The Tribunal does not find that the respondents had a design or intention to remove the claimant from employment from this date onwards. The Tribunal has found that , both prior to and during the meeting between the claimant and respondents on 21 November 2023, the respondents did not have this intention for the reasons set out in paragraphs 88 to 90 above. After this meeting, the evidence shows that there was a period of negotiation between the parties about the claimant's possible termination of employment by way of a settlement agreement. The Tribunal is therefore of the view that throughout this period, there was a mutual discussion regarding the claimant's departure which had arisen from previous events and which was entirely consistent with the facts until that point. The claimant participated in this discussion and no departure was imposed upon him by the respondents, although it did seek to impose conditions on his remaining employment. As such, the Tribunal concludes that the claimant was not subjected to this unfavourable treatment.

157.3. The Respondents' removal of the Claimant's access to information he was entitled to as an employee and director of BeDigital from 1 December 2023 onwards;

157.4. As set out in paragraph 96 above, R2 deliberately removed the claimant's IT access on or around this date. Throughout December 2023, despite being asked for access to various information by the claimant, R2 did not reinstate it and did not give a reasonable explanation to the claimant. The claimant clearly explained why he needed the information and why he was unhappy about access denial. Notwithstanding R2's alleged rationale given to the Tribunal (effectively that it was for the claimant's "own good") the Tribunal accepts that the evidence is consistent with this being unfavourable treatment.

157.5. The Respondents' decision to remove the Claimant from the workplace, first on 29 December 2023 by purporting to unilaterally extend the Claimant's sabbatical and then on 30 January 2024 by suspending him;

157.6. The Tribunal also accepts that the extension of the claimant sabbatical and his suspension amount to unfavourable treatment. The extension of the sabbatical was done unilaterally and the claimant made clear his objection to both this and the entire disciplinary process, including suspension.

157.7. BeDigital and Mr Matthews' (R1 and R2's) notification to the Claimant of disciplinary allegations, which the Claimant will allege were untrue and/or manipulated for improper means, on 30 January 2024 and the disciplinary process which has since been pursued against him, and including the notification of unidentified and unparticularised "new allegations" on 27 February 2024;

157.8. The Tribunal does not accept that any of the disciplinary allegations were untrue, manipulated or used for improper means. It accepts the respondents' evidence, and in particular the evidence of R2 about the claimant's conduct from May 2023 onwards. In general terms there were clear concerns about the claimant's behaviour: his inappropriate language, aggressive and confrontational communication style, his refusal or inability to compromise and to accept other viewpoints and his alcohol and cannabis use.

157.9. It is clear that these issues should have been addressed long before January 2024. As set out in paragraph 103, R2 regretted that these issues had not been addressed or dealt with formally at the time.

157.10. Despite this, the Tribunal finds that notifying him of the allegations does amount to unfavourable treatment, given the general and wide definition of this term.

157.11. The Respondents' further decision to remove the Claimant from BeDigital's management team on or before 6 February 2024;

157.12. The Tribunal has accepted the evidence of the respondents that the reason for the claimant's removal from R1's website was as set out in paragraph 107 above, namely its redesign. It does not find that he was removed from the R1's management team and as such, does not find that he was subjected to this unfavourable treatment.

157.13. The Respondents' further decision to unlawfully deduct and fail to resolve the unlawful deduction of the Claimant's wages at any point from March 2024 onwards, despite the Claimant's grievance and appeal expressly raising the same;

157.14. The claimant's claim of unlawful deductions from wages in relation to the Pay Allegation was later admitted and upheld against the respondent. The Tribunal finds that this amounted to unfavourable treatment.

157.15. The Respondents' failure to resolve the Claimant's grievances in a timely manner, and either adequately or at all?

157.16. At least one grievance ground was not resolved in a timely manner, adequately or at all. This was the Pay Allegation. Neither the grievance outcome, nor the grievance appeal outcome resolved it. Both simply passed the buck. The claimant raised the Pay Allegation at the end of February 2024. It was not resolved until October. The respondents offered no explanation for this delay over the significant timespan of the grievance and appeal investigations. R1 had access to legal advice (see paragraph 122) but did not seek it as part of the investigation and there is no evidence that they did any research of their own, pursuant to the legal authority offered by the claimant's solicitor in the letter of 28 March 2024. Entirely regardless of the claimant's other grievance grounds, and how thorough the investigation and "adequate" the resolution of them was, this was an important grievance, relating to a fundamental contractual term and employment issue. Therefore, the Tribunal is of the view that the respondents failed to resolve the claimant's grievance and that this amounted to unfavourable treatment.

158. Did the Respondents subject the Claimant to [the unfavourable treatment in paragraphs 157.3, 157.5, 157.13 and 157.15] because of the "something" arising in consequence of the Claimant's disability?

159. The Tribunal have found that a reason for R2's refusal to give the claimant access to information was his mental ill health and his volatile behaviour (paragraph 96). The Tribunal also concludes that there is a casual relationship between this ill health and behaviour and the claimant's difficulties in dealing with stress and symptoms of anxiety. This is consistent with the claimant's evidence about his disability and deteriorating mental health during the meetings on 19 September and 21 November 2023 which the Tribunal has accepted and with the medical evidence, including his subsequent fit note. As such, the Tribunal concludes that this unfavourable treatment was because of something arising in consequence of disability.

160. The unilateral sabbatical extension and the claimant's suspension and the notification of the disciplinary allegations were effectively for the same reason: to keep the claimant away from the working environment following the concerns about his behaviour and the breakdown in the working relationship, and to address this behaviour. The Tribunal has accepted that the disciplinary invitation letter, in general terms, records the concerns about his behaviour, namely, his offensive language, his obstructive and bullying approach to board meetings and his alcohol and cannabis consumption. It is likely that a cause of this behaviour was the symptoms of anxiety experienced by the claimant; a conclusion which is explained in numerous paragraphs above. In addition, the Tribunal is also of the view that his use of offensive and inappropriate language; for example, the totally misjudged language used with Ben Thrower on 13

September 2023, results, at least in part, from his communication difficulties; something which it experienced first-hand at the hearing. It is also likely that stress exacerbated these features. As such, the Tribunal concludes that this unfavourable treatment was because of something arising in consequence of disability.

161. The deduction leading to the Pay Allegation was because R1 chose to pay him sick pay. It chose to pay him sick pay because he was off sick due to "stress at work". The Tribunal concludes that this sickness therefore arose, at least in part, because of his difficulties in dealing with stress and symptoms of anxiety. As such, the Tribunal concludes that this unfavourable treatment was because of something arising in consequence of disability. The fact that this was subsequently found/admitted to be unlawful because of the fact that his suspension was the initial and operative cause of absence and that full pay was therefore due as a matter of law/contract, does not affect the Tribunal's findings that this was a causal reason for the decision and for the failure to reverse the decision.

162. The Tribunal does not find however that the respondents' failure to resolve the grievances was because of something arising in consequence of his disability and can find no causal connection. The reason for the failure to resolve the Pay Allegation appears to be incompetence or a lack of motivation to resolve the issue, not for any other reason.

163. If the Respondents treated the Claimant unfavourably because of something arising in consequence of his disability, can the Respondents show that the treatment was a proportionate means of achieving a legitimate aim? The Respondents rely on the matters set out at paragraphs 46 - 52 of the Grounds of Resistance, in summary the need to ensure the appropriate standards of conduct and the application of the disciplinary policy.

163.1. The Tribunal does not consider that the denial of the claimant to IT access and information as set out above was a proportionate means of achieving a legitimate aim. It has not established a legitimate aim. In addition, if there were concerns about giving the claimant access, this should have been discussed with him and other possibilities explored. R2 does not appear to have considered other options once the claimant raised the issue. This claim of discrimination arising from disability is therefore upheld.

163.2. In addition, the unilateral sabbatical extension again, was not a proportionate means of achieving a legitimate aim. No legitimate aim has been established. R2 says this was a suspension in all but name; the Tribunal has found that it was not, but if it was, why was it not called a suspension and invoked as part of the disciplinary procedure? This happened a month later. R1/R2 should have started the disciplinary process sooner, even if this was difficult, rather than relying on a successful settlement process. No other options apart from the sabbatical extension

appear to have been considered. This claim of discrimination arising from disability is therefore upheld relating to the extension of the sabbatical.

163.3. The Tribunal does conclude however that the notification to the claimant of the disciplinary allegations and his suspension were a proportionate means of achieving a legitimate aim. For the reasons explained in 157.8, R1/R2 had a genuine need to address these allegations and to do so via correct disciplinary procedure was proportionate. Some of the allegations were potentially serious. It was also proportionate to suspend him, given the claimant's seniority, the small size of R1, his integral role in R1 and the need to conduct a full investigation. This claim of discrimination arising from disability therefore fails.

163.4. Finally, the Tribunal does not consider that the decision to reduce the claimant's pay to sick pay during his suspension was a proportionate means of achieving a legitimate aim. No legitimate aim has been established. It was later accepted that this was the wrong decision, reversed, with the claimant being paid in full. No explanation has been offered as to why R1 didn't take prompt legal advice at the material time so that the claimant received his lawful entitlement. This claim of discrimination arising from disability is therefore upheld.

Conclusion.

164. The claims of discrimination arising from disability are upheld against R1 and R2 in respect of the allegations set out at paragraphs 10.3.2, 10.3.3 and 10.3.6 to the extent stated.

165. None of the claims of discrimination arising from disability are upheld against R3. There is no evidence that he was involved in any of those decisions or acts of unfavourable treatment.

Victimisation.

166. Did the Respondents subject the Claimant to the following detriments (see paras. 57(6) and 57(7) and 57A of the GoC):

166.1. The Respondents' further decision to unlawfully deduct and fail to resolve the unlawful deduction of the Claimant's wages at any point from March 2024 onwards, despite the Claimant's grievance and appeal expressly raising the same;

166.2. The Respondents' failure to resolve the Claimant's grievances in a timely manner, and either adequately or at all?

167. The Tribunal finds that both of the above amounted to detriments for the reasons set out in paragraphs 157.14 and 157.16.

168. Subject to the Tribunal's findings in respect of the issue (10) above, did the Respondents subject the Claimant to those detriments because he had done a protected act(s), namely:

168.1. Raising grievances on 6 February 2024 and 29 February 2024; or
168.2. *Issuing his first claim at the Employment Tribunal on 3 June* 2024?

169. The Tribunal does not find that the payment of sick pay was because of these protected acts. This was for the reason stated in paragraph 161 above.

170. It has found that one (central) grievance ground was not resolved adequately: the pay allegation. The reasons for this were as stated in paragraph 162 above. There is no evidence that Amy Stephenson and Mark Nutter failed to resolve this either because the grievances were brought in the first place or because the claimant submitted his ET1.

171. The claims of victimisation therefore fail.

Reasonable Adjustments (Equality Act 2010 sections 20 & 21)

172. Did the First Respondent operate the following provisions, criteria or practices ('PCPs')? (see para. 58 of the Grounds of Claim (the "GoC")):

172.1. Refusing to provide employees with information to which they are personally entitled, including HR records and contractual documentation;

173. There is no evidence that the decision of R2 to withhold information from the claimant in December 2023 was a decision or act done "in practice" or part of a "continuum"[2]. First of all, the claimant was given immediate access to his HR file on 1 December 2023, by Amy Stephenson on request. It is not clear what is meant by "contractual documentation" and it is not clear on the evidence, the extent to which he was denied access to such information in the weeks that followed; but regardless, this decision appears to have been one of a one off nature, specific to the claimant, in his specific circumstances, while he was on sabbatical. As such the Tribunal do not find that this was a PCP applied to him.

173.1. Refusing to hear or address (adequately, promptly or at all) grievances raised by employees;

174. In addition, R1 did not refuse to hear or address the claimant's grievance. R2 informed the claimant that its grievance would be considered after the disciplinary process. Whether his grievances were adequately or promptly heard or addressed is different. As such the Tribunal do not find that this was a PCP applied to him.

174.1. Refusing to hear or address grievances relating to disciplinary allegations and processes until the disciplinary process has concluded;

175. R2 did initially refuse to hear the claimant's grievance until after the disciplinary process. The claimant was signed off ill from work and could no longer continue with the disciplinary procedure but agreed for the grievance process to continue. The reasons given by R2 for this decision were as stated in paragraph 110 above. Thus, he expressly refers to policy provisions. As such, this clearly indicates a decision made "in practice", as part of a "continuum". As such the Tribunal finds that this was a PCP applied to him.

[2] Ishola v Transport for London [2020] IRLR 368

175.1. Not considering or reconsidering the appropriateness of managers to conduct formal processes, including disciplinary and grievance processes, where there is good reason for a manager not to conduct such processes.

176. There is no evidence that R1 did not consider or reconsider whether and why R2 should conduct the disciplinary processes affecting the claimant, and which stages within them he should conduct: see paragraph 108 above. In relation to the grievance procedure, Amy Stevenson conducted this as R2 considered or reconsidered that it was inappropriate for him to do so: see paragraph 122. The Tribunal does not consider that R1's failure to appoint either process to a third-party independent organisation, especially as a small business, amounts to evidence of this PCP. In addition, the same reasoning from paragraph 173 also applies to this alleged PCP. As such the Tribunal do not find that this was a PCP applied to him.

177. In respect of each of the PCPs identified above, was the Claimant put to a substantial disadvantage compared to someone who did not share his disability? In particular, the Claimant relies upon the following substantial disadvantages:

177.1. Heightened difficulty in dealing with the stress caused by the internal processes.

177.2. Heightened difficulty in dealing with and understanding processes which were mismanaged and/or refusal of requests to which he was entitled to expect a different response.

177.3. Caused heightened stress, which exacerbated the other symptoms of his disability and made the same more prevalent.

177.4. Caused and/or exacerbated symptoms of anxiety.

178. The claimant raised multiple grievances. He asked on numerous occasions for these to be addressed and chased responses. He documented all details of his grievance (which significantly pertained to the disciplinary proceedings) in painstaking detail and made clear the effect on him. His subsequent grievance included a ground about the failure to resolve his initial grievances and some 10 days after being told by R2 that they would not be resolved until after the disciplinary process, he went off sick because of "stress at work". In addition, the Tribunal has accepted the evidence of the claimant about his difficulties in dealing with stress and anxiety which arose from his disability and the fact that the proceedings affecting him caused stress and anxiety. On balance therefore, we do find that refusing to hear or address grievances relating to disciplinary allegations and processes until the disciplinary process has concluded, put the claimant to substantial disadvantage compared to someone who did not have ADHD and ASD for the above reasons.

179. Did the First Respondent know, or ought it reasonably to have known, that the Claimant was disabled and is likely to be placed at the disadvantage by the PCPs as set out above?

180. R1 knew that the claimant was disabled at the material time of this claim.

181. Did the First Respondent fail to comply with a duty to make such adjustments as were reasonable to the PCPs to seek to avoid or minimise the disadvantage to the Claimant?

182. The Tribunal does not consider that it would have been reasonable to expect R1 to have suspended the disciplinary process until after his grievances were heard, however, R1 has not explained how and why it would not have been reasonable to:

182.1. consider those aspects of his grievance which related to the disciplinary proceedings as part of the disciplinary procedure; and

182.2. consider the other aspects of his grievance separately at the same time.

183. The Tribunal is of the view that this would have been a reasonable step that it could have taken to avoid the disadvantage. It may, as a matter of fact, have had to have considered some of the points raised in his grievance as part of the disciplinary procedure but this was never made clear and the process never concluded because of the claimant's sickness. The fact was that he was told that his grievances would not be addressed at that time and this indicates a deliberate decision to that effect. For these reasons this claim is upheld.

Conclusion.

184. The claim of failure to make reasonable adjustments therefore succeeds against R1 in respect of the allegations set out at paragraph 12.1.3.

Discriminatory Dismissal.

185. Was the Claimant's dismissal discriminatory in breach of sections 39(2)(c) and 39(7)(b) EqA?

186. The Tribunal must consider whether or not the discrimination of R1 materially influenced the fundamental breach of contract which caused the claimant to resign and amounted to his constructive dismissal.[3]

187. The claimant's resignation letter stated the Pay Allegation and his discriminatory treatment as the reasons for his resignation. As stated in paragraph 161 above, the deduction leading to the Pay Allegation was because R1 chose to pay him sick pay. It chose to pay him sick pay because he was off sick due to "stress at work". As such, the Tribunal concludes that this sickness therefore arose, at least in part, because of his difficulties in dealing with stress and symptoms of anxiety and that this amounted to discrimination in breach of the Equality Act 2010.

188. For these reasons, the Tribunal finds that this discriminatory act materially influenced this fundamental breach and that his dismissal was discriminatory.

[3] *Lauren De Lacey v Wechseln Ltd ta The Andrew Hill Salon: UKEAT/0038/20/VP*

V.Othen

Employment Judge Othen

16/04/26

REASONS SENT TO THE PARTIES ON

20 April 2026

Miriam Drake

FOR THE TRIBUNAL OFFICE