



EMPLOYMENT TRIBUNALS

Claimant: Mr H Walayat
Respondent: Department of Health and Social Care
Heard at Sheffield **On:** 23, 24, 25, 26 and 27 February 2026
2 March and 10 April 2026
29 May 2026 (in chambers)

Before: Employment Judge Brain
Members: Mrs K Grace
Mr D W Eales

Representation

Claimant: Ms J Sherratt, counsel
Respondent: Mr T Holloway, counsel

RESERVED JUDGMENT

The Judgment of the Employment Tribunal is that:

1. The claimant was fairly dismissed by the respondent. The complaint of unfair dismissal brought pursuant to the Employment Rights Act 1996 fails and stands dismissed.
2. The claimant's complaint of wrongful dismissal fails and stands dismissed
3. The claimant's complaint that he was unfavourably treated for something arising in consequence of disability fails and stands dismissed.

REASONS

Introduction and preliminaries

1. This is a complaint of unfair dismissal, wrongful dismissal, and disability discrimination. After hearing the evidence in the case between 23 February and 2 March 2026, the matter was adjourned part heard. Submissions were made by the parties on 10 April 2026. The Tribunal reserved judgment. We deliberated in chambers on the afternoon of 10 April 2026 and on 29 May 2026.
2. At the material time with which the Tribunal is concerned the claimant worked for the respondent as senior policy advisor.
3. For the purposes of the disability discrimination claim the relevant disability comprises of impairments arising from dyslexia, dyspraxia, attention deficit hyperactivity disorder, and Irlen Syndrome. The latter is a perceptual disorder that affects the way the brain processes visual information. This is exacerbated by environmental factors such as lighting, brightness and glare. The respondent accepts the claimant to be a disabled person (by reason of impairments arising from these conditions which impact upon day-to-day activities) for the purposes of the Equality Act 2010 and to have knowledge of disability from 24 March 2022.
4. The case benefitted from a case management hearing which came before Employment Judge Shepherd on 16 October 2024. He identified the issues in the case as set out below.
5. On the first morning of the hearing, the Tribunal directed that remedy issues shall be dealt with later (if required) save for the issue of conduct and any issue arising of the application to the case of the principles in **Polkey v AE Dayton Services Ltd** [1987] IRLR 503 HL. On **Polkey**, the Tribunal directed that at this stage narrower issues of any procedural failure would be considered. Any wider issue of the likelihood of the claimant being dismissed for reasons other than the matters we were principally concerned with (such as performance issues) would be dealt with at a later remedy hearing.
6. As an adjustment for the Irlen Syndrome, the Tribunal maintained dimmed lighting in the hearing room through the hearing. The Tribunal refused the claimant's application to give evidence by video. This was not in accordance with best practice and the claimant's comfort in the hearing room was assured by adjusting the lighting and permitting reasonably frequent breaks. The Tribunal was cognisant of the hearing taking place during Ramadan, and the claimant's propensity to be more fatigued. Honesty lays at the heart of the case. The Tribunal considered that the right balance was for the claimant to give evidence in person to enable the Tribunal to better assess demeanour than through video, while ensuring as best we could that the claimant was comfortable in the hearing room by adjustments to the lighting and the provision of breaks.
7. The Tribunal heard evidence from the claimant. The following witnesses were called to give evidence by the respondent – (their roles below are those held at the time when they were involved in the matter):

7.1 Phil Thompson, deputy director, technology services.

- 7.2 Rececca Diment, head of pandemic preparedness.
- 7.3 Helen Lovell, deputy director, medicines directorate.
- 7.4 Oliver Clarke, director for electives and cancer.
- 7.5 Matthew Style, director general, NHS policy & performance.

Factual findings

- 8. The claimant was a career civil servant. He commenced work with the Home Office on 24 May 2017.
- 9. The claimant underwent a workplace assessment on 5 July 2018. At the time he was an administrative officer in the Home Office. The workplace assessment at pages 71 to 86 of the bundle reports sensitivity to bright lighting which can cause the claimant headaches. A number of workplace adjustments were recommended none of which involved the deployment or provision of bright lights in the claimant's workspace.
- 10. On the 11 November 2021 the claimant transferred permanently from the Home Office to the respondent (pages 87 to 100).
- 11. The contractual terms concerning notice periods may be found at page 95. This says that unless a different notice period is agreed then (except for summary dismissal for incidents of gross misconduct) the claimant was entitled to one week of notice for every year of continuous service up to a maximum of thirteen weeks.
- 12. The contract refers (at page 97) to the respondent's code of business conduct and says that a failure to maintain the code of business conduct may result in disciplinary action being taken.
- 13. The code of business conduct is at pages 803 to 838. This provides at paragraph 3 on page 804 that the "*central framework*" (comprised of the civil service code and civil service management code) "*derives from the need for civil servants to be and seen to be honest and impartial in the exercise of their duties.*"
- 14. The code of business conduct also says (in paragraph 10 at page 826) that "*From 1 November 2015 the department provides the Cabinet Office with information about employees who are dismissed for fraud or dishonesty offences. This information will be the individual's name, date of birth, national insurance number and a general description of the relevant misconduct.*" The code of business conduct then goes on to provide in paragraph 11 that the Cabinet Office will input this information onto the internal fraud database and share it with Government Recruitment Services. Where an applicant is successful in any recruitment process, they will be refused employment if included on the database.
- 15. The contract refers (in page 98) to the civil service code. This provides civil servants are bound by the civil service code which places obligations on civil servants as servants of the Crown. The claimant was contractually bound to adhere to the civil service code.
- 16. The civil service code is at pages 772 to 779 of the bundle. The code sets out the standards of behaviour expected of civil servants. There is an obligation of honesty which is defined (in page 774) as "*being truthful and open*" entailing (in pages 775 and 776) setting out facts and relevant issues truthfully, correcting errors as soon as possible and not knowingly deceiving or misleading others.

17. Also of relevance to this case is the respondent's discipline policy and procedure. This is in the bundle at pages 839 to 854. The policy provides in paragraph 1 (page 840) that all employees are responsible for ensuring their behaviour meets the standards expected of them in the civil service code and code of business conduct. Paragraph 5 (page 840) says that misconduct may have occurred where it is suspected or alleged that an employee has failed to meet acceptable standards of behaviour or conduct in any way. Where misconduct is proven a range of penalties may be imposed, up to and including dismissal. By paragraph 20 (page 843) the decision manager must immediately notify their HR casework service, HR operations and DHSC security of any case involving fraud or dishonesty which could lead to dismissal.
18. The discipline policy and procedure document provides for informal action (in paragraphs 34 and 35) for instances of minor misconduct. A range of penalties is provided for more serious matters in accordance with paragraphs 61 to 64. A first written warning is appropriate for some instances of minor misconduct. A final warning will be appropriate when another incident of minor misconduct occurs during the period of a live first written warning or when the misconduct is serious. Dismissal may take place for instances of gross misconduct or when another incident of misconduct occurs during the currency of a final written warning.
19. The discipline policy and procedure document is supplemented by discipline advice. The advice for employees is at pages 855 to 862. There is an explanation of the levels of misconduct at page 857. Serious misconduct is said to arise in cases of a repeated minor offence or significant breach of standards. Gross misconduct arises where conduct is serious enough to destroy the working relationship between the employee and employer and the likely sanction is dismissal.
20. The discipline advice for employers is at pages 863 to 892. The Tribunal's attention was not drawn to any particular provision in this document. However, there is a further guide entitled "*How to: Assess the level of misconduct*" (pages 893 to 899) to which we were taken. Paragraph 6 of this document gives factors to consider when deciding the level of seriousness of misconduct. This includes the degree of the misconduct, the impact on others and the department, damage to property value, culpability, intent, and breach of the civil service code.
21. Paragraph 12 gives guidance for the assessment of serious misconduct. This is defined as either repeated minor offences or significant breaches of the standards expected. This will require formal management action but is not of itself serious enough to amount to gross misconduct. Serious misconducts can include some breaches of the civil service code.
22. Paragraph 14 deals with gross misconduct. This is conduct serious enough to destroy the working relationship between the employee and employer and its sanction is likely to be dismissal. Theft, corruption or fraud are included in the non-exhaustive list of examples of gross misconduct. Also included are causing major loss, damage, or injury through serious negligence, deliberate and gross misuse or damage to departmental property, repeated or persistent failure to follow reasonable instructions, and significant or repeated breaches of the civil service code. There is then guidance about how to decide upon disciplinary penalty and taking account of mitigating factors (pages 900 to 902).

23. There is also an acceptable use policy (pages 903 to 909). About IT equipment, this says at paragraph 2.1 that *“Users SHALL NOT expose any IT equipment to deliberate external stress, sudden impacts, excessive force or humidity (fluids/corrosive materials).”*
24. On 16 December 2021 the claimant reported problems with his laptop. The person with whom the claimant dealt at the respondent’s helpline noted that Microsoft Teams was behaving oddly. The claimant demonstrated by screenshots that Microsoft Teams was crashing. The claimant also complained about a very hot vent and very loud fan. The relevant e-mail exchange about this is at page 101.
25. Further issues were experienced by the claimant. On 10 May 2022 a member of the respondent’s hub support team noted that the claimant was complaining of crashes and slowness which he (the hub support team member) attributed to the Dragon plug-in within Word. The relevant e-mail is at page 102.
26. These were two IT incidents amongst many experienced by the claimant. The respondent produced a helpful table of incidents at pages 768 and 769. Eleven incidents were reported between 30 November 2021 and 26 September 2023 all of which led to a laptop replacement. Several complaints from the claimant were about overheating laptops.
27. On 15 June 2022 the team of which the claimant was part was due to move to Quarry House in Leeds. The transformation and delivery lead sent an e-mail to the health and safety unit anticipating problems for the claimant based upon his previous experience working in Quarry House. The claimant had found the bright artificial lights there to cause him eye strain and headaches. As an adjustment it was suggested that he be allocated a fixed desk near a window to be near natural light and for there to be a thorough desk assessment that would also include monitor settings to test for brightness (page 103).
28. In July 2022, a workplace adjustment passport was created for the claimant. This was updated periodically (pages 177 to 184 - it also appears in pages 570-577). The claimant’s conditions of dyslexia, dyspraxia, ADHD, and Irlen Syndrome were noted as was the need for an allocated workspace with anti-glare blockers and the provision of anti-glare filters.
29. Another iteration of the passport is at pages 562 to 565. This references a change in line manager with effect from 25 July 2022. This version of the passport notes the claimant’s sensitivity to light and that the fixed desk allocated to the claimant was unsuitable as it was under bright ceiling lights. The claimant indicated he would prefer to work in meeting rooms when they became available. Amongst other things, this passport recorded as adjustments undertaking Irlen/Scotopic Sensitivity testing and tinting of lenses with it being for the claimant to consider if he wants to consult with a specialist about the lenses. In evidence given in cross examination, the claimant was asked if he had ever suggested to his managers a need for an artificial light for his keyboard. The claimant said that he had requested a Display Screen Equipment assessment which would have resulted in an assessment of such a need. From this we conclude that the claimant at no stage expressly told the respondent of his need for an artificial light or that he was in the practice of using one when working from home.
30. Although seemingly only created in July 2022, in the version at pages 177 to 184 (and 570-577) mention was made of historic medical reports and assessments

on the claimant. The earliest of these was dated 13 December 2013. This is in reference to a dyslexia assessment of that date, recommending that the claimant reduce exposure to fluorescent lights.

31. An occupational health report of 24 March 2022 was also noted in page 182. (The occupational health report itself is at pages 552 to 558). This reads in paragraph 3.5 of the passport, *“DSE assessment is completed paying particular attention to his computer display settings, to support his light sensitivity, regarding eyewear Mr Walayat could discuss this with an optician for appropriate options. His computer should also support him to utilise his assistive technology and provide an appropriate screen size for him to increase his font size. Mr Walayat did advise that he finds a larger screen more effective than multiple screens as this can impact on his attention.”*
32. In paragraph 3.6 the report says, *“Sensitivity to lighting and stimulus should be considered, an appropriate workplace is sought for him to work from or provide access to a quiet space within the workplace where he can go should he experience an increase in his symptoms.”*
33. The occupational health report describes Irlen Syndrome (in page 553) as *“a perceptual disorder that affects the way the brain processes visual information. This is exacerbated by environmental factors such as lighting, brightness and glare...”*
34. The passport was annotated to include recommendations from a workplace needs assessment report dated 23 June 2022 (pages 181 and 182). The report itself is at pages 543 to 551. Recommendations included that the claimant should be allocated a workstation in a corner and not directly under artificial lighting sources. The report went on to say that the claimant should find natural light more comfortable but there should also be suitable window coverings to attenuate the light on brighter days. Consideration should also be given to any direct light from the sun falling across his workstation or reflected light from buildings and vehicles outside. Reference was made to other adjustments (including an anti-glare screen and investigation for the provision of precision tinted lenses). None of the adjustments included the provision of a light or lamp onto the claimant's computer keyboard or other illumination of the keyboard.
35. On 8 September 2022 a record was made of a complaint from the claimant of his laptop overheating. The relevant e-mail is at page 104.
36. On 26 October 2022, the claimant received a first written warning for unsatisfactory work performance (pages 933 to 937). This was served on him by his previous line manager, Andrew Haines. The performance issues were timeliness and poor time keeping, repeated failure to follow direct instructions to use the team mailbox and SharePoint impacting the claimants work, repeated failure to follow direct instructions to complete work to the required standard and in a timely manner, and repeated failure to manage the mailbox and commissions and communicate with colleagues to the required standard, accurately and in a timely manner.
37. The claimant raised as mitigation that reasonable adjustments had not been put in place to enable him to complete his work. He also raised issue IT issues.
38. Mr Haines noted the reasonable adjustments which have been put in place which included the provision of specialist software with training sessions, face-to-face training sessions on IT and assistive technology, and that an offer had been made

for an IT engineer to visit his home to assess the internet connection there which the claimant had rejected. Mr Haines also observed that the parties were in ongoing discussions with health and safety team colleagues around the ordering of a home office chair, and that they were waiting on delivery of light shields for use on his permanent desk (delayed due to the claimant's rejection of them initially).

39. Mr Haines then suggested a number of steps to be taken by the claimant and arranged performance reviews. The claimant was warned that a failure to improve would lead to him moving to the next stage of the managing poor performance policy procedure. (The Tribunal notes that the performance issues have not as yet been considered in any detail given the **Polkey** direction above and thus we can make no factual findings as to the claimant's performance at this stage other than to record the respondent's perception of matters).
40. On 4 November 2022, the claimant raised a grievance against Kathryn Glover, deputy director, medicines regulation and prescribing. She had taken over the line management of the claimant on a joint basis with Ms Lovel for his pastoral care. Plainly, this was raised after the performance warning of 26 October 2022.
41. On 21 December 2022 the claimant was served with a final written warning (pages 1144 to 1147) because his work performance and conduct were said to be below that acceptable to the department. The letter was sent to the claimant by Noor Salik (copying in Ms Glover and Ms Lovell). The letter said *"I was disappointed with your approach to the [performance review] meeting. Instead of engaging with the performance issues and setting out mitigations you acted in an extremely defensive and combative manner. For example, you chose to open the meeting with an unsubstantiated claim of collusion between me and others regarding your performance. You then proceeded to regularly turn the discussion into an interrogation on my conduct. You used every opportunity to blame others rather than using this time to reflect and learn."*
42. The performance issues were then listed in some detail. The claimant was informed that *"Your work performance will be reviewed four weeks from when you return from sick leave. We will meet during the review period every fortnight to discuss your progress. You are expected to take full advantage of this opportunity to improve your performance. I must warn you that if your performance falls below the expectations required in this review period you will move to the next stage of the managing performance policy which could ultimately lead to your dismissal."* Again, the tribunal notes that no evidence has been heard about the claimant's performance or about the claimants conduct at the performance review meeting held on 7 December 2022 which led to the critical remarks made by Noor Salik.
43. On 19 January 2023 the claimant raised another complaint about his laptop (pages 105 and 106). He was complaining about Dragon working extremely slowly and the laptop getting extremely hot. This enquiry was dealt with by Mike Bradshaw, a site-based IT support technician employed by ATOS, the respondent's external IT supplier. As a reasonable adjustment and given the number of IT issues which he had, Mr Bradshaw had been assigned to provide IT assistance for the claimant, and the claimant was able to reach him quickly.
44. It can be seen from the table in page 179 that the workplace adjustment passport was annotated on 13 June 2023 to include recommendations from an occupational health report of 17 February 2023 (page 181). This recommended

(amongst other things) the allocation of a desk in the office in an area with natural lighting, a DSE assessment and the provision of an anti-glare screen and monitor. The report itself is at pages 555 to 558. The context for the commissioning of the occupational health report was a period of ill-health absence.

45. On 4 July 2023, the claimant was working at home on the latest device issued to him. This was a Lenovo ThinkPad X13 GEN 1 laptop (with serial number 5N20V43025). This model is not backlit. Photographs in the bundle at pages 766 and 767 show the set up. The desk used by the claimant when working from home is positioned in front of and facing an external window overlooking the claimant's garden.
46. Technical specifications for the ThinkPad are at pages 770 and 771. About these specifications, Mr Thompson said in paragraph 38 of his witness statement that the ThinkPads are tested to military standard and *"they are sufficiently robust to withstand temperatures in excess of 54 degrees centigrade and that's higher than the temperature at which human skin burns."*
47. The claimant messaged Mr Bradshaw at 10:34 to say, *"Hi Mike, still having issues with Outlook do you have time for a quick chat?"* At 11:27 Mr Bradshaw messaged the claimant, *"Just discussed your laptop getting overly hot, to the point where a key has disfigured with heat. I've advised you to turn off the machine and not use it. Asked you to come to Leeds for a replacement machine today."* At 11:37 the claimant complained that the keyboard *"got really hot and the key has melted."* At 11:58 the claimant messaged to say he was on his way to Quarry House as instructed. These messages (or at any rate, at least one of those sent) were accompanied by a photograph showing the deformed enter key. These messages are at pages 224 and 225 and 227- the photograph of the deformed enter key is at page 225.
48. At 12:17 on 4 July 2023, Ms Glover messaged the claimant to the effect that Michelle McDaid (policy manager, medicines regulation and prescribing) had informed her of the incident (page 277). Ms McDaid was the claimant's task manager. It appears that the claimant did not reply to Ms Glover as she (Ms Glover) asked him the next day how he was (also at page 277). (Ms McDaid had informed Ms Glover and Ms Lovell of the incident at 11:40 on 4 July (pages 341 and 342)). The claimant provided a very brief report of the incident recorded by Ms McDaid in page 342 which said, *"Just discussed your laptop getting overly hot, to the point where a key has disfigured with heat. I've advised you to turn off the machine immediately and not use it. Asked you to come into Leeds for a replacement machine today."*
49. On 4 July, the claimant recorded a video at Mr Bradshaw's request. This is around eight seconds long. The Tribunal was able to view this video. It shows the laptop keyboard but not the surrounding area or home workstation setup. In evidence given in cross examination, the claimant said that the surrounding set up was not shown on the video because Mr Bradshaw wished to focus on the laptop and the sound emanating from it.
50. At 12:56 on 4 July 2023 Mr Bradshaw messaged Jonathan Carter, service delivery manager of the respondent's external supplier (page 133). He reported that the claimant had had *"a catastrophic issue with his current laptop - it's overheated to the point keys have melted so he's on his way in to have a replacement issued."* The message from Mr Bradshaw at 12:56 was forwarded by Mr Carter

to Rothna Dev Modak (head of IT service management, technology services) at 13:02 with the message *"For info. This is a new one on me."*

51. At 13:14 on 4 July 2023 Mr Carter, emailed Ms Modak (page 130). Mr Carter said *"I wanted to make you aware Hashim Walayat is on his way to see the on-site team at Quarry House due to an issue with his laptop. He's advised it overheated to the point of physical failure and even to the extent the keys have melted. I have attached a picture he shared with the engineers. I have asked the team to provide further pictures and observations of the faulty device once it's replaced and to log a warranty call with Lenovo, so it can be investigated. I will supply more info when we have it."* The photograph attached is at page 132. This shows the enter key having suffered a deformation.
52. On 4 July 2023 at 13:23 Ms Modak emailed Anna Djoric, who is the account manager at Lenovo (page 138). Ms Modak reported that the claimant said that his device overheated so much he burned his finger and the keys warped. She asked for the matter to be investigated.
53. In response to Ms Djoric's initial enquiries, Lenovo quick diagnostics were carried out by or on behalf of the respondent. At 14:41 on 4 July 2023 Mr Carter emailed Ms Modak and Ms Djoric (page 135). He said *"Feedback on the circumstances is not very specific. The device would occasionally get warm, but this issue has entirely occurred today. The device is in working order now and not overheating, our engineer has been able to log onto it and is currently running Lenovo extended diagnostic which no issue highlighted thus far. The user stated the device was sat on some on some papers at home which are slightly scorched however we've not got any images or anything of that."* Ms Modak then circulated some pictures which are at pages 139 to 145. These show the enter key and the key beneath it as warped and then the two keys to the left of the enter key as also being affected to the extent that one of them has become detached from the keyboard.
54. On 4 July 2023 the highest maximum temperature recorded by the Met Office was 22°. This was recorded in Hull (pages 116 to 129).
55. Staying with the quick diagnostics testing, Mr Carter emailed Ms Modak on 10 July 2023 (page 163). He reported that, *"We completed the Lenovo quick diagnostics and nothing was uncovered. The engineer has also reviewed the even log on the laptop. There is nothing showing anything obvious relating to high temperatures of failures. Mike has taken a copy of the event log should it be needed at any point. He did note that the laptop was quite warm following boot up and for a while after logging on, not so warm he was uncomfortable using it, but noticeable. After it has been running for a while it cooled down to a normal temperature."*
56. Picking up now from paragraph 48, as we said, on 5 July 2023 Ms Glover enquired of the claimant's welfare (page 277). He replied, *"just a bit burned but can use my other hand."* He said he was trying to arrange a doctor's appointment. He then told her in a subsequent message that he had been recommended to go to the pharmacy who recommended Acriflex and painkillers (page 279). He added in a subsequent message (also on 5 July 2023) (p280) that *"I'm really fortunate that I was working at the laptop on the time and not on my break as this could have potentially caused a fire. I quickly unplugged the laptop and made a video afterwards for IT where they can hear the fan whirling and the noise working. I have told IT many times the laptop's heating and they said it is normal."*

Ms Glover replied *"Indeed- very lucky you were there. Mine does get very hot at times too."*

57. On 6 July 2023, the claimant sent a message to Mr Bradshaw in which he said, *"Mike when I mentioned to you previously about my laptop getting hot and the fan making a loud noise do you have an incident number for me? Because I [remember] having numerous conversations when I said the fan was getting loud and the laptop was becoming hot."* Mr Bradshaw replied with the incident number from an episode in September 2022 where *"some of those records mention heat."* He also furnished the incident number for the 4 July incident, described by Mr Bradshaw as *"the melting keys incident"* about which he said the respondent was waiting to hear from Lenovo. (This exchange is at page 228). He did not take issue with the claimant's assertion that the fan of the Lenovo laptop was loud on 4 July 2023 (a fact which appears not to be in dispute, it being audible on the video clip taken by the claimant at the time and which the Tribunal was able to watch).
58. Phil Thompson and Kathryn Glover exchanged messages on 9 and 10 July 2023 about the video. Neither considered the video to be particularly illuminating (pages 152 and 153).
59. It was resolved to send the laptop to Lenovo in Bratislava, Slovakia. We refer to the email to this effect of 10 July 2023 from Steve Brown, technical support engineer addressed to Mr Bradshaw (page 189).
60. At 14:06 that day, Mr Brown posed a series of questions to Mr Bradshaw (pages 191 and 192). At 15:24 Mr Bradshaw said that he had asked the claimant for further detail to assist him in answering the questions but in the absence of a reply, answered them based on his knowledge of matters. At page 234 is the message from Mr Bradshaw to the claimant asking him for a reply to Mr Brown's questions. He messaged the claimant at 14:20. At 15:10 Mr Bradshaw said to the claimant *"I need to reply to Lenovo so will answer based on what I know."* He therefore had allowed the claimant just over an hour to reply before he (Mr Bradshaw) furnished the reply to Mr Brown. The claimant explained in cross examination that he had not replied as he was tied up in an important meeting.
61. Mr Bradshaw's reply of 15:24 (pages 191 and 192) is as follows - [for convenience, we underline the questions]: *When did heating instances start to occur?* *The end user had mentioned to me on occasions that the machine had become hot since it was issued in April, however this wasn't thought to be out of the ordinary as their previous machine had done the same thing, The end user is constantly running assistive technology (AT) software (Dragon Naturally Speaking as one example) so the machine is under a higher constant load than a non-AT loaded machine.* *When did the keys start to warp?* *It was reported to me on 4th July I understand it happened that day.* *Did the warping of the keys occur gradually or did this occur in one single event?* *As I understand it, one single event.* *Where specifically was the overheating felt the device open (keyboard only, when carrying device etc)?* *Right hand side of keyboard under the bezel to the right of the keyboard. End user reported that the fan much faster the normal, video shown to me by the end user has audio of the fine sound.* *During the overheating /warping of the keys, were there any other issues experienced?* *No.*

62. On 12 July 2023, Mr Bradshaw told the claimant that *“your overheated machine is getting shipped to Lenovo’s centre in Bratislava for them to investigate the extreme heat, that goes tomorrow”* (page 242).
63. It appears that the workplace adjustment passport was updated in July 2023 by Kathryn Glover and Helen Lovell. (It is unclear exactly when this annotation was made as the table in page 179 contains only the date of 13 June 2023, yet the front page in page 177 refers to July 2023). At all events, at around this time, adjustments to the claimant’s ways of working were recorded. These included (at page 178) a preference for a quieter, darker room without artificial lights due to eye sensitivity. The claimant was permitted to work from home. His home IT equipment consisted of a desk, monitor, keyboard, mouse, laptop raiser and anti-glare screen blockers and filters. There was no reference to any need of a lamp to illuminate the workstation.
64. Unfortunately, the claimant continued to experience IT issues. On 14 July 2023, the claimant was complaining that his (replacement) laptop was running slowly. The infrastructure and data manager attributed the slow running to the installation of Dragon Dictate (page 185). The same day, in a message sent at 9:41, Mr Bradshaw attributed the issue to *“Dragon clashing with Outlook.”*
65. On 20 July 2023 the respondent wrote to the claimant (pages 938 and 939). This concerned a request made by the claimant for disability leave and for an extension of the performance improvement process then underway. It was recorded that the new laptop provided to the claimant on 7 July 2023 was equipped with Dragon and had *Read&Write* installed in line with recommended workplace adjustments. A number of the coping strategy coaching sessions recommended in an ergonomic assessment had been carried out. The respondent’s position was that upon completion of the coaching, all workplace adjustments recommended would then have been implemented or provided. A performance improvement plan was then set out for the four weeks between weeks commencing 31 July and 21 August 2023.
66. On 24 July 2023 Mr. Thompson emailed Ms Lovell and Ms Glover (pages 193 and 194). Mr. Thompson noted the *“exceptionally high number of issues with [the claimant’s] technology provision over the last 12 months.”* Mr. Thompson went on to say that *“we have encountered challenges with Hashim that we have simply not experienced for other users and for those using the same AT products.”* Mr Thompson said that his team had looked for trends and problems but had found nothing other than repeated problems for the claimant. He said *“... We have never had a report of a melting laptop or any with heat damage. Laptops can run hot, cooling fans can cease working, but the devices are designed to shut down. We have analysed the logs from the laptop and see nothing to indicate a thermal issue. The laptop is currently with Lenovo in Bratislava and is under investigation. They are extremely concerned that this has happened to one of their devices as they have never had this reported before. The investigation by Lenovo is being carried out this week and I have asked for details of the conclusion as soon as they are available.”*
67. Mr Thompson noted (in page 193) that the claimant had been issued with multiple laptops and that a great deal of time had been invested in supporting the claimant. Upon each occasion that the claimant had returned a laptop it had been deployed to other users without any further issues. He gave evidence to this effect in paragraph 7 of his witness statement. He accepted in cross examination

that the laptops returned by the claimant had not been reissued to those few employees (5 or so in number) with like needs to the claimant. Mr Thompson fairly accepted that a number of employees have experienced IT issues.

68. Lenovo's report was received on 26 July 2023 (pages 195-206). The model and serial number were noted at page 205 as was the fact that there was no backlight (to illuminate the keys). The keys were noted to be damaged (page 202). Otherwise, there was no damage noted to the external covers (front and rear). The system powered up without any issues. There were no Lenovo diagnostic failures.
69. Lenovo's conclusion was that the damage was caused by an external heat source. The report concluded (page 205) that *"Presuming an internal failure to release such amount of heat to cause keyboard plastics deformation as reported, it would have necessarily left heat traces in internal assembly or would have a destructive impact on the parts in close proximity, what according to the tests and inspection done it is obviously not the case here."*
70. The report was circulated by Mr Thompson to others on 26 July 2023 (pages 195 and 196). Ms Glover and Ms Lovell were amongst those copied in. The report was not shared with the claimant at this time. He (Mr Thompson) in this email drew attention to the respondent's Acceptable Use of IT policy and that within the policy is a provision (in paragraph 2.1) that *'Users SHALL NOT expose any IT equipment to deliberate external stress, sudden impacts, excessive force or humidity (fluids/corrosive materials).'* Mr Thompson was "clear" that there was a breach of the policy given that Lenovo had discounted internal malfunctioning as the cause of the heat source which had caused the external damage to the keys. He said that what further action to take was a decision for management. In paragraph 39 of his witness statement, he said that *"I find it highly improbable that kind of temperature could be generated by the light of a desk lamp, and even if it could, I cannot believe that the claimant would not have been aware of the source of the heat at the time of the events."* The claimant accepted in cross examination that had Lenovo concurred with Mr Thompson's opinion, then his theory would be disproved.
71. On 28 July 2023, an assistive technology trainer and workplace coach had a session with the claimant. The issue appears to have again been with Dragon, this time with it not recognising voice commands (page 226).
72. On 1 August 2023, Mr Thompson and Sarah Smye-Rumsby, senior accessibility specialist (from ATOS) met with the claimant. This was a remote meeting. The meeting was an attempt to resolve the IT issues which the claimant was experiencing at this time. The issue was diagnosed as being that the claimant's *"laptop was not running our VPN connectivity software so he was only partially connected to the network."* It was arranged that the claimant would go to Quarry House in the hope of resolving the matter. We refer to page 251, which is Mr Thompson's email to Michelle McDaid and others (including the claimant) to this effect. The next day, Mr Thompson concluded that the solution was to build a new laptop and then meet with the claimant to conduct a handover (page 256).
73. The respondent commissioned an investigation as had been recommended by Mr Thompson. Oliver Clarke was asked to carry act as the decision manager by Elizabeth Woodeson, director, medicines directorate. Confirmation of his appointment may be found in the email of 4 August 2023 (page 257). He was asked to commission an investigation and then decide whether the claimant's

conduct constituted gross misconduct. Rebecca Diment agreed to act as investigation manager. Debra Coates, civil service HR manager was to provide HR support. Mr Clarke was chosen as he works outside the claimant's directorate. This was the first time that Mr Clarke's had undertaken and conducted a disciplinary hearing.

74. On 8 August 2023, Ms Coates sent to Mr Clarke and Ms Diment a link to the 'Discipline handbook' on the respondent's intranet (pages 259-261). She said that in the "how to assess document attached definition of levels of misconduct that fit this allegation are: **Serious:** serious misuse of departmental assets such as phone/e-mail/Internet (if for gain, this may be gross misconduct in line with the Cabinet Office definitions of internal fraud, see paragraph 15 onwards); failure to follow reasonable instructions with serious consequences, for example, damage to property. **Gross:** Deliberate and gross misuse or damage to departmental property." She then gave some guidance as to process depending on at which level the allegation was to be pitched.
75. Ms Coates then turned to the question of suspension. She said that "Suspension is very rarely given in DHSC." She included (at page 260) the salient parts of the suspension guidance. In the event, the claimant was not suspended.
76. Terms of reference for Ms Diment's investigation were drafted by Mr Clarke (page 265). These provided that the investigation needed to focus on two issues. The first of these was the cause of the damage to the laptop keyboard with the key question being whether the damage was caused deliberately by the claimant. This could be a breach of the respondent's code of conduct and the acceptable use of IT policy. The second question was the truthfulness of the claimant's explanation of the damage with the key question being whether the claimant breached the obligation of truthfulness and integrity set out in the civil service code. In the event, the finalised version of the terms of reference was issued by Mr Clarke to Ms Diment on 10 August 2023 (pages 295 and 296).
77. On 8 August 2023, Mr Clarke emailed Ms Coates (copying in Ms Diment) (page 264). He said that "I'm fairly clear this is a potential case of gross misconduct because it may be deliberate and gross misuse or damage to departmental property. I also think it may be a significant breach of the civil service code's requirement for honesty and objectivity." In a subsequent e-mail of the same date to the same recipients, he attached a draft letter to the claimant. He mentioned in the email that he did not think there was any dishonesty for personal gain and hence did "not include the paragraphs on the Cabinet Office internal fraud database." It is the respondent's policy to refer those suspected of fraud to the Cabinet Office internal fraud database where this is warranted. The claimant was not put on the database.
78. Ms Coates guided Mr Clarke at his request as to the difference between serious and gross misconduct. She replied to him on 8 August 2023 (page 269) that "The key difference is about whether the allegations, if proven, would mean the trust between DHSC and the employee has irretrievably broken down ie if proven on the balance of probability that he damaged the laptop himself and then lied to his manager, could you trust him to be employed going forward? You can set a gross misconduct and bring it down to serious if needed after the investigation. Gross doesn't mean an automatic dismissal if there is significant mitigating evidence. You cannot increase a serious misconduct to gross however."

79. On 9 August 2023 Mr. Clark wrote to the claimant (page 268). He said *"I am writing to advise you that Rebecca Diment has been appointed to investigate whether you deliberately caused the damage that occurred to your laptop on or before 4th July leading to it needing to be replaced, and whether your explanation of the course of that damage was truthful. The purpose of the investigation is to gather and present evidence. The investigation report will show whether, on the balance of probability, there is a case to answer."* The claimant was told that *"Rebecca will be in touch with you shortly to arrange a date when they can interview you (at which you will have a right to be accompanied by a work companion or trade union representative). If you would like to name any witness to Rebecca at this meeting please do so. You should be aware that any information that emerges from this investigation might be used in any misconduct proceedings against you."* A decision had been taken not to inform the claimant of the level of misconduct in the respondent's contemplation at this stage (page 284).
80. Rebecca Diment drew up an investigation plan (pages 297 to 299). She issued letters of invite for interview to Ms Modak, Ms Glover and Ms Lovell (pages 273 and 274). (The latter was issued to Ms Glover and Ms Lovell jointly). The letter said *"I am writing to advise you that I have been appointed to investigate whether Hashim Walayat deliberately caused the damage that occurred to his laptop on or before 4th July leading to it needing to be explained and whether his explanation of the cause of that damage was truthful. You have been named as a witness against Hashim Walayat. I should like to interview you so that I can find out what happened."*
81. On 9 August 2023, Ms Glover emailed Mr Clarke and Ms Diment (page 276) to say that others were involved in the matter. She named Michelle McDaid, Danielle Zemlik, health and safety manager at the claimant's office and *"IT."*
82. On 9 August 2023 at 17:53, Ms Diment invited the claimant to meet with her at an investigation meeting which she had arranged to take place on 16 August 2023 (page 290). She said *"I am writing to advise you that I have been appointed to investigate whether you deliberately caused the damage that occurred to your laptop on or before 4th July leading to it needing to be replaced, and whether your explanation of the cause of that damage was truthful. I should like to interview you so that I can find out what happened."* The claimant was informed of his right to be accompanied by a trade union representative or work colleague.
83. Ms Diment received the claimant's reply at page 312, timed at 18:00 the same day. It read *"I am currently on leave. This mailbox is not monitored. For any urgent work queries contact [email address]."*
84. On 9 August 2023, the claimant was assessed by his GP as to his fitness to work with amended duties for a period of two weeks from 9 until 23 August 2023 (page 294). This was attributable to stress occasioned by IT issues impacting on the claimant's mental health.
85. On 14 August, Shirely Tobin, the claimant's PCS union representative sought a postponement of the investigation meeting. This was due to her non availability.
86. In the event, the meeting was re-arranged for 18 September 2023. The delay was due to the participants' annual leave.
87. In the meantime, Ms Glover was sufficiently concerned about the out-of-office email at page 312 that she contacted Ms Diment about it on 21 August 2023

(page 310). She alleged that it was a fake out-of-office message and contrasted it with the genuine out-of-office email from the claimant of 10 August 2023 at page 314. Ms Lovell shared the concern that the email was an ordinary email designed to appear like an out-of-office reply (see her email of 1 September 2023 at page 319). The claimant denied in cross examination that he did this to delay the process. Ms Lovell in cross examination said that she felt the out-of-office email was “*bizarre*” and that “*it felt deceitful*.”

88. Mr Thompson was asked for his views and said on 1 September 2023 (pages 318- 319) that “*we don’t have a technical way of seeing when an out of office was set.*” However, he did agree that the absence of ‘*automatic reply*’ as part of the text was suggestive of it not being an automated response. Mr Thompson added that he does not know how an automated response could be set without the appearance of the words ‘*automatic reply.*’ There was also the feature of the reply being sent a few minutes from receipt, as opposed to the immediate automated response that may be anticipated.
89. On 15 September 2023 the claimant emailed Ms Diment. He asked for the opportunity to review evidence pertaining to the alleged misconduct in advance of the meeting scheduled for 18 September 2023, and referenced his neurodiverse conditions of ADHD, dyslexia, and dyspraxia (page 331). After seeking advice from HR, Ms Diment assured the claimant that the interview was for the purposes of evidence gathering with no expectation for him to review other material.
90. The claimant reported feeling unwell on 18 September 2023 and requested that the meeting be postponed (page 333). This was granted. The claimant was signed off as unfit to work until 25 September 2023. The interview was re-arranged again, this time for 2 October 2023.
91. Ms Modak was interviewed on 19 September 2023 (pages 458 to 461). She said that she had been made aware of the incident on the day, and that the claimant was coming into Quarry House as his laptop had overheated such that a key had melted. She added that ATOS had informed her that the laptop had been sat on some papers, which were scorched. No photographs were supplied of these. The claimant had not given ATOS an account of what he had been doing prior to the overheating. She had never encountered such an incident before. She recounted that the claimant had a history of raising issues about the laptops issued to him. She had no reason to question Lenovo’s diagnosis of external damage.
92. Ms Lovell and Ms Glover were interviewed together on 20 September 2023 (pages 462 to 464). Ms Glover recounted her history of dealing with the claimant on 5 July 2023 around the extent of his injury and medical treatment. She said that the claimant had told her that it was fortunate that he was at the laptop at the time, as it may have presented a fire risk had he been away from it. He had provided her with the video of the laptop which she confirmed had audio of the fan whirring. She was aware of the claimant having been issued with a number of laptops during his time with the respondent. Ms Glover then commented that the claimant had been untruthful in that he had said in his written statements that performance management processes only started after he had raised a grievance against his previous line manager whereas these had in fact started beforehand. There were concerns about the claimant’s working relationship with others.

93. On 22 September 2023, Ms McDaid was invited to interview (page 351). On 24 September 2023, Ms Diment invited Mr Thompson to interview. The letter is at page 347. On 3 October 2023 Ms Zemlik was invited for interview (page 362). In cross examination, Ms Diment said that she did not interview Mr Bradshaw, taking the view that he would not be able to add anything to what was shown on the video and it being accepted that the video showed symptoms of the laptop overheating from the audio of the fans. It was suggested in cross examination that Mr Bradshaw should have been interviewed in light of what Ms Modak had said (referenced in paragraph 22 of Ms Diment's witness statement) to the effect that there appeared to be a conflict between the photographs showing no scorched paper and a suggestion within ATOS (denied by the claimant) that it had been sat on papers.
94. The interview with the claimant went ahead on 2 October 2023 (pages 465 to 472, with a Teams transcription at pages 480 to 504). It commenced at 11:00 and lasted for about 45 minutes (according to Ms Diment's email at page 358).
95. The claimant gave an account of the events of the morning of 4 July 2023: that he was working at home on one of the hottest days on record, that he left the laptop unattended for around five minutes to make a coffee, on returning to the device he noted the deformation of the enter key, and that he contacted Ms Glover and IT and was advised to go to Quarry House to swap over the laptop.
96. He described his working set up, that it was a hot day, and that he was running a number of applications at the same time. He described the set-up, with the sun shining on his home-desk through the window, the presence of the bottles, the laptop placed on the tablecloth, and a high wattage incandescent lamp creating a *"localised heat pocket."* He was wearing sunglasses for his light sensitivity and so shone this lamp onto the keyboard as the keys were hard to see. He mentioned that he had since learned that the manufacture of the kind of lamp being used had been discontinued. He has replaced it with a low heat lamp. In cross examination, he accepted this to be the first time he had suggested this to be the cause of the damage and explained that he had been trying to "work through" the explanations, and that the first opportunity he got to advance this explanation was at the investigation meeting. The claimant had prepared a note before the 2 October 2023 investigation meeting but had not shared that with the respondent until the meeting took place.
97. On return to the desk after making his drink, he pressed the enter key to wake the laptop and *"the key went in."* He contacted IT and recorded the video (with the audio of the fan) which was sent to Mr Bradshaw. He mentioned *"showing them [IT] what was happening with the laptop."*
98. The claimant also alluded to difficulties with workplace relationships, mentioning the raising of a grievance before the incident. He was also troubled by colleagues' messages about him that were divulged following a Data Subject Access request. He complained of feeling that *"he is being set up."* Ms Diment said that *"it [the investigation] was raised off the back of the formal report that came from the manufacturer"* (page 494).
99. The claimant asked for sight of the report. We know that the respondent had had the report from 26 July 2023 but had not shared it with the claimant or with his trade union at any point to this stage. Plainly, therefore, the claimant's description of the event (and his suggestion of a possible cause being external environmental factors) was given before he knew of the contents of the Lenovo report and them

discounting the damage as being due to internal causes. The claimant complained later in the meeting about not being informed of Lenovo's opinion (page 499).

100. After the interview, Ms Tobin emailed Ms Diment (page 356). She said, *"As part of Hashim's reasonable adjustments, we would like to ask if you could let us have the questions you would like to ask him as part of your investigation in an e-mail please? Could you also include the questions already asked this morning so that he can reconsider them and give a more accurate response please? (I'm sure we would all agree that it would be difficult to recall details of times and work details from early July off the top of our heads). Could we also please request sight of the report relating to the laptop? When accused of misconduct it seems unfair not to make it clear to the member of staff what it is they are being accused of. And again- with reference to Hashim's disabilities and agreed reasonable adjustments, it is helpful for him to have time to digest and understand new information in writing before responding to it. We could then look at re convening the meeting after Hashim has had a chance to read and respond."*
101. Ms McDaid was interviewed on 2 October 2023 (pages 473 and 474). She said that the incident had been notified to her by the claimant on the day of the incident. They had spoken and he had described the event, having *"touched a hot key on his laptop that had melted."* She described the claimant as *"shaken but ok."* Ms McDaid then notified Ms Glover in her capacity as the claimant's joint line manager. She confirmed that the claimant had *"previously raised concerns about the fan on his laptop."* She spoke with the claimant again on 5 July 2023, enquiring of the claimant's welfare. He told her that he had been advised to use *Acriflex* cream and take painkillers.
102. Mr Carter was interviewed on 3 October 2023 (pages 475 and 476). He was aware of the claimant having had IT issues in the past. He had been informed of the incident of 4 July 2023 by a member of his team. He had directed the instruction to exchange the laptop and for the team to take pictures *"as this was an unusual case."* He had not known of a similar occurrence. He did not have any direct contact with the claimant about the matter.
103. On 5 October 2023, Ms Diment sent a copy of the Lenovo report to the claimant and Ms Tobin. She also sent to them the questions to be gone through in the investigation in template question form and re-sent the invite letter and the link to the employee advice section of the respondent's discipline handbook (pages 365 and 367). It follows therefore that the claimant did not see the Lenovo report until this date.
104. The investigation meeting with the claimant reconvened on 13 October 2023 at 09:30 (pages 469 to 472). This was also transcribed by Teams (pages 505 to 529). At this stage, the claimant had the Lenovo report.
105. The claimant repeated his account of the events of the morning of 4 July 2023. He said, *"In summary, the combination of my medical conditions, working environment, leaving the keyboard unattended while making a coffee, direct sunlight, magnified through a glass bottle, very high wattage incandescent lamp, and the operation of CPU-intensive software on my laptop, which was known for overheating issues and soft tablecloth could have created a localised 'heat pocket' sufficient to cause deformation in my laptop's key. Additionally, it's worth mentioning that my laptop is typically set up with the screen fully flat, connected*

to a large monitor as I need this to help with my dyslexia which would have given a direct line of sight to the keys. I agree with the engineer's findings that there was no external damage and the laptop was fully operational after this investigation. If it was intentional to break the laptop then there would be much easier ways to say the laptop was broken. I needed the laptop to be able to work and therefore travelled 40 miles the same day to collect replacement laptop so work would not be impacted. No time was taken off work."

106. The claimant (at page 471) repeated his complaint that a home working assessment should have been carried out by the respondent to assess the suitability of his home working set up. He said this might have identified the need for a backlit or high contrast keyboard and therefore avoided this incident. The introduction of a backlit or high contrast keyboard he claimed would have significantly reduced his reliance on external heat producing light sources *"catering to both my dyslexia and Irlen Syndrome."* He mentioned his need to wear sunglasses (page 508). Towards the end of the meeting the claimant mentioned having discontinued the use of the desk lamp. He said work should have provided a lamp for him to work with at home (page 472).
107. After the reconvened investigation meeting, the same day (13 October 2023) at 13:13, the claimant sent to Ms Diment a number of documents (pages 369 to 378) including the video footage taken immediately after the event, a statement containing replies to the template questions, the template questions themselves (cross referenced to the statement), a health and safety accident report, the engineer's report (from Lenovo) and a transcript of the investigation meeting held that day. (He had gone through the replies to the template question in the interview earlier that day- page 471).
108. The health and safety accident report (completed by Daniele Zemlik) is at page 376. This recorded the incident having taken place at around 11:00 am on 4 July 2023. The injury consisted of a *"burn to thumb from hot keyboard key."* Environmental conditions were reported as *"usual home conditions- nothing unusual."* The claimant accepted in cross examination that he had not told her about the presence or position of the lamp. Ms Zemlik recorded in this form that *"Hashim advised he was working on his laptop sending emails and communicating with IT on Teams as he had issues with Outlook the previous day. He said his laptop was getting louder, he heard the fans and he said pressed the enter key on his device by pressing his thumb onto it to test it and it burnt his thumb as he said it was hot. He advised IT and sent them a picture of the melted key who told him to shut down his device immediately and to attend Quarry House with it and they would issue a replacement."*
109. She asked him how his thumb was. The claimant said that it was burnt. Ms Zemlik recorded that he showed her the thumb which she reported as looking *"slightly darker on the pad on his thumb but I could not see any open wound or blister."* She notes that the claimant had put water on the area for a couple of minutes but had not sought any medical attention at that point. Ms Zemlik made this record at 18:44 on 4 July 2023.
110. For the sake of completeness, the claimant the messaged Ms Zemlik at 12:36 on 5 July 2023 (page 391). He was using the newly issued laptop following his visit to Quarry House the previous day. A large bandage had been applied to his thumb. The health and safety report was updated by her on 14 July 2023 (page 389). She added a remark that the claimant was *"WFH at the time [ie 4*

July 2023]. He said nothing was unusual” and there were “usual home conditions he’s used to.” On 14 July 2023 she checked on the claimant’s welfare, noted that the laptop was with IT for investigation and that no further action was required from a health and safety perspective. *(The information in this paragraph did not form part of the claimant’s statement in pages 369 to 378).*

111. Returning to the statement itself (at pages 369 to 373) the claimant said that his case presented on 2 October 2023 was prior to receiving the template questions (which he was sent on 5 October). He added that in any case, his account “remains the same from day one and has not changed.” He mentioned in page 369 his “documented disabilities” as noted in the workplace passport.
112. He then went on to explain the incident occurred on the morning of 4 July 2023. He said (in pages 369 and 370) that, *“It is worth noting that this day took place during one of the hottest weeks on record, as reported by the Sheffield Star which stated that July 2023 was the hottest July recorded in Sheffield since 1979.”* He went on to say, *“I normally go to sleep at around 6:00 AM due to my condition, I was working at my desk at home at around 7:00 AM (offline) as allows me time to prepare for the day and my employment tribunal case and I officially started work around 10 AM. I left my laptop unattended at around 10:45 AM as I went into the kitchen to make a coffee as I need this to keep me awake and keep me focused (note the laptop was in my direct sight from the kitchen as I was making coffee). I returned to my desk around 11:00 AM and I immediately pressed the enter key as this was a standard way to check if any new messages had arrived, as I pressed the enter key it went slightly in and deformed along with some keys next to the enter key. The fan was making a loud noise which was verified by IT team and can be heard on the video. I immediately phoned my task manager Michelle McDaid and following the call I contacted the IT team (Mike Bradshaw IT technician) to report the incident and during the video call I showed IT the keys/laptop, as requested by IT team I made a video of the keys/laptop which I shared with IT team and later with my line manager Kathryn Glover.”* (The employment tribunal claim mentioned here is a different matter to that with which we are concerned).
113. The claimant then explained the environmental conditions that morning. He said *“The desk is located in an area in the room where the sun rises from this side and directly shines towards me and my desk (it is a large window and patio as well). In an effort to alleviate the stifling heat (hot day) I had inadvertently allowed direct sunlight into the room by opening the window and the patio door. A large glass bottle was already placed near the window (as I use this to drink water from, as my ADHD condition makes it difficult for me to change routines). I recall the bottle was empty at the time, and it could have acted as a magnifying glass, intensifying the sunlight and focused the heat onto the keys. Additionally, my keyboard was illuminated by a very close-by high wattage incandescent lamp (as my laptop is a non-backlight keyboard), which is very bright so I can see the keys (as I wear very dark lens glasses due to my medical condition, Irlen Syndrome, related to bright lights, and documented in my DHSC adjustment passport). However, the downside is that the lamp emits substantial heat as well which was focused towards the keyboard as it was placed on the right hand side of the laptop nearest to the enter key. The lamp (ie bulb) recently stopped working so I had to dispose of it, it then came to my attention that the bulb I used was an incandescent bulb type which are no longer manufactured*

(due to high heat and wattage), the new replacement bulbs are now LED low wattage low heat. This is how I became aware of the type of bulb that I had been using. In the investigation meeting I showed on screen the new LED lamp but I was using which I brought myself as DHSC to date does has not provided any approved lamps."

114. The claimant went on to say that *"The location of my desk with direct sunlight exposure, especially during those early working hours, made the situation vulnerable. The magnifying effect from the empty glass bottle intensified the heat, posing a risk of thermal damage. During the investigation hearing today at 10 am you can see, even in October... that the bright sunlight is shining directly on to the keyboard. The high wattage incandescent lamp, which was a necessity due to my Irlen Syndrome (so I could see the keys) alongside a laptop known for overheating issues, running a CPU- intensive software on a soft tablecloth, compounded the thermal challenges. Compounded by my need for dark lens sunglasses due to my registered medical condition, I was using my laptop, which has a history of reported overheating problems to the IT team and was therefore already prone to overheating issues, on a soft tablecloth covered desk. Running CPU-intensive assisted technology Dragon software (which also caused CPU 100% activity contributing to laptop to heat up) also reported to the IT team previously further escalated the internal heat generation of the laptop/keyboard."*
115. The claimant went on to say that the combination of factors created a localised *"heat pocket"* around his laptop. He continued to use the laptop despite having reported overheating problems. He said that upon pressing the enter key he noted signs of deformation due to the intense heat and promptly reported the matter to Mr Bradshaw. He also reported the matter to Ms Zemlik, in her capacity as health and safety manager.
116. The claimant complained that there had been no *"comprehensive workplace and ergonomic assessment"* of his home to ensure that all necessary adjustments were in place. He went on to say *"such assessment would likely have identified the need for a backlit or high contrast keyboard, mitigating the risk posed by my environment and working conditions. The introduction of a backlit or high contrast keyboard what have significantly reduced my reliance on external, heat producing light sources, catering to both my dyslexia and Irlen Syndrome."*
117. The claimant then mentioned that he had had the opportunity of reading the engineer's report from Lenovo *"which also confirms that there was no other external damage to the laptop, that the keyboard was not backlit, the laptop was still fully operational on that exposure to an external heat source could have caused the keys to deform in the way that I have explained. The health and safety report made at the time (ie 4/7/23) also aligns with my record of the events."*
118. The claimant also drew attention to inappropriate comments from colleagues about him (page 378). These had been revealed following a Data Subject Access request.
119. Ms Zemlik was interviewed on 16 October 2023 (pages 477 to 479). She explained that the claimant had been due to have an assistive technology training session on the morning of 4 July 2023. She received a message at 11:58 to say that he had an issue with his laptop and was going up to Quarry

House. She directed the claimant to see her there after his appointment with IT. She recorded their meeting on the report form (this being the form described in paragraphs 107-110 above). She was copied into photographs of the keyboard by IT.

120. Ms Zemlik was asked by Ms Diment if the claimant had mentioned environmental factors as a likely contributing factor. She (Ms Zemlik) said that he had not. On the report form, she had noted that nothing unusual had been reported by him. Nothing had been reported about his working conditions or set-up. She confirmed her observations of the injuries and need for medical attention as noted in the form and then her surprise the next day (5 July 2023) on being sent a photograph of the thumb heavily bandaged (as we noted in paragraph 110). She had not known of any similar occurrences. A copy of the photograph is in the messages in pages 539 and 540.
121. Ms Diment asked whether a home desk light had been provided as part of the claimant's workplace adjustments (in which the health and safety team had had an involvement since June 2022). Ms Zemlik said that a home desk light had not formed any part of the required adjustments and the claimant had not made the health and safety team aware of any issues with his home working set-up. She said *"If an adjustment is not noted on a report then the individual should notify the health and safety team of any requirements they have so that the team can help them."*
122. On 18 October 2023, Ms Glover emailed Ms Diment and Jade Henderson (civil service HR case manager) in reply to a request for information about lighting needs *"as part of his adjustments"* (page 393). She (Ms Glover) referred to the three assessments commissioned by the respondent (presumably being those referenced in the workplace passport at pages 177 to 184). She highlighted the salient passages around sensitivity to light and that the claimant had been allocated a fixed workstation fitted with light blockers and sited to give of the best combination of overhead and natural light. She noted that the claimant found the noise in the office to be a distraction and that he preferred to relocate to meeting rooms to avoid distractions and to work with no overhead lights. It was noted (at page 394) that no further workplace assessment was carried out after the occupational health report of 17 February 2023. Ms Glover said that that she had *"spent a considerable amount of time with Hashim trying to review his workplace passport with him."* That this is the case is corroborated by the emails at pages 566 to 569 (dated 19 June 2023 and 12 July 2023). In page 566, Ms Glover refers to a workplace passport. According to paragraph 38 of Ms Lovell's witness statement, the iteration of the workplace passport being referred to in page 566 is that at pages 570 to 577. This is duplicated and is the one we have referred to in pages 177 to 184. Ms Glover says that there is a third version of it at pages 716 to 725 (ie additional to the versions at pages 177-184/570-577, and 562-565). The one at pages 716 to 725 was it seems referred to by the claimant in his appeal. Ms Lovell attributes the multiplicity of reports to disagreements over the accuracy of them. This is certainly sub-optimal as it was likely to cause confusion.
123. On 18 October 2023, Ms Diment posed some questions of Ms Modak. She (Ms Modak) replied the same day (pages 397 and 398). She said that the claimant had not mentioned to her (or anyone else in the team) about environmental conditions as a factor in the incident. She said that she had not experienced a similar occurrence while in her role.

124. The issue of whether the damage could have been caused as described by the claimant was put to Lenovo on 19 October 2023 (pages 399 and 400). This was done by citing passages from the claimant's statement at pages 369 to 373.
125. Ms Diment prepared a first draft of her investigation report (pages 402 to 407 and 417 to 422). The version in pages 402 to 407 appears to have been annotated by Ms Diment herself. This records the interviews with the witnesses and with the claimant. She noted (at page 405/page 420) that *"when originally flagged by HW [the claimant] the issue was reported as the laptop overheating"* and the history of the claimant reporting laptop concerns. She also noted that in the investigatory meeting of 2 October 2023, the claimant had suggested environmental factors as a possible cause, a theory which the claimant asserted more strongly in the second interview of 13 October 2023. She noted this to be a theory advanced by no one else.
126. Ms Diment observed the absence of any occupational health reports or recommendations around keyboard requirements or for additional lighting. She opined that thus there was an inconsistency between the claimant's position that there was a need for a comprehensive workplace and ergonomic assessment and the measures already put in place following the recommendations.
127. Ms Diment then concluded that it had not been possible to determine one way or the other whether the claimant deliberately caused damage to the laptop, whilst noting that the environmental factors explanation *"has only been put forward since the start of the misconduct case."* Similarly, she said that it had not been possible to determine one way or the other whether the claimant's explanation of the cause of the damage had been truthful. An additional inconsistency to that noted in paragraph 126 above was noted in reference to Ms Zemlik's observations of the condition of the claimant's thumb on 4 July 2023 and it then being heavily bandaged the next day. She left blank the section *"For discipline cases: Is there a case to answer? YES/NO."*
128. Her draft was sent to Ms Henderson on 18 October 2023. Ms Henderson suggested amendments to Ms Diment's report by the omission of Ms Diment's conclusions in paragraph 127 and the substitution of the words *"It has not been possible to determine"* with alternative wording - that *"It is not within my remit as IM [investigation manager] to decide whether this is proven, however the evidence shows..."* and the addition of the words that there remain *"unresolved issues to be explored further at a hearing and would recommend there is a case to be answered"* (pages 408 to 411).
129. On 25 October 2023, Ms Diment emailed Ms Henderson (page 423). She noted that Lenovo had not yet replied to the enquiry of 19 October 2023. Ms Henderson recommended that she send the report to Mr Clarke with a note that this further information was awaited. Ms Diment had opined in an email to Ms Henderson the day before (page 425) that Lenovo's view was unlikely to change her opinion unless they definitively said that *"yes, those specific environmental conditions could/did cause the damage."*
130. Ms Diment's report then was sent to Mr Clarke on 25 October 2023 (page 434). She mentioned awaiting to hear from Lenovo and also from the claimant about the *"write-up of our second conversation"* (of 13 October 2023).

131. The report itself is at pages 435 to 440 with attachments from pages 441 to 577. The attachments comprise the following documents. There is the accident report made to Ms Zemlik and the claimant's emails and messages referenced in paragraphs 108 to 110, the claimant's report in answer to the template questions referenced in paragraphs 107, 111 to 118, and the interviews to which we have referred with the witnesses and with the claimant (on 2 and 13 October 2023). Also included were the emails and reports referenced above in paragraphs 28, 29, 31, 34, 44, 56, 120 and 122.
132. The final investigation report sent to Mr Clarke was faithful to her two drafts of it. Ms Diment mentioned in addition that the claimant had concerns about his management chain which she did not see as of any direct relevance (albeit she acknowledged the stresses for all involved). Acting on Ms Henderson's advice cited in paragraph 128, she added that it was not within her remit as investigation manager to decide as proven the questions of deliberate damage to the laptop or whether the claimant's explanation was truthful. She recommended that there was a case to answer and that a disciplinary hearing should be convened when completing the section left blank in the draft referenced in paragraph 127. In evidence from cross examination, Ms Diment said that it was her decision that there was a case to answer.
133. On 31 October 2023, Ms Henderson noted that the second Lenovo report had still not yet been received and that Mr Clarke should proceed with the disciplinary hearing based on the information available (page 578). Mr Clarke took the view (as he said in paragraph 14 of his witness statement) that the process was becoming "quite extended" and in paragraph 17 that it "*would not be helpful to anyone, including the claimant, to delay the process further for an answer that might not come [from Lenovo]*" where the enquiry of 19 October 2023 may not "*be definitive anyway.*"
134. On 3 November 2023, Mr Clarke invited the claimant to attend a formal meeting under the respondent's discipline policy (pages 590 and 591). He said in the letter, "*The formal meeting will consider the allegation/s that you deliberately caused the damage that occurred to your laptop on before 4th July leading to it needing to be replaced, and gave a false explanation of the cause of that damage. The report of Rebecca Diment's investigation into these allegations has been sent to me to consider whether misconduct action should be taken. I enclose a copy of this report (including the witness statements) which may only be shared with your companion. Sharing it with other individuals may be viewed as serious misconduct. At the end of the meeting I will decide what further action to take. I must make you aware that the allegations concerning deliberate damage to departmental property and dishonesty are considered to be gross misconduct and may result in dismissal.*" When preparing the letter, Mr Clarke noted (page 586) that deliberate damage and dishonesty are not definitively gross misconduct by reference to the guide mentioned in paragraphs 20 to 22 above.
135. The disciplinary hearing was arranged for 15 November 2023. The claimant was informed of his right to be accompanied by a trade union representative or work colleague. He was told that witnesses do not normally attend disciplinary hearings, but that Mr Clarke may consider allowing witness attendance if necessary.

136. The disciplinary hearing went ahead on 15 November 2023. The notes are at pages 684 and 685 with the Teams recording at pages 595 to 624. The claimant was accompanied by Ms Tobin. Mr Clarke was supported by Ms Henderson. The note records the claimant reading from a prepared statement (pages 629 to 636) and making a number of points. This was to be read with *"my original statement"* (page 630) - presumably a reference to that at pages 369 to 373 mentioned in paragraph 111. Amongst the other points was refutation of the laptop having been sat on paper and the suggestion that Mr Bradshaw should be interviewed (page 630). He also made some points by reference to materials collated by him. It is clear from this that the claimant knew that the issues for the disciplinary hearing were those of deliberate damage to the laptop and giving a false explanation of the cause of the damage. He maintained that his *"recounting of the events has remained unchanged"* involving retracing his actions to recall the events. At page 685, it is recorded that *"OC [Mr Clarke] said his reading was that HW reported the incident at the time as having been caused by the laptop itself overheating and that HW had brought external heat sources in as factors once the investigation started. HW explained that this was because he had taken time to reflect further on possible causes and concluded there could be a combination of factors."* The salient part of the Teams recording at page 614 records Mr Clarke as saying that *"...at the time you thought it was to do with the heat coming from the laptop and that having thought about it subsequently, including having seen the report from the IT technicians, you have thought about other causes and identify what you think."*
137. The claimant in the meeting said he described to Mr Bradshaw the working arrangements and that Mr Bradshaw would have seen that the laptop was not sat on papers. Mr Clarke asked the claimant what he thought may emerge from interviewing him (page 610). The claimant replied, *"I mean, if you just imagine when this incident happened straight away, I'd spoken. I don't know the exact, I'd spoken to my manager and because I'd had issues with my laptop previously, I was able to just contact him directly. So you know, via Teams messages. So whenever I have any kind of issue... So whenever you get an IT issue, contact him. So as soon as this instance happened straight away like I said. So this is my work mobile phone. I turned that on. And called him from here and showed him exactly what was happening. He was able to see exit the layout to set up the noise at the fan was making, and I think that's kind of why."* (The Tribunal thinks that the Teams transcription should read *"...exact layout..."*). It is clear that the claimant considered there to be some benefit in Mr Bradshaw being interviewed as he had shown him the layout in their discussion on the morning of the incident.
138. In evidence given in cross examination, the claimant said he had shown the set up and the incandescent lamp to Mr Bradshaw albeit that the video did not show the overall set up. When asked by Mr Holloway if he suggested to Mr Bradshaw that the lamp was the cause of the heat the claimant replied, *"I showed him."* From this, we infer and conclude that the claimant did not expressly tell Mr Bradshaw on 4 July 2023 that he thought the lamp has caused the damage. Returning to this issue later in the cross examination, the claimant said that Mr Bradshaw had seen the incandescent lamp two inches/ 5 cm above his keyboard. The claimant accepted in cross examination that he had not told Mr Bradshaw about the lamp. Later in cross examination, he said that he had never placed the lamp as close to the keyboard before. Mrs Grace asked the claimant if the respondent knew of his use of this lamp to which he replied, *"potentially,*

they never asked what the home set up was.” He accepted to not having volunteered this information to them before 5 October 2023. Ms Lovell said in cross examination that given the time which she and Ms Glover had spent with the claimant, she was baffled to find that he had not mentioned using a lamp at home. She fairly did not dispute his need for one but was plainly perplexed that it had not featured in discussions. She felt it was out of character for the claimant to not have mentioned it even if he only needed it at home.

139. Mr Clarke confirmed that he had viewed the video. He said *“what I’m testing here, Hashim, is to what extent there is a gap in the evidence? And I think it is limited because we have the video which gives evidence of sort of what Mike saw. And have some team messages from Mike as well. So I feel reasonably confident on that. I just wanted to check it.”*
140. The claimant also introduced evidence that the desk lamp was capable of causing the keys to warp and medical advice to wear dark glasses and use a bright lamp. Mr Clarke questioned the tension between the claimant’s need for a bright lamp on the one hand and the workplace assessments’ emphasis on the claimant’s need for natural light on the other (page 612).
141. The claimant said he had visited a local shop and had been told that the incandescent bulb being used on the day is no longer manufactured and poses a fire risk due to the amount of heat generated.
142. He also said he had applied the bandage seen by Ms Zemlik on 5 July following medical advice to keep his thumb free of infection. He added that replacing a melted key was an easy fix, with no need to involve technical support and inexpensive materials of around £2 per key. The claimant asserted that before lodging his grievance against Ms Glover on 4 November 2022 he had no formal warnings on record. He also alluded to workplace issues with colleagues, referencing the messages at page 635 in support.
143. Mr Clarke questioned the mechanics of the incident (page 615 and 616). He questioned the claimant as to whether the key was warped upon him returning to the laptop or the key only warped when the claimant attempted to wake up the device on his return to it from making himself a drink. The claimant said that he was not concerned about the fan noise as this was a common occurrence, he pressed the key, and it then warped.
144. Mr Clarke decided to adjourn the disciplinary hearing so that he could consider the materials produced by the claimant. He said (at page 620) that his decision swings on two main factors. One of these was the feasibility of the keys being warped by the lamp. He mentioned that the respondent had been in touch with Lenovo but not yet heard anything. He mentioned *“I don’t want this to drag on forever because it’s not good for anyone.”* The second issue of concern to him was about the need for a lamp and the *“sort of rationale for having a lamp near the laptop...”* He did not question that the claimant was using the lamp. What was in question was his need for it.
145. On 17 November 2023, the claimant sent further materials to Mr Clarke. This consisted of the statement at pages 629 to 635 presented at the hearing of 15 November 2023. This document made reference to the optician’s recommendation for a need for glasses for work and for lamp and backlit keyboard (page 636), research on incandescent lamps causing key warping (page 637), and correspondence with IT regarding fan noise and laptop

overheating (page 638). (These in fact are the messages about the incident reports mentioned in paragraph 57 above). Also enclosed was a quote from Amazon for key replacement (£5.99 for five keys) (pages 626 and 627), an inquiry with Apple who confirmed the possibility of an incandescent lamp warping keys (page 628), an engineer's opinion (pages 642 and 642), and an email from a departmental disability network group highlighting issues with Lenovo ThinkPads (pages 639 -641).

146. Upon the latter, Mr Thompson said in paragraph 10 of his witness statement that it may be expected that there would be some systems failures given the number of ThinkPad users but that no other users of them with the assistive technology installed upon them had as many issues as did the claimant. He attributed this (in paragraph 15) to the claimant's practice of having so many applications open at a time. He accepted (in paragraph 27) that running a laptop in this way can lead to it running hot which would then trigger the fans to cool down the machine.
147. In the statement the claimant attributed the damage to "*collective environmental issues*." He said that Mr Bradshaw would have seen the layout from the live video call and the absence of paper beneath the laptop. He said that Mr Bradshaw would also have heard the fan noise – the respondent does not in any case dispute the fan noise confirmed by the audio video clip. He denied any intention to cause damage to the laptop and made the point that there were much easier ways to achieve that if such was his intention.
148. The optician's report is dated 14 November 2023. This confirmed Irlen's Syndrome. The report read that the claimant "*does have require glasses for his work and I would recommend further help which work can provide which is backlit keyboard and desk lamp*." Mr Clarke said in paragraph 30 that he was "*struck*" by the fact of the optician's report having been obtained the day before as part of a routine eye test.
149. The claimant's research (page 637) confirms the intensive heat properties of incandescent bulbs. The report said that there is a risk of warping where the key is exposed to temperatures of in excess of 105 degrees and the ABS plastic material in the keyboard will not dissipate the heat "*leading to localised hotspots*."
150. The electrician's report is from Mr Khan of Ace Electrical Solutions Ltd. He confirms the significant amount of heat generated by incandescent lightbulbs. He says that prolonged exposure to excessive temperatures can lead to deformation or warping of ABS or polycarbonate plastics. Localised heating and damage may be caused by prolonged exposure and lack of heat dissipation. The risk may be mitigated by use of LED bulbs and keeping heat generating devices a safe distance from electronic equipment.
151. Mr Clarke made some further inquiries of Ms Glover. She confirmed on 21 November 2023 (page 646) that the claimant was never keen on coming into the office because he found the lighting difficult and the chat and activity of other staff to be a distraction given his ADHD. She had never seen him use a desk lamp while in the office. She said he used light blockers on the fixed desk which had been allocated for him but that he preferred to work from a small meeting room where he could turn off the lights or from a first-floor office where no one else works. She said that he had never referred to using a lamp nor having been recommended to use one notwithstanding that a lot of time was spent

discussing his needs. She confirmed that all the discussions had been about artificial light being a problem for him and that darkness and natural light was preferable. She concluded “*I have never seen him wearing glasses of any kind- nor has Helen (Lovell) or his task manager other recent months, Michelle [McDaid].*”

152. The disciplinary hearing resumed on 21 November 2023 (pages 686 to 688 with the Teams transcript at pages 648 to 670). Mr Clarke accepted that heat, including heat from a lamp, can cause plastic to warp, as he said in paragraph 39 of his witness statement. In paragraph 12 a at page 687, Mr Clarke said that the claimant's case had changed over time, from initially saying the damage was from the overheating to then focussing on the role of the desk lamp and that he did not find it credible that the claimant would not have been aware of the heat source. (Paragraphs 12 b to e deal with the other factors feeding into Mr Clarke's deliberations summarised below in paragraphs 156 to 160).
153. The discussion then turned to the optician's report. Mr Clarke noted that it was dated as recently as 14 November 2023. Mr Clarke appeared to be concerned that the report was contemporaneous with the first disciplinary hearing and questioned the claimant as to whether he had received any earlier medical advice in similar terms. He found the claimant to be evasive when asked about this, given the diagnosis of Irlen's Syndrome was made in 2013.
154. He then relayed to the claimant what he had learned from Ms Glover. The claimant sought to explain away her not seeing him using a lamp on the basis that he would rarely type on the keyboard, as he would try to make use of the assistive technology such as Dragon Dictate. He maintained that others including Ms Tobin would be able to confirm that he routinely wore sunglasses. Ms Tobin confirmed that she had seen the claimant wearing sunglasses at some of the meetings which she had attended with him. The claimant said he did not always wear them when needed as he did not wish to appear “*the odd one out.*”
155. The claimant reiterated that management had an agenda against him because he had raised grievances against them.
156. After a nine minutes' adjournment, Mr Clarke informed the claimant that he had reached a decision which was to dismiss him without notice. He said that he had concluded that the damage to the laptop had been deliberate and that the claimant had not been honest about the cause of the damage.
157. Mr Clarke set out his rationale. He said that the claimant's account had changed over time from initially saying the laptop overheating was the cause to suggesting a combination of a range of possible heat source, to focusing particularly on the role of the desk lamp. He said that the claimant had explained this by saying that he had thought more about the causes when the investigation was launched. Mr Clarke did not find it credible that it would not have occurred to the claimant to consider the desk lamp as a possible cause given how obviously and noticeably hot it would have been if his subsequent explanation of the incident was true (although Mr Clarke did accept that it was possible for a hot lamp to melt the plastic keys).
158. Mr Clarke was also concerned that the claimant had failed to mention at the meeting held on 15 November 2023 that the optician's report had been obtained only the day before and that it was strange that he had not volunteered information that the medical evidence was obtained so recently. He was also

concerned about the conflict between the claimant's account of routinely wearing dark glasses and using a desk lamp against his line manager's account that she had seldom seen him wearing dark glasses and that when in the office preferred to work in a room with the lights off and did not require a desk lamp.

159. Mr Clarke was sceptical as to the claimant's need to use a bright desk lamp on the day in question when on the claimant's account bright sunshine was on the keyboard, particularly given the advice to rely upon natural light as much as possible because of the Irlen Syndrome. He also questioned the claimant's need for a bright desk lamp as such had not featured in the workplace passports and assessments.
160. There were other inconsistencies which troubled Mr Clarke. One such was the question of whether the claimant was at his desk at the time of the incident or whether he was away from the desk making coffee. There was the question of whether the laptop was sat on paper which had scorched and inconsistencies about the position of the sun. There was also an issue about the number of keys which had been damaged and the claimant's reports about the extent of his injury. Mr Clarke did not have the Met Office weather report at pages 116 to 129 referenced in paragraph 54 when he made his decision.
161. The decision letter is at pages 682 and 683. Mr Clarke said in this letter: *"The allegation that was investigated was as follows: you deliberately caused the damage that occurred to the laptop on or before 4th July leading to it needing to be replaced and gave a false explanation of the cause of that damage during the meeting. During the investigation, and at the disciplinary meeting, you gave your position that the damage was caused accidentally by a combination of factors particularly your use of a bright desk lamp near to your keyboard as a result of your having Irlen syndrome. I have carefully considered all the circumstances including: the report of the investigation conducted by Rebecca Diment in which she interviewed you and range of others with knowledge of the incident, the notes of her interviews, the technical report from the laptop manufacturer, your representations at our meetings, and the additional evidence you provided and I gathered between our first and second meetings.*
- I have concluded that on the balance of probabilities you are giving a dishonest account of its causes thereby breaching the civil service code. I set out my reasons for this in detail during our meeting and they are reflected in the meeting notes but in short: your account of the causes of the incident changed over time, I do not find it credible that the lamp only occurred to you as a potential factor weeks after the incident (given the obvious heat it would have needed to be generating). Evidence from your line and task managers and your workplace adjustment calls into question your assertion that you routinely wear dark glasses and use a bright desk lamp, and the medical evidence for this you referred to in your meeting turned out to have been sourced the previous day. There were a range of small inconsistencies within your account and between your account and other evidence. These included whether you were at your desk at the time of the incident or not, whether paper was scorched, the number of keys affected, the position of the window, on the extent of the thumb injury.*
- In deciding the appropriate sanction, I carefully considered the mitigating factors you highlighted in our meeting. The most relevant one was that the cost of replacing the damaged laptop keys was small, but that did not weigh heavily in my decision on sanction as the gross misconduct related principally to your*

dishonesty, rather than the cost to the department of the laptop damage. You also raised in mitigation that you had not gained anything from the incident or taken any time off, and that my decision would have a significant impact on your life. I did not consider these were significant mitigating factors as they do not help explain or excuse your dishonesty.

The Department of Health and Social Care's disciplinary policy provides examples of what may be considered gross misconduct: this includes significant or repeated breach of the civil service code and deliberate and gross misuse or damage to departmental property.

After considering all the relevant factors, I concluded that your employment with the Department of Health and Social Care should be terminated due to gross misconduct through breaching the civil service code requirements of honesty and integrity in being repeatedly dishonest in your accounts of the damage to the laptop. I consider the relationship of trust and confidence between the department as employer and you as employee to be irrevocably breached and in line with the department's discipline policy the sanction for gross misconduct is dismissal without notice and without pay in lieu of notice as set out in the department's discipline handbook."

162. In paragraph 47 of his witness statement, Mr Clarke said, *"Ultimately, I did not think that I would ever be able to conclusively settle on a single explanation for the damage, but on the basis of the evidence I had before me, and on the balance of probabilities, I believed there was significant dishonesty in [the claimant's] account of events, and that the claimant had not been truthful about the way in which the damage had occurred to his laptop."* Mr Holloway confirmed on behalf of the respondent that dishonesty was the sole reason for the claimant's dismissal. The Tribunal therefore need not be concerned with the issue of deliberate property damage. The Employment Judge asked Mr Clarke by what standard he was judging the claimant's honesty. He replied, *"he was dishonest, consciously not telling the truth, not inadvertent, knowing dishonesty."*
163. Mr Clarke confirmed that the decision had been communicated on 21 November 2023 and that the dismissal was to take effect from 28 November 2023. In cross examination, he confirmed that the reference to *"the [undated] meeting"* in the first paragraph of the dismissal letter was to the disciplinary meeting.
164. In evidence given in cross examination, Mr Clarke accepted that the claimant could not be criticised for the failure to reply to the questions answered on his behalf by Mr Bradshaw in paragraph 60. He said he had factored this into his decision making. He agreed with Ms Sherratt that no real significance should attach to the issue of scorched paper. He said that the issue of the claimant wearing dark glasses or not was of potential relevance.
165. It was suggested that there was nothing unreasonable about the claimant not offering an explanation until the investigation meeting, which was the proper forum to do so. Mr Clarke replied, *"He should give information about the malfunctioning laptop, which he did do."*
166. It was suggested to Mr Clarke that Mr Bradshaw should have been interviewed. It was suggested that Mr Bradshaw may have been able to say if he'd seen a lamp and if the claimant was wearing dark glasses. Mr Clarke replied that, *"I*

didn't consider that. I thought the video provided evidence of the video call. I don't think he could have said the lamp could cause the damage as that had already occurred." It was suggested that Mr Bradshaw could also have confirmed that he thought the laptop was overheating and had agreed with the claimant that was the case. Mr Clarke said that *"I knew that."* He denied that interviewing Mr Bradshaw would have made any difference to the outcome.

167. Mr Clarke accepted that heat from the lamp could have caused the damage. However, he did find it difficult to see how it would not have been apparent to the claimant that a lot of heat would have to be coming from the lamp such as to cause the damage. He maintained this to be the case even where the claimant only found out in August 2023 about the amount of heat generated by incandescent lamps. He denied conflating the claimant being wrong about the cause of the damage and dishonesty.
168. Mr Clarke accepted that the claimant had offered up the explanation of external heat damage before he had seen the Lenovo report. In paragraph 38 of his witness statement, Mr Clarke said that *"there were a number of issues with his account and how it had developed over time that between them led me to the conclusion that he had been and continued to be dishonest. He had initially given a very confident account of what happened and why and changed this only once it was demonstrated by the manufacturer that it could not be true: there was no suggestion before the investigation was instigated that there could have been any other cause of the damage."* Mr Clarke denied getting the chronology of events wrong by finding that the claimant had changed his story to suit the Lenovo report and that but for that error the outcome may have been different. He attached significance to the claimant not having offered external heat damage as an explanation before the investigation commenced. Mr Clarke said that the claimant's explanation after receipt of the Lenovo report focussed more on the external heat source while accepting there was a consistency with what the claimant had said before receipt of it.
169. Mr Style was the appeals officer. He says in paragraph 6 of his witness statement that, *"I understood my role as appeal manager was to consider the arguments put forward by the claimant as to why the decision taken to dismiss him for dishonesty (a breach of the civil service code) was wrong or unreasonable. That meant considering whether the decision was a reasonable one based on the evidence gathered, considering any new evidence the claimant presented and assessing whether the process followed overall had been procedurally fair."*
170. Mr Style agreed to an extension of time for the appeal. This was presented on 8 December 2023 (pages 695 to 706). The *"high level grounds of appeal"* were given as *"procedural flaws (ie key witnesses not interviewed and not waiting for manufacturer response to my key warping scenario), inconsistency of treatment (ie disproportionate punishment for a minor incident), unfair reason for dismissal (alleged dishonesty but not taking my medical conditions into account, such as ADHD), new evidence provided (for example from IT Team and others confirming that I wore dark glasses at work, letter from dyslexic specialist re the need for a lamp, historical laptop overheating issues etc) and also further mitigating circumstances."*
171. The claimant went on to say that his account showed *"a consistent narrative of the incident's cause, mainly focussing on the heat from the lamp and*

environmental factors.” He said that his understanding had developed around the heat generated by the incandescent lamp. He added that the lamp was normally positioned “away from the keyboard, so I wouldn’t have noticed the extent of the heat it emitted. However, on the day of the incident I had to move the lamp closer to the keyboard to see the keys than usual due to direct sunlight causing visual discomfort, exacerbated by my Irlen Syndrome. This unusual positioning of the lamp could have led to a localised heat effect on the keyboard keys. Note: The date of the incident was recorded as one of the hottest days on record.”

172. The claimant included a number of other points, including that the timing of the optician’s report should not affect its validity and the production of further evidence in support of his case. In appendix one of his appeal, the claimant produced statements from three others (including Mr Bradshaw and Ms Diment) that they had seen the claimant wearing dark glasses on occasions. Appendix two was a report from Vicky Shaw, dyslexia specialist dated 19 November 2023. This confirmed that a backlit keyboard can help mitigate visual stress. A desk lamp would “allow for personalised control over the level of illumination, reducing glare and minimising visual distortions” in addition to turning off overhead lighting. Appendix three was another report from the electrician Mr Khan which contains the same information as that in pages 642 and 643 - (the first report was dated 17 November 2023 whereas that in appendix three was dated 16 November 2023). The claimant also added evidence (in appendix 4) of overheating of laptops from the use of assistive technology, from his GP (in appendix 5) of the impact of ADHD on his memory and a copy of the workplace adjustment passport (noting that no Display Screen Equipment assessment has been carried out). It may be thought curious that the claimant was pursuing the question of the overheating of laptops in light of the Lenovo report. The claimant sought to explain this in cross examination by saying that it was advanced “to show that I was not dishonest” – presumably in reference to advancing the overheating theory on and immediately after 4 July 2023.
173. Ms Lovell said in paragraph 43 of her witness statement that she had seen the claimant wearing dark glasses only once, that being at a one-to-one meeting in October 2023. She accepted in cross examination that he did need to wear them, but just that he had not done so generally in Teams calls with her.
174. The claimant (in paragraph 5.1 at page 700) gave details as to why Mr Bradshaw should be interviewed. This was because he was the first point of contact after the incident and with whom the claimant had a video call. This, said the claimant, showed him wearing dark glasses, the position of the desk and the desk lamp, the situation of the laptop (on a tablecloth and not on paper) and the overheating causing the cooling fans to operate, detectable by the noise they make. He also referenced the small cost of key replacement.
175. The appeal was heard on 3 January 2024. The notes are at pages 726 to 730. The Teams transcription is at pages 740 to 763. The claimant was accompanied by Ms Tobin. Mr Style was supported by Caroline White of HR.
176. The claimant went through his points of appeal. Little in the way of additional information was forthcoming than that set out in his written appeal - (at any rate, the Tribunal’s attention was not drawn to anything in either set of notes of any significance). Ms Tobin said that Mr Bradshaw ought to have been interviewed.

She added that no workplace assessment had been carried out at the claimant's home (page 729).

177. On 12 January 2024, the appeal decision was sent to the claimant (pages 737 to 739). The appeal was not upheld. Mr Style gave the following reasons in his letter.

"The investigation, decision making and appeal processes have been conducted fairly, consistent with departmental policy.

In particular I do not consider that the decision not to interview Mr Bradshaw materially compromised the investigation or decision-making processes, given the range of other evidence that was available. Specifically, evidence about prior reports to the HelpDesk of concerns about the heat of the laptop was the available to the decision manager, through copies of messages from Mr Bradshaw which you submitted. Similarly I do not think that additional evidence from Mr Bradshaw on any of the points listed in paragraph 5.1 of your appeal would have affected the decision manager's judgement as to whether, on the balance of probabilities, you had been dishonest.

I do not consider that the information and arguments in respect of your reasonable adjustments- in particular, the use of Dragon Dictate, the need for a desk lamp, the reasons for its positioning, and the wearing of dark glasses- or the impact of ADHD on short term memory, change the fundamental judgement that you would have been aware at the time of the incident and immediately afterwards had the lighting setup generated sufficient heat to cause the damage to the laptop under consideration. I therefore concur with the decision manager's judgment that on the balance of probabilities you gave a dishonest account and conclude that the rationale set out by the decision manager at paragraph 12a of the record of the disciplinary meeting on 21st November 2023 was sound.

I acknowledge that the cost of the damage to the laptop is not in and of itself very great. However, the key factor in the decision to dismiss as set out in the letter 27 November 2023 was "breaching the civil service code requirements of honesty and integrity in being repeatedly dishonest in your accounts of the damage to the laptop." I concur with the decision manager's judgement that dismissal without notice and without pay in lieu of notice was a reasonable and proportionate sanction in line with the department or policy, given the paramount importance of trust and confidence between the department and its staff, and how central compliance with the civil service code is to that relationship.

This decision is final."

178. In paragraph 16 of his witness statement, Mr Style said that *"I could see no errors or unfairness in the investigation or disciplinary process."* In paragraph 21 Mr Style said that he did not find the claimant to be credible. He opined that, *"Had the lamp actually generated the kind of heat necessary to cause the plastic keys to melt in the way described, the claimant would surely have been aware of that at the time of the incident. He made no mention of other potential reasons for the damage until after the manufacturer's report disproved his original explanation. None of the information he provided about the events after receiving the report from Lenovo or after the investigation stage was unknown to him. He could have provided a full account at the start, but he didn't, and his explanations all appeared contrived to fit. In the circumstances, it was a reasonable response to dismiss him."*

179. Mr Style adopted a similar stance to Mr Clarke upon the issue of the need to interview Mr Bradshaw. He agreed with Mr Clarke that it was implausible that he would not be aware of the lamp as the heat source it was the lamp that caused the damage and that failure to mention it in his initial account rendered the claimant dishonest. Like Mr Clarke, Mr Style denied being incorrect about the chronology of events and that the claimant's explanation about the external damage was volunteered before he saw the Lenovo report discounting internal damage. Mr Style said that *"for a lamp to cause that damage, it'd be apparent. It was reasonable to offer that explanation at the time."*
180. In evidence given in cross examination, the claimant accepted that it is not his case that any of the relevant medical conditions referred to in paragraph 3 above have any impact on his ability to tell the truth. The claimant qualified this answer by commenting that *"short term memory can be affected. Communication can be impacted."*
181. It was suggested to him by Mr Holloway that heat such as to warp a key on a laptop would be so obvious it amounted to dishonesty not to venture that possibility. The claimant replied, *"I didn't know it was the lamp, I thought it was overheating."*

The issues in the case

182. The issues in the case were identified at the case management hearing which came before Employment Judge Shepherd on 16 October 2024. These are now set out – *[we have omitted the remedy issues identified as (subject to what was said in paragraph 5 above, this was to be the subject of a subsequent remedy hearing if required)].*

"The Issues

The issues the Tribunal will decide are set out below.

Unfair Dismissal

- 1. Was the Claimant dismissed by the Respondent? If so, what was the reason for his dismissal and was it a potentially fair reason (i.e. misconduct)?*
- 2. If so, was the decision to dismiss the Claimant within the band of reasonable responses that a reasonable employer might have adopted in those circumstances? In determining this issue, the tribunal should consider:*
 - a. Did the Respondent have a genuine belief in the Claimant's guilt?*
 - b. Was that belief formed on reasonable grounds?*
 - c. Did the Respondent carry out a reasonable investigation?*
- 3. If so, did the Respondent follow a fair procedure in dismissing the Claimant?*

Wrongful Dismissal

4. *Was the Claimant entitled to notice of termination of employment (either statutory or contractual)?*
5. *If so, how much notice was the Claimant entitled to?*
6. *Was the Claimant's conduct such that the Respondent was entitled to treat it as a repudiatory breach of contract?*

Discrimination Arising From Disability

7. *What was the 'something arising in consequence' of the Claimant's disability? The Claimant will assert that the 'something arising in consequence' of his disability was the use of a lamp he used to assist him with his disability of Irlen Syndrome.*
8. *Did the Respondent treat the Claimant unfavourably because of the 'something arising in consequence' of his disability? The Claimant will assert that the unfavourable treatment was:*
 - a. *Being subjected to disciplinary action as a result of damage to a plastic cap on his laptop; and*
 - b. *Being dismissed for that damage*
9. *If so, was the unfavourable treatment a proportionate means of achieving a legitimate aim? The Respondent relies on the following legitimate aims:*
 - a. *Maintaining fair, consistent and effective management of the conduct of the Respondent's workforce; and*
 - b. *Having honest and trustworthy employees."*

The relevant law

183. We now set out the relevant law. We shall start our analysis with the law of unfair dismissal.
184. Serendipitously, HHJ Tayler very recently conducted a very helpful review of the principles in **Lamb v TEVA UK Ltd** [2026] EAT 8 (and referenced in paragraph 60 of Mr Holloway's submissions). HHJ Tayler's exposition of the principles is unimprovable and we make no apology for setting it out in full. We shall have to add some other principles of law to align our statement of relevant law with the facts of the case. We do so after the following citation from **Lamb v TEVA- [the bold type is that from the citation]**.

“The Law

29. Section 98 Employment Rights Act 1996 (" ERA ") provides:

98 General.

- (1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—
 - (a) **the reason (or , if more than one, the principal reason)** for the dismissal, and
 - (b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.
- (2) A reason falls within this subsection if it— ...
 - (b) **relates to the conduct of the employee** , ...
- (4) Where the employer has fulfilled the requirements of subsection (1), the determination of **the question whether the dismissal is fair or unfair** (having regard to the reason shown by the employer) —
 - (a) depends on whether **in the circumstances** (including the **size and administrative resources** of the employer's undertaking) the **employer acted reasonably or unreasonably** in treating it as **a sufficient reason for dismissing** the employee, and
 - (b) shall be determined **in accordance with equity and the substantial merits** of the case. [emphasis added]

30. The fundamental test in a claim of unfair dismissal is that set out in section 98 ERA . There are three steps in the analysis:

- 30.1. the employer is required to establish the reason, or principal reason, for dismissal; for convenience, I will refer to the reason, or principal reason, as "the reason" for dismissal; at this stage the Employment Tribunal considers the factual reason for dismissal
- 30.2. the reason for dismissal established by the employer must be a potentially fair reason
- 30.3. if the employer establishes that the employee was dismissed for a potentially fair reason, the Employment Tribunal will go on to determine whether the dismissal was fair or unfair on application of the provisions of section 98(4) ERA ; fairness is determined on a neutral burden of proof.

31. The first issue for the Employment Tribunal is the reason the employer had for

dismissing the employee. The words "it is for the employer to show" means that it is for the employer to establish in evidence the reason for dismissal.

32. In **Croydon Health Services NHS Trust v Beatt [2017] ICR 124**, Lord Justice Underhill considered what is meant by the term "reason" for dismissal, at Paragraph 30:

30. What tends to be treated as the classic expression of the approach to identifying the "reason" for the dismissal of an employee for the purpose of section 98 and its various predecessors is the statement by Cairns LJ in Abernethy v Mott Hay & Anderson [1974] ICR 323, at p. 330 B-C, that:

"A reason for the dismissal of an employee is a set of facts known to the employer, or it may be of beliefs held by him, which cause him to dismiss the employee."

As I observed in Hazel v Manchester College [2014] EWCA Civ 72, [2014] ICR 989, (see para. 23, at p. 1000 F-H), Cairns LJ's precise wording was directed to the particular issue before the Court, and it may not be perfectly apt in every case; but **the essential point is that the "reason" for a dismissal connotes the factor or factors operating on the mind of the decision-maker which cause them to take the decision** – or, as it is sometimes put, what "motivates" them to do so (see also The Co-Operative Group Ltd v Baddeley [2014] EWCA Civ 658, at para. 41). [emphasis added]

33. If the employer fails to establish the factual reason for dismissal, the complaint will succeed.
34. The second question for the Employment Tribunal is whether the reason established by the employer is one of the potentially fair reasons for dismissal, provided by section 98(2) and 98(1)(b) ERA . A reason that relates to the conduct of the employee is a potentially fair reason for dismissal: section 98(2)(c) ERA .
35. If the employer does not establish that the factual reason for dismissal was one of the potentially fair reasons for dismissal, the complaint will succeed.
36. If the employer establishes the factual reason for dismissal, and that it was a potentially fair reason, the Employment Tribunal will go on to consider, on a neutral burden of proof, whether the dismissal was fair. Section 98(4)

ERA requires that the Employment Tribunal considers a number of factors to determine the core question of whether the dismissal is fair or unfair. The Employment Tribunal must have regard to the reason shown by the employer; i.e. the factual reason for dismissal and the potentially fair category of reason into which it falls. The Employment Tribunal must consider all the relevant circumstances, including the size and administrative resources of the employer's undertaking. Having regard to the reason shown by the employer, the Employment Tribunal must decide whether the employer acted reasonably or unreasonably in treating it (the reasons established by the employer) as a sufficient reason for dismissing the employee, which shall be determined in accordance with equity and the substantial merits.

37. The Employment Tribunal must not substitute its view for that of the employer. Employment Tribunals apply a range, or band, of reasonable responses test. In **Hewston v Office for Standards in Education, Children's Services and Skills** [2025] EWCA Civ 250, [2025] I.C.R. 1270, Underhill LJ considered the origin of the test and its ongoing applicability, while emphasising the underlying statutory test:

15. **It is very well-recognised that a decision to dismiss may be reasonable even where another employer, or the tribunal itself, might have taken the view that a lesser sanction was sufficient**; and it follows from the statutory language that in such a case the tribunal must find the dismissal to have been fair. **This is generally referred to as "the range [or band] of reasonable responses" approach**. After some confusion in the EAT authorities, arising from a concern that that formulation encouraged tribunals to apply a lesser level of scrutiny than the statute requires, this court gave authoritative guidance as to the correct approach in *Foley v Post Office* [2000] ICR 1283: see the judgment of Mummery LJ at pp 1291–1293. **It endorsed the range of reasonable responses approach**, but it is important to note that Mummery LJ emphasised that that did not mean that a tribunal can only find unfairness where the employer's decision has been "perverse" (see p 1292D–E); he also observed that in many cases reference to the range of reasonable responses is an unnecessary gloss (see p 1292F–G). It is important to be alert to the possibility that the tribunal has failed to heed that message and has been deflected by the invocation of "the range of reasonable responses test" from its statutory responsibility to decide for itself whether the employer "acted reasonably or unreasonably" in deciding to dismiss

the employee (for the identified reason) . [emphasis added]

38. In University of Exeter v Plaut [2024] EAT 159 , I made a similar point:

38. The concept of a band of reasonable responses prevents the Employment Tribunal from substituting its view for that of the employer. It does not preclude the Employment Tribunal from holding that the employer has acted unreasonably if no reasonable employer would have dismissed. **The band of reasonable responses is not so elastic that no employer can ever break it.** As Bean LJ observed in *Newbound v Thames Water Utilities Ltd [2015] EWCA Civ 677, [2015] IRLR 734 at paragraph 61* :

The 'band of reasonable responses' has been a stock phrase in employment law for over thirty years, but the band is not infinitely wide. It is important not to overlook s.98(4)(b) of the 1996 Act , which directs employment tribunals to decide the question of whether the employer has acted reasonably or unreasonably in deciding to dismiss 'in accordance with equity and the substantial merits of the case'. This provision, originally contained in s.24(6) of the Industrial Relations Act 1971 , indicates that in creating the statutory cause of action of unfair dismissal Parliament did not intend the tribunal's consideration of a case of this kind to be a matter of procedural box-ticking. As EJ Bedeau noted, an employment tribunal is entitled to find that dismissal was outside the band of reasonable responses without being accused of placing itself in the position of the employer. [emphasis added]

39. Employment Tribunals are often assisted, when considering misconduct dismissals, by the guidance given in British Home Stores Limited v Burchell [1978] IRLR 379 :

2. ... What the tribunal have to decide every time is, broadly expressed, whether the employer who discharged the employee on the ground of the misconduct in question (usually, though not necessarily, dishonest conduct) entertained a reasonable suspicion amounting to a belief in the guilt of the employee of that misconduct at that time. That is really stating shortly and compendiously what is in fact more than one element. First of all, there must be established by the employer the fact of that belief; that the employer did believe it. Secondly, that the employer had in his mind reasonable grounds upon which to sustain that belief. And thirdly, we think, that the employer, at the stage at which he formed that belief on those grounds, at any rate at the

final stage at which he formed that belief on those grounds, had carried out as much investigation into the matter as was reasonable in all the circumstances of the case. ...

40. In **Boys and Girls Welfare Society v McDonald** [1997] ICR 693, His Honour Judge Peter Clark emphasised that, while **Burchell** provides useful guidance, the fundamental principles are to be found by reading the clear words of **section 98 ERA**. HHJ Clark also noted that **Burchell** was decided before a change in the burden of proof. Where an employer has established the reason for dismissal, and that it is a potentially fair reason, the fairness of the dismissal is determined on a neutral burden of proof. HHJ Clark emphasised the importance of an Employment Tribunal considering whether there has been an adequate investigation, in addition to considering whether there were reasonable grounds for the employer forming a belief that the employee was guilty of the alleged conduct.
41. In **Reilly v Sandwell Metropolitan Borough Council** [2018] UKSC 16, [2018] ICR 705, the Supreme Court considered the extent to which the analysis in **Burchell** fits with the statutory test, but chose not to depart from it. Lord Wilson JSC (With Whom Lord Carnwath, Lord Hughes and Lord Hodge JJSC agreed) stated:
 19. The proper approach to the inquiry under what is now subsection (4) has long been regarded to have been set out in the judgment of the Employment Appeal Tribunal (Arnold J presiding) in **British Home Stores Ltd v Burchell** (Note) [1980] ICR 303. In the present case Elias LJ described it as the "classic formulation of the employer's obligation in misconduct cases": [2016] IRLR 779, para 21. In the passage of the judgment at p 304 frequently cited, the Employment Appeal Tribunal, through Arnold J, held that the tribunal had to be satisfied first that the employer believed that the employee was guilty of misconduct; second that it had reasonable grounds to sustain its belief; and third that, prior to forming its belief, it had carried out a reasonable amount of investigation into the matter.
 20. It is at once apparent that the three requirements identified by Arnold J do not well fit the inquiry mandated by what is now **section 98(4)**. It is indeed clear that, on the contrary, they were directed to the first part of the inquiry under what is now **section 98(1) to (3)**. Unlike in the present case, in which the conduct—the non-disclosure—is an agreed fact, the employee's alleged

conduct is often disputed. So it was in the British Home Stores case. The issue there was whether, which she denied, the employee in the store had dishonestly abused her right to buy its goods at a discount. To the tribunal's resolution of that disputed issue relating to her conduct, Arnold J's three requirements, which all related to belief in the employee's guilt, fitted perfectly. Applying them, the Employment Appeal Tribunal held that the store had reasonable grounds for its belief that the employee had conducted herself dishonestly and—which was not separately considered because it followed so obviously—that therefore, under a precursor to section 98(4), it had been reasonable for the store to treat her conduct as a sufficient reason for her dismissal.

21. But, although the judgment of Arnold J on behalf of the Employment Appeal Tribunal in the British Home Stores case did not relate to the inquiry mandated by what is now section 98(4) of the Act, the Court of Appeal has for long applied it to that inquiry. Thus, in Foley v Post Office [2000] ICR 1283, 1287–1288 Mummery LJ, with whom the other members of the court agreed, stated that the tripartite approach there explained by Arnold J governed not only the reason for a dismissal but its reasonableness or unreasonableness. Since then the Court of Appeal has consistently adopted the same view of the breadth of Arnold J's judgment: see for example Turner v East Midlands Trains Ltd [2013] ICR 525, para 1.
22. Nevertheless, so far as I can see albeit in the absence of full argument, no harm has been done by the extravagant view taken of the reach of the judgment of Arnold J in the British Home Stores case [1980] ICR 303. In effect it has been considered only to require the tribunal to inquire whether the dismissal was within a range of reasonable responses to the reason shown for it and whether it had been preceded by a reasonable amount of investigation. Such requirements seem to me to be entirely consonant with the obligation under section 98(4) to determine whether, in dismissing the employee, the employer acted reasonably or unreasonably.
23. On any view it is clear that the tribunal is at one remove from answering the direct question: was the dismissal unfair? Instead it must answer the question: was the dismissal within the range of reasonable responses to the reason shown for it by the employer?...

42. Baroness Hale of Richmond PSC noted:

34. There may be very good reasons why no one has challenged the **British Home Stores** test before us. First, it has been applied by employment tribunals, in the thousands of cases which come before them, for 40 years now. It remains binding upon them and on the Employment Appeal Tribunal and Court of Appeal. Destabilising the position without a very good reason would be irresponsible. Second, Parliament has had the opportunity to clarify the approach which is intended, should it consider that the British Home Stores case is wrong, and it has not done so. Third, those who are experienced in the field, whether acting for employees or employers, may consider that the approach is correct and does not lead to injustice in practice.

35. It follows that the law remains as it has been for the last 40 years and I express no view about whether that is correct.

43. In Sainsburys Supermarket Ltd v Hitt [2002] EWCA Civ 1588, [2003] ICR 111 the Court of Appeal held that the band of reasonable responses test applies to all of the steps in determining whether a dismissal is fair, including the investigation into a disciplinary allegation.

44. The Employment Tribunal should take an overview of the process from investigation, through the disciplinary hearing up to the determination of any appeal. If there is an appeal the Employment Tribunal should not be sidetracked into considering whether it was a review or rehearing. This point was considered in Software 2000 Ltd v Andrews and others [2007] ICR 825, in which Elias J also emphasised the importance of applying the statutory test:

47. The use of the words "rehearing" and "review", albeit only intended by way of illustration, does create a risk that employment tribunals will fall into the trap of deciding whether the dismissal procedure was fair or unfair by reference to their view of whether an appeal hearing was a rehearing or a mere review. This error is avoided if employment tribunals realise that **their task is to apply the statutory test . In doing that, they should consider the fairness of the whole of the disciplinary process. If they find that an early stage of the process was defective and unfair in some way, they will want to examine any subsequent proceeding with particular care .** But their purpose in so doing will not be to determine whether it amounted to a rehearing or a review but **to determine whether, due to the fairness or**

unfairness of the procedures adopted, the thoroughness or lack of it of the process and the open-mindedness (or not) of the decision-maker, the overall process was fair, notwithstanding any deficiencies at the early stage .

48. In saying this, it may appear that we are suggesting that employment tribunals should consider procedural fairness separately from other issues arising. We are not; indeed, it is trite law that section 98(4) of the Employment Rights Act 1996 **requires the employment tribunal to approach its task broadly as an industrial jury. That means that it should consider the procedural issues together with the reason for the dismissal, as it has found it to be.** The two impact upon each other and the employment tribunal's task is to decide whether, in all the circumstances of the case, the employer acted reasonably in treating the reason it has found as a sufficient reason to dismiss. So, for example, where the misconduct which founds the reason for the dismissal is serious, an employment tribunal might well decide (after considering equity and the substantial merits of the case) that, notwithstanding some procedural imperfections, the employer acted reasonably in treating the reason as a sufficient reason to dismiss the employee. Where the misconduct was of a less serious nature, so that the decision to dismiss was nearer to the borderline, the employment tribunal might well conclude that a procedural deficiency had such impact that the employer did not act reasonably in dismissing the employee. The dicta of Donaldson LJ in Union of Construction, Allied Trades and Technicians v Brain [1981] ICR 542, 550 , are worth repetition:

Whether someone acted reasonably is always a pure question of fact ... where Parliament has directed a tribunal to have regard to equity - and that, of course, means common fairness and not a particular branch of the law - and to the substantial merits of the case, the tribunal's duty is really very plain. **It has to look at the question in the round and without regard to a lawyer's technicalities. It has to look at it in an employment and industrial relations context and not in the context of the Temple and Chancery Lane.** [emphasis added]

45. So what can be expected of a disciplinary process? When dealing with misconduct employers cannot be expected to set up their own Police force to investigate the allegations, an equivalent of the Crown Prosecution Service to decide whether to bring charges or to conduct the disciplinary process as

if it were the Crown Court, with a right of appeal to an equivalent of the Court of Appeal. Nor is an employer expected to conduct the process with the full rigour required in civil court proceedings. What is required is substantive industrial fairness, that takes account of the seriousness of the allegations and ensures that the allegations are investigated fairly, looking both for material that may support or undermine the allegation.

46. This equates to the core tenets of natural justice; **Khanum v Mid-Glamorgan Area Health Authority [1979] ICR 40** at 45F:

Some of the authorities are not easily reconciled and we do not think it would be helpful to try to do so, for in the end **how nearly a domestic disciplinary inquiry, a statutory inquiry by a statutory body, a public statutory inquiry, or any other inquiry which has to make decisions must approach to the full-blown procedure of a court of justice in order to comply with the rules of natural justice is no doubt a matter of degree** . But in our judgment as regards the sort of domestic tribunal with which we are concerned in this case the law is as it was expressed by Harman J. in Byrne v. Kinematograph Renters Society Ltd. [1958] 1 W.L.R. 762, 784 and approved and applied by the Privy Council to the context of a University Vice-Chancellor's inquiry into cheating in examinations in *H Fernando's Case* :

What then are the requirements of natural justice in a case of this kind? First, I think that **the person accused should know the nature of the accusation made**; secondly, that he should **be given an opportunity to state his case**; and, thirdly, of course, that **the tribunal should act in good faith**. I do not myself think that there really is anything more.

47. This succinct statement sets out the fundamentals of a fair procedure. The fact that they can be stated so briefly does not detract from their profound importance, particularly where upholding a disciplinary charge may result in the loss of a job; and in some cases the loss of a career. Whether a process has met these requirements is a matter of substance, depending on the circumstances of the case.

48. The employee needs to know the charge. The employee must have a fair chance to answer the charge. That will often require sight of any witness statements, but in some cases a summary of the evidence will do. Whether

the employee is guilty, or not, of the alleged misconduct must be determined in good faith. While the band of reasonableness applies to the totality of a disciplinary process, if on any view the employee does not know the charge, the information provided does not give the employee a fair opportunity to answer the charge, or the determination is not made in good faith, the dismissal is unfair, and the concept of a band of reasonableness does not have much to add to the analysis. There will often be a number of ways in which an employer could have acted fairly; there is scope for variation in how precisely a charge is drawn up, how much information is required for the employee to have a fair chance to respond and in determining the penalty; but if the process is fundamentally unfair the band of reasonable responses cannot make it fair.”

185. The question of the claimant’s honesty lies at the heart of this case. The Employment Judge drew the parties to the test for dishonesty as explained by the Supreme Court in **Ivey v Genting Casinos (UK) Ltd (trading as Crockfords Club)** [2017] UKSC 67 [2018] A.C. 391 where it was said at 416H-417A:

“When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual’s knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest”

186. As Ms Sherratt said in paragraph 15 of her written submissions *“The question as to whether C was dishonest, according to this standard, is relevant to wrongful dismissal ... The question for the purposes of unfair dismissal is whether R had a genuine and reasonable belief that C had been dishonest.”*
187. A little more needs to be said in the context of this case about procedural matters given that the claimant was a career civil servant and the respondent’s decision was career ending for him. (Where we cite from counsels’ submissions but wish to interpose, we so indicate by the use of square brackets [...]).

188. Picking up from Ms Sherratt’s submission at [29] *et seq*:

“29. As per Salford Royal NHS Foundation Trust v Roldan [2010] EWCA Civ 522; [2010] I.C.R 1457 at [13]:

“Section 98(4) focuses on the need for an employer to act reasonably in all the circumstances. In A v B [2003] IRLR 405 the Employment Appeal Tribunal (Elias J presiding) held that the relevant circumstances include the gravity of the charge and their potential effect upon the employee. So it is particularly important that employers take

seriously their responsibilities to conduct a fair investigation where, as on the facts of that case, the employee's reputation or ability to work in his or her chosen field of employment is potentially apposite”.

30. In *A v B* [2003] I.R.L.R 405, EAT (*'A v B'*) an investigating officer decided not to interview witnesses named by the employee subject to disciplinary proceedings. This (along with significant delays and failure to provide witness statements to the employee) meant the investigation conducted was not reasonable, given the very serious allegations and the risk to the employee's career:

“In this case we consider the investigation fell short of the even-handed, careful enquiry that is required. As we have said, certain members of staff, who may have given relevant evidence, were not interviewed at all. This is because Mr Edgar [the residential children's home manager and investigating officer] took the view that as a result of the delays they would not be able to remember anything significant. It is relevant to note that it is not said that they could not have had anything relevant to say, merely that by the time they might have been interviewed they would not be likely to remember anything, even if it was relevant.

Mr Pepperall [the respondent's counsel] submitted that it is unlikely that they would have had anything material to add. He may well be right, but it seems to us that that is not something one can assume ... Mr Pepperall may be quite right in submitting that their evidence may well have added nothing to the evidence already available, but the fact is that one simply does not know” (*A v B* at [81]-[82]).

31. *Whilst A v B concerned potentially very serious criminal conduct [involving an inappropriate sexual relationship with one of the children], the present case is also one in which the employee concerned stood to lose their chosen career path. It is submitted that the charge of dishonesty is serious, that the potential effect of the charge on C was to end his career in the civil service, and that these are relevant factors when determining whether the investigation was reasonable.”*

189. Citing from Ms Sherratt's submissions at [38]-[45]

“38. A number of factors are relevant in determining what disciplinary penalty to impose, and in determining whether or not dismissal was a reasonable sanction in the circumstances of the case, including:

‘whether the employer's rules indicate the likely penalty; the penalty imposed in similar cases in the past; the employee's disciplinary record, work record, experience and length of service; whether there are any special mitigating circumstances which might make it appropriate to adjust the severity of the penalty; and whether the proposed penalty is reasonable in all the circumstances’ (*Tolley's Employment Handbook* at [55.9])

39

40. As per *Harvey on Industrial Relations and Employment Law* [Division D1] at [1550]:

‘Broadly, dismissals for a first offence may be justified in three rather different circumstances:

- *where the act of misconduct is so serious (usually constituting*

'gross misconduct' at common law) that dismissal is a reasonable sanction to impose notwithstanding the lack of any history of misconduct;

- *where disciplinary rules have made it clear that particular conduct will lead to dismissal; and*
- *where the employee has made it clear that they are not prepared to alter their attitudes so that a warning would not lead to any improvement.'*

41. Only the first two bullet points are potentially relevant to this case. As to the first / gross misconduct, a single act of misconduct must be particularly serious to justify summary dismissal. *Neary v Dean of Westminster* [1999] I.R.L.R. 288 at [22] held that:

"conduct amounting to gross misconduct justifying dismissal must so undermine the trust and confidence which is inherent in the particular contract of employment that the master should no longer be required to retain the servant in his employment." [Neary was not an unfair dismissal claim, but one brought at common law for breach of contract by way of petition of the Queen as Visitor of the Abbey].

42. As to the second / disciplinary rules, if the employee infringes a rule breach of which under his contract does not constitute grounds for dismissal but only for a warning, it will be very difficult for an employer to show that the dismissal is fair (e.g. see *Trusthouse Forte (Catering) Ltd v Adonis* [1984] I.R.L.R 382, EAT ('Trusthouse')).

43. When deciding what sanction to impose, it is important to consider the circumstances of the individual case, and not simply to apply an inflexible policy; the type of conduct is relevant, but so is the gravity (*Rentokil Ltd v Mackin* [1989] I.R.L.R. 286, EAT ('Rentokil') at [11];[15]). For example, even where an employee is dismissed for misconduct such as dishonesty which is referred to in the employer's disciplinary code as being misconduct which would normally lead to dismissal, the duty on an employer to act fairly and reasonably requires that they should investigate the seriousness of the offence in the particular case (*John Lewis plc v Coyne* [2001] I.R.L.R 139, EAT ('John Lewis') at [16];[37]).

44. The Court of Appeal has confirmed that a tribunal is entitled to take into account the fact that an employee had not been suspended during an investigation when assessing the reasonableness of the employer's decision to dismiss for misconduct (*Graham [Graham v Secretary of State for Work and Pensions* [2012] EWCA Civ 903; [2012] I.R.L.R. 759 [62];[78]: – summary dismissal did not 'sit well' with the decision to allow the employee to remain in work during the period of the investigation [and the ET was entitled to take that fact into account when assessing whether the DWP really did think, reasonably, that its confidence and trust in Ms Graham had been so destroyed that she could no longer remain in its employment] or 'fit easily' with the conclusion that any ongoing working relationship would be impossible)."

190. **Harvey** goes on to say about dismissals for gross misconduct:

"[1551]

The ACAS Code of Practice on Disciplinary and Grievance Procedures recognises that an employee might be dismissed even for a first offence where it constitutes gross misconduct (see para 23 at S [8]). A non-

*exhaustive list of examples is given in para 88 of the Guide [to the ACAS Code]... In the common law cases which permit the employer to dismiss the employee summarily for gross misconduct the courts have significantly narrowed the range of circumstances where this will be permitted. In the 19th century virtually any deliberate refusal to comply with the employer's lawful order was thought to justify summary dismissal, however justified the employee was in failing to obey it (see eg *Turner v Mason* (1845) 14 M & W 112). It is now generally accepted that some acts of disobedience are excusable and do not justify summary dismissal (eg *Laws v London Chronicle (Indicator Newspapers) Ltd* [1959] 2 All ER 285, [1959] 1 WLR 698, where an employee was faced with two conflicting orders, one from her immediate departmental head, and one from the managing director, and she chose to obey the former. Her summary dismissal for disobedience was held to be wrongful). For gross misconduct in its original context of wrongful dismissal at common law, see *All* [520].*

[1552]

*Single acts of misconduct must be particularly serious to justify summary dismissal. For 'gross misconduct' to be found the conduct is likely to be considered 'such as to show the servant to have disregarded the essential conditions of the contract service'—per Lord Evershed MR in *Laws*' case (at 701). And although a single act of negligence might justify summary dismissal at common law, as Lord Maugham commented in *Jupiter General Insurance Co Ltd v Shroff* [1937] 3 All ER 67, this will be in exceptional circumstances only (see further *All* [522.05]).*

191. The list in the *Acas Guide* referenced in [1551] includes theft or fraud, deliberate and serious damage to property and a serious breach of confidence. Perhaps surprisingly, the list does not include dishonesty. However, the list is non-exhaustive and in any case, dishonesty will strike trust and confidence. The Guide says that “*Acts which constitute gross misconduct must be very serious and are best determined by organisations in the light of their own particular circumstances.*” This point alludes to the second bullet point in **Harvey** [1550] cited above.

192. **Harvey** goes on to say at [1553]:

*“The common law authorities merely indicated the range of potentially lawful summary dismissals for first offences. The dismissal may still be unfair under the statute, even though justified at common law, if in all the circumstances the employer has acted unreasonably, eg by applying the rule inconsistently or refusing to consider extenuating circumstances or failing to make the rule explicit. A good example of this is *Arnold Clark Automobiles Ltd v Spoor* [2017] IRLR 500, EAT where the summary dismissal of an employee with 42 years' exemplary service because of one isolated incident of physical violence was held unfair because the disciplinary procedure was ambiguous on the point and the employer had refused to take into account the circumstances of the offence and the service record.”*

193. A similar outcome arose in **Brito-Babapulle v Ealing Hospital NHS Trust** [2013] IRLR 854, EAT where it was held that an act of gross misconduct will not invariably result in dismissal falling within the range of reasonable management responses. Mitigation such as long service, the consequences of dismissal and disciplinary record may militate against dismissal being within the reasonable range. (The offence in the case was undertaking

private practice while on sick leave from the employer NHS Trust). Tribunals must therefore not jump to the conclusion that dismissal for gross misconduct is inevitably fair.

194. This principle cuts the other way. Gross misconduct at common law need not be shown to enable a fair dismissal for a first offence. **Harvey:**

[1553.01]

“This principle of the separation of the common law and statute gives rise to a further caveat here. It is customary to equate dismissal for a first offence with summary dismissal for gross misconduct. This will normally be the case, but in law the statutory action for unfair dismissal operates on its own terms, and thus it is possible for there to be a fair dismissal for a first offence falling short of ‘gross misconduct’ at common law. This is illustrated by the case of Quintiles Commercial UK Ltd v Barongo UKEAT/0255/17 (16 March 2018, unreported). The claimant was disciplined for two actions (not undertaking necessary training and missing a compulsory session) which the employer considered to be gross misconduct. Although on that basis it could have gone for summary dismissal, it instead dismissed on notice. On his appeal, it was decided that these actions fell short of gross misconduct; they were recategorised as ‘serious misconduct’ under the firm’s procedures but the decision to dismiss was upheld. When he brought proceedings, the ET held that this had to be unfair dismissal because a first offence which fell short of gross misconduct had to result in warnings; to proceed to dismissal in such circumstances was in law unfair. The EAT allowed the employer’s appeal, denying any such rule of law. The ET had been wrong to draw a bright line between summary dismissal and anything less in a statutory action for unfair dismissal. Neither the [ERA 1996 s 98](#) nor the ACAS Code of Practice makes such a distinction. Quite simply, a dismissal for a first offence (without warnings) may or may not be unfair, depending on a consideration of all the facts and the application of the range of reasonable responses test, as required by s 98(4). It may of course be in practice that such a dismissal for less than gross misconduct may be more difficult for an employer to defend, but that is a question of fact, not law.”

195. Where a Tribunal finds that a complaint of unfair dismissal is well-founded it must decide the appropriate remedy. The relevant statutory provisions as to remedy are to be found at sections 112-126 inclusive of the 1996 Act.
- 196 Should the Tribunal be dealing with monetary remedy, then by section 122(2) the basic award may be reduced in circumstances where the Tribunal considers that any conduct of the claimant before the dismissal was such that it would be just and equitable to reduce the amount of the basic award to any extent, then the Tribunal shall reduce that amount accordingly.
197. By section 123(6) where the Tribunal finds that the dismissal was to any extent caused or contributed to by any action of the claimant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding. Some guidance upon this issue may be found in **Nelson v BBC [1980] ICR 110** where the Court of Appeal identified the three factors which had to be established before an order for contribution could be made.

These were firstly conduct on the part of the employee which was culpable or blameworthy in the sense that it was foolish or perverse or so unreasonable in the circumstances as to be culpable or blameworthy or fit within that class of conduct; secondly, that the conduct contributed to the dismissal; and thirdly, that it was just and equitable to reduce the assessment of the employee's loss. (The same considerations as to what is culpable conduct and what is just and equitable apply to the basic award albeit that section 122(2) does not require the causal link between the conduct and the dismissal required by section 123(6)). The Tribunal must make factual findings as to what occurred upon the issue of employee conduct. The question of reasonableness of the employer's belief which arises at the merits stage does not apply at remedy stage **British Heart Foundation v Roy** UKEAT/0049/15 (16 July 2015, unreported)- see paragraph 201 below.

198. When applying both sections, the Tribunal must make an objective assessment of whether the employee was guilty of conduct that was culpable and blameworthy. Under section 122(2) the link between the conduct and the dismissal is temporal. The conduct must have occurred before the dismissal or the giving of notice of dismissal, but the employer need not have dismissed the employee because of the conduct or even have known of it at the time of the dismissal. Under section 123(6), the link between the conduct and the dismissal is causal. The dismissal must have been caused or contributed to by the conduct and the employer must have known of it and taken it into account in the dismissal.
199. By application of the principles arising from **Polkey v A E Dayton Services Ltd** [1987] IRLR 503 HL, the Tribunal may consider whether an employee would still have been dismissed even if a fair procedure had been followed or whether the particular employer may have fairly dismissed the employee at a determinate point anyway. If the Tribunal considers that that would have been the case, then compensation can reflect the chance that the employee would have lost his or her employment in any case. This is by application of section 123(1) of the 1996 Act which provides that the amount of the compensatory award shall be such amount as the Tribunal considers just and equitable in all the circumstances having regard to the losses sustained by the claimant in consequence of the dismissal in so far as that loss is attributable to actions taken by the employer.
200. In **Software 2000 Ltd v Andrews** [2007] IRLR 568 the EAT reviewed the authorities and gave the following guidance regarding the correct approach to **Polkey** and in particular the difficulties inherent in what is a predictive exercise.

At [54] Elias J said:

- (1) *In assessing compensation the task of the Tribunal is to assess the loss flowing from the dismissal, using its common sense, experience and sense of justice. In the normal case that requires it to assess for how long the employee would have been employed but for the dismissal.*
- (2) *If the employer seeks to contend that the employee would or might have ceased to be employed in any event had fair procedures been followed, or alternatively would not have continued in employment indefinitely, it is for him to adduce any relevant evidence on which he wishes to rely. However, the Tribunal must have regard to all the evidence when making that assessment, including any evidence from the employee himself. (He might, for example, have given evidence that he had intended to retire in the near future.)*
- (3) *However, there will be circumstances where the nature of the evidence which the employer wishes to adduce, or on which he seeks to rely, is so unreliable that the*

tribunal may take the view that the whole exercise of seeking to reconstruct what might have been is so riddled with uncertainty that no sensible prediction based on that evidence can properly be made.

- (4) *Whether that is the position is a matter of impression and judgment for the Tribunal. But in reaching that decision the Tribunal must direct itself properly. It must recognise that it should have regard to any material and reliable evidence which might assist it in fixing just compensation, even if there are limits to the extent to which it can confidently predict what might have been; and it must appreciate that a degree of uncertainty is an inevitable feature of the exercise. The mere fact that an element of speculation is involved is not a reason for refusing to have regard to the evidence.*
 - (5) ...
 - (6) ...
 - (7) *Having considered the evidence, the Tribunal may determine*
 - (a) ...
 - (b) ...
 - (c) *That employment would have continued but only for a limited fixed period. The evidence demonstrating that may be wholly unrelated to the circumstances relating to the dismissal itself...*
 - (d) *Employment would have continued indefinitely.*
- However, this last finding should be reached only where the evidence that it might have been terminated earlier is so scant that it can effectively be ignored.'*

201. We now turn to the claimant's complaint of wrongful dismissal. At common law, the employer is entitled to dismiss its employee on the spot, without notice, for gross misconduct. The proper contractual analysis is that the employee has committed a repudiatory breach of contract, and the employer has accepted it. Summary termination of the contract by the employer must be defended by the employee's conduct on an objective basis.

202. A point touched upon in paragraph 186 is the distinction between unfair dismissal and wrongful dismissal. Expanding on this, the Tribunal sets out the following passages from Harvey (Division All) – *[for transparency, it should be noted that the Employment Judge is the contributing editor of this part]*.

“The objective test for repudiatory conduct and the contrast with unfair dismissal law

[443.19]

If not justified, the dismissal is wrongful, and the employer is liable in damages for wrongful dismissal. The test is objective: it is not enough for the employer to argue reasonableness of belief that the employee's conduct was repudiatory. Summary termination of the contract by the employer must be defended because of the employee's conduct on an objective basis.

Furthermore, the repudiatory conduct must be proved. It is for the employment tribunal or court to determine for itself whether the employee has committed a repudiatory breach. As it was put by HHJ Mary Stacey in *Cameron v East Coast Main Line Company Ltd* [UKEAT/0301/17 \(21 May 2018, unreported\)](#), when remitting the case to the employment tribunal to make findings of fact in order to decide whether the employee was wrongfully dismissed: ‘The Employment Tribunal has a fact-finding function and, as per the opening lines of *Hard Times* in the words of Mr Gradgrind: “Now, what I want is Facts.” Without those it cannot be known if the claimant was wrongfully dismissed.’

[444]

It is thus important to remember that in order to succeed with a complaint of employee breach, the employer will have to prove that the employee misconduct (or other breach) in question was actually committed; it is not enough to apply the unfair dismissal test (in misconduct cases) of whether the employer reasonably believed that the employee had so acted. This fundamental distinction was set out with great clarity by Langstaff P in *Rawson v Robert Norman Associates Ltd* [UKEAT/0199/13 \(28 January 2014, unreported\)](#) where the tribunal had held that because the claimant's misconduct dismissal was held fair because of the employer's reasonable procedure and belief, the employer's counterclaim for damages in relation to that same misconduct therefore had to succeed. This part of the decision was reversed because it erred by applying the belief test to the counterclaim, rather than the common law test of whether the misconduct had been proved as a fact.

[444.01]

Even if it is justifiable at common law, summary dismissal is not necessarily fair under the statute (ERA 1996): it is possible for the employee to succeed in a complaint of unfair dismissal even if he or she would lose in an action for wrongful dismissal. For example, the dismissal may be unfair because the employer unreasonably failed to operate agreed disciplinary procedures; or because it had not dismissed other employees guilty of the same misdemeanour.

Moreover, in a case of suspected dishonesty (eg theft from the employer) the issue in unfair dismissal is whether the employer had a reasonable belief in guilt, whereas at common law in a summary dismissal case the question is the *objective* one of whether the employee *actually committed* the offence, which again could lead to disparate results if the two actions (unfair and wrongful dismissal) are brought together.

In *British Heart Foundation v Roy* [UKEAT/0049/15 \(16 July 2015, unreported\)](#)). Langstaff J (as he then was) put the matter in these terms:

- '6. Whereas the focus in unfair dismissal is on the employer's reasons for that dismissal and it does not matter what the Employment Tribunal thinks objectively probably occurred, or whether, in fact, the misconduct actually happened, it is different when one turns to the question either of contributory fault for the purposes of compensation for unfair dismissal or for wrongful dismissal. There the question is, indeed, whether the misconduct actually occurred.
7. In a claim for wrongful dismissal the legal question is whether the employer dismissed the Claimant in breach of contract. Dismissal without notice will be such a breach unless the employer is entitled to dismiss summarily. An employer will only be in that position if the employee is herself in breach of contract and that breach is repudiatory—that is, in the modern expression of the phrase (see *Tullett Prebon plc and others v BGC Brokers LP and others* [\[2011\] EWCA Civ 131, \[2011\] IRLR 420](#)) whether she “abandons and altogether refuses to perform” the contract.
8. Just as all contracts of employment contain an implied term on the part of the employer that it will not act without reasonable or proper cause so as to damage or destroy the relationship of trust and confidence which exists, or should exist, between employer and employee, so too the employee may be bound by that term, and is undoubtedly bound by the term that the employee is to provide loyal service to the employer. Stealing from an employer is a clear and undoubted breach of those terms. It could not be otherwise. If an employer, knowing of the repudiatory conduct, dismisses an employee for it, the employer is, by doing so, accepting the employee's breach as terminating the need for it, the employer, to continue to perform its side of the bargain which is the employment contract. In short, if an employee is guilty of repudiatory conduct, which stealing inevitably is, then except perhaps in the most exceptional circumstances (which for myself I cannot readily bring to mind, but I am prepared to accept may possibly exist), an

employer is entitled to dismiss that employee without notice. The employer, by doing so, is not in breach of the contract. It is the employee's breach which causes the termination.'

[444.02]

In *Mgubaegbu v Homerton University Hospital NHS Employment Foundation Trust* [UKEAT/0218/17 \(18 May 2018, unreported\)](#) Choudhury J (as he then was) issued a reminder of this principle, saying (at [40]): 'The Tribunal must make its own findings of fact in relation to the breach in order to determine whether that breach was sufficiently serious to warrant immediate termination.'

Whereas in determining whether dismissal was fair or unfair the tribunal's task is to assess whether the employer's response fell within the range of reasonable responses, its task in determining whether the dismissal was wrongful is rather different. Choudhury J referred to the dicta of Maurice Kay LJ in *Boardman v Nugent Care Society* [\[2013\] EWCA Civ 198, \[2013\] ICR 927](#) at [19]:

'... On the issue of wrongful dismissal, it was appropriate, indeed necessary, for the employment tribunal to make its own findings of fact. The issue was whether the claimant had breached her contract of employment in such a way as to justify summary dismissal. ...'

...

[444.05]

In summary, in an unfair dismissal case the question may arise as to whether dismissal of the employee was a reasonable response. In a breach of contract claim the issue is purely objective and a factual question as to whether the employee did the act in question, and it was sufficiently serious as to be repudiatory.

The distinction between unfair and wrongful dismissal is illustrated in *East Coast Main Line Company v Cameron* [UKEAT/0212/19 \(31 January 2020, unreported\)](#). The employee had been employed by the employer since 1981, most recently as a shunter. He had authorised the departure of a train when it was unsafe to do so resulting in a serious safety incident. He was summarily dismissed. The employment tribunal decided that the dismissal was wrongful given that the employee had been employed for such a long time. The EAT held that the tribunal had erred in law in taking into account length of service when deciding upon wrongful dismissal. Length of service has no bearing upon the question of whether the employee's acts were such a negligent dereliction of duty as to justify summary dismissal. Including length of service as a valid consideration may be an issue in an unfair dismissal claim but is not relevant when looking at wrongful dismissal. There had been an impermissible eliding of wrongful dismissal and unfair dismissal law. "

202. As to the kind of conduct which justifies summary dismissal, we cite the following passages from the same section of **Harvey**:

“[443.04]

The cases of summary dismissal typically involve dishonesty, disobedience or incompetence on the part of the employee.

The issue of dishonesty in employment was recently considered by the Employment Appeal Tribunal (HHJ Griffiths presiding) in *Human Kind Charity v Gittens* [\[2020\] IRLR 412](#). The employee had been asked to carry out an investigation into high data charges for use of an iPad. Her report said that she could not pin down who had used the iPad when the charges were incurred. The employer was dissatisfied with the report and asked another employee to

do a separate investigation. The claimant employee then admitted that she had been in possession of the laptop when the charges were incurred.

The employment tribunal held that the employee had been wrongfully dismissed as she was under no obligation to disclose her own wrongdoing. She was not a director or senior employee and owed no fiduciary duty and was not obliged to report her own misdeeds...

The tribunal was held to have erred in law. The employee had submitted a report which was not true. The tribunal had found that 'there was clearly some dishonesty.' The EAT observed that the right to remain silent is not the same as a right to say something that is not true. The EAT said (at [37]) that:

'The implication in the [tribunal's reasons] that the person given the task of investigation need not produce an investigation report which is true, if an untruth or a lack of honesty are required to cover up the investigator's own conduct, because of a right of silence, or a right not to incriminate oneself, is not supported by the authorities referred to and has no basis or principle in law.'

The employee had sought to cover up her responsibility for the matter in question and was guilty of repudiatory conduct. The EAT cited a passage at para [161] of this work that 'dishonesty usually justifies summary dismissal at common law.'

The test of whether the conduct is dishonest is an objective one: *Ivey v Genting Casinos (UK) Ltd (t/a Crockfords Club)* [2017] UKSC 67, [2018] AC 391 (a non-employment case). Where a question arises as to whether conduct is in fact dishonest, the fact-finding tribunal must first ascertain the actual state of the individual's knowledge or belief as to the facts. The question whether the conduct was honest or dishonest should then be determined by applying the objective standards of ordinary decent people."

204. As Mr Holloway submits in paragraphs 121-123 of his submissions, by virtue of section 191 of the Employment Rights Act 1996, the claimant as a crown servant does not benefit from the statutory right to notice in section 86. However, he does have a common law contractual right to notice pursuant to his terms and conditions of employment. This is subject to the respondent's right to dismiss without notice in cases of gross misconduct (page 95 of the bundle).
205. At common law, an employer can defend a wrongful dismissal claim on the basis of facts found out after dismissal which *would have* justified summary dismissal for gross misconduct, as with the undisclosed secret profits in one of the foundation cases on wrongful dismissal, **Boston Deep Sea Fishing & Ice Co Ltd v Ansell** (1888) 39 CHD 339, CA.
206. We now turn to the claimant's complaint brought under the Equality Act 2010. This is a complaint of disability discrimination. The complaint is of unfavourable treatment for something arising in consequence of the claimant's admitted disability. Section 15 defines the prohibited conduct which is made unlawful in the workplace pursuant to the provisions set out in part 5 of the 2010 Act. The complaint of unfavourable treatment for something arising in consequence of disability is unlawful in the workplace pursuant to section 39(2) of the 2010 Act. As the claimant was at the material time an employee of the respondent then section 39(2) is engaged which provides that an employer (A) must not discriminate against an employee of A' s (B) by [amongst other things] dismissing B or subjecting B to any other detriment.

205. Section 15 of the 2010 Act 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.*
206. The provision requires the following components to be shown. For those at 206.1 to 206.3 the burden of proof is upon the claimant. For that at 206.5 it is upon the respondent:
- 206.1 Unfavourable treatment.
 - 206.2 Because of something.
 - 206.3 The something to have arisen in consequence of the claimant's disability.
 - 206.4 The respondent to have knowledge of the disability (which is not in dispute) and;
 - 206.5 The treatment is such that the respondent cannot show it to be a proportionate means of achieving a legitimate aim.
207. Unlike with a direct discrimination complaint, no comparator issue arises on a section 15 claim. The question is whether the treatment of the complainant is such that it amounts to unfavourable treatment. Paragraph 5.7 of the EHRC Code says that *"This means that [the complainant] must have been put at a disadvantage. Often, the disadvantage will be obvious and it will be clear that the treatment has been unfavourable; for example, a person may have been refused a job, denied a work opportunity or dismissed from their employment. But sometimes unfavourable treatment may be less obvious. Even if an employer thinks that they are acting in the best interest of a disabled person, they may still treat that person unfavourably."*
208. In paragraph 4.9 of the EHRC Code (in the context of complaints of disadvantage by way of indirect discrimination pursuant to section 19 of the 2010 Act) it is said that *"The courts have found that 'detriment' a similar concept [to disadvantage], is something that a reasonable person would complain about – so an unjustified sense of grievance would not qualify. A disadvantage does not have to be quantifiable, and the worker does not have to experience actual loss (economic or otherwise). It is enough that the worker can reasonably say that they would have preferred to be treated differently."*
209. In paragraph 26 of his written submissions, Mr Holloway said that:

"In the normal course a dismissal will meet the relevant test -

"Save possibly in the very rare case where an employee for some reason wishes to be dismissed, dismissal will always be unfavourable treatment for the purposes of section 15"
(Parnell v Royal Mail Group [2024] EAT 130 para 57 citing

His Honour Judge David Richardson in T Systems v Lewis
[UKEAT/0042/15]

but that leaves open the possibility of a finding that, in the particular circumstances of a case, a dismissal should not be regarded as having been unfavourable treatment.”

210. Parliament has of course chosen to use the words “*treats unfavourably*” in section 15 rather than the words “*disadvantaged*” or “*detriment*” in section 19.. In **Williams v Trustees of Swansea University Pension and Assurance Scheme and another [2019] ICR 230, SC** Lord Carnworth held that little is to be gained by seeking to draw narrow distinctions between the words “*unfavourable treatment*” and analogous concepts of “*disadvantage*” or “*detriment*” found in other provisions of the 2010 Act. That said, the claim in that case failed as there was nothing intrinsically unfavourable to the claimant about the award to him of a pension based not on his full-time salary but rather on his part time salary before he took ill health retirement.
211. In **Pnaiser v NHS England [2015] UK EAT/137/15** guidance was given upon the correct approach to section 15 cases. The Tribunal must firstly identify whether there was unfavourable treatment and if so by whom.
212. The Tribunal must then 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 the decision makers. The “*something*” that causes the unfavourable treatment need not be the main or sole reason that must have at least a significant (or more than a trivial) influence on the unfavourable treatment and so amount to an effective reason for it.
213. The Tribunal must then determine whether the reason is something which arises in consequence of the claimant’s disability. A loose causal link may be established by the complainant. The second stage of the causation test involves an objective question and does not depend on the thought process of the alleged discriminator. The required state of mind is simply that the unfavourable treatment should be because of the relevant something. There is no requirement that the alleged discriminator should have known that the relevant something arose from the disability.
214. As Mr Holloway said in his written submissions:

“21. If a tribunal properly concludes that either the “because of” limb or the “arising in consequence” limb of section 15 EA is not satisfied in a given case, then that particular complaint must fail: Ashley v Walk the Walk Family Support Service Community [2025] EAT 144 at para. 25.

22. The Tribunal must determine what caused the impugned treatment, or what the reason for it was. 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. 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 s.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. Motive, however, is irrelevant. Parnell v Royal Mail Group Ltd [2024] EAT 130 at para. 54.”

215. Should the complainant establish that they have been unfavourably treated for something arising in consequence of disability, then it is open to the respondent to justify that unfavourable treatment. The burden is upon the respondent, when seeking to run a justification defence, to show that the treatment of the complainant is a proportionate means of achieving a legitimate aim
216. Upon the question of justification, the role of the Employment Tribunal is to reach its own judgment based on a critical evaluation, balancing the discriminatory effect of the act with the organisational needs of the respondent.
217. **MacCulloch v ICI [2008] IRLR 486** sets out four legal principles regarding justification (which has since been approved by the Court of Appeal in **Lockwood v DWP [2013] IRLR 941**). These are that:
 - 217.1 The burden is on the respondent to prove justification.
 - 217.2 The classic test is set out in **Bilka-Kaufhaus GmbH v Weber Von Hartz (case number 170/84; [1984] IRLR 317)**. The court or tribunal must be satisfied that the measures must “*correspond to a real need ... are appropriate with a view to achieving the objective pursued and are necessary to that end*” (paragraph 36). This involves the application of the proportionality principle. The reference to “*necessary*” means “*reasonably necessary*”: **Rainey v Greater Glasgow Health Board (HL) [1987] IRLR 26**;
 - 217.3 The principle of proportionality requires an objective balance to be struck between the discriminatory effect of the measure and the needs of the undertaking. The more serious the disparate adverse impact, the more cogent must be the justification for it: **Hardy & Hansons Plc v Lax [2005] IRLR 726**.
 - 217.4 It is for the tribunal to weigh the reasonable needs of the undertaking against the discriminatory effect of the employer’s measure and to make its own assessment of whether the former outweighs the latter. There is no “*range of reasonable responses*” test in this context: **Hardy and Hansons Plc**.
218. The aim in question must be legitimate and unrelated to any discrimination based on any prohibited ground. The means or measure adopted to achieve the aim must be capable of so doing and must be proportionate. The objective of the measure must be sufficiently important to justify the limitation of a protected right. This involves a consideration of whether a less intrusive measure could have been used and balancing the severity of the measures effect upon the complainant against the extent that the measure will contribute to the achievement of the aim from the perspective of the employer. The test to be applied by the Tribunal is objective. The Tribunal has to make its own judgment as to whether the measure applied by the respondent is reasonably necessary as a proportionate means of achieving the aim in question.
219. The Tribunal must evaluate the employer’s legitimate aim and not some other aim that the Tribunal may consider would have been preferable. Where there is

no other way of achieving the identified aim, then the means will inevitably be proportionate. The employer must convince the Tribunal that there was a legitimate aim and that it was appropriate and reasonably necessary to adopt the means in question in order to achieve the aim. It must be shown that the means adopted actually contributed to the pursuit of the aim.

220. The Equality and Human Rights Commissions Employment Code sets out guidance on objective justification. The Code says that the aim pursued should be legal, should not be discriminatory in itself and must represent a real, objective consideration. As to proportionality, the Code notes that the measures adopted by the employer do not have to be the only possible way of achieving the legitimate aim, but the treatment will not be proportionate if less discriminatory measures could have been taken to achieve the same objective.

221. Section 136 of the 2010 Act provides,

- (1) This section applies to any proceedings related to a contravention of this Act.
- (2) If there are facts from which the Court could decide, in the absence of any other explanation, that a person (A) contravenes the provision concerned, the Court must hold that contravention occurred.
- (3) But subsection (2) does not apply if A shows A did not contravene the provision.
- (4) The reference to a contravention of this Act includes a reference to a breach of an equality clause or rule.
- (5) A reference to the Court includes a reference to –
 - (a) An Employment Tribunal.

222. The shifting burden of proof to be found in section 136 of the 2010 Act applies to all claims forms of discrimination, victimisation and harassment under the Act. The burden remains upon the claimant to provide that the alleged discriminatory treatment actually happened and that the respondent was responsible. It is for the claimant to prove that he suffered the treatment, not merely to assert it. It is only after hearing all of the evidence, including that from the respondent, that the Tribunal can decide whether the requirements at the first stage are satisfied and then upon hearing the respondent's explanation whether the respondent has discharged the onus which has shifted.

223. The application of section 136 has given rise to significant case law.

224. In **Hewage v Grampian Health Board [2012] ICR 1054** at [32], Lord Hope suggested that it is appropriate to go straight to the reason why an alleged discriminator or harasser acted as they did unless there is room for doubt. He said “... *it is important not to make too much of the role of the burden of proof provisions. They will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. They have nothing to offer*”

where the Tribunal is in a position to make positive findings on the evidence one way or the other.”

225. Where the reason for the treatment cannot be clearly determined on the evidence, the initial burden is on the claimant to prove, on a balance of probabilities, a *prima facie* case of discrimination, harassment or victimisation. The burden does not shift to the employer to explain the reasons for the treatment unless the claimant is able to prove, on the balance of probabilities, those matters which they wish the Tribunal to find as facts from which an unlawful act of discrimination, harassment or victimisation can be inferred. In **Madarassy v Nomura International Plc [2007] EWCA Civ 33**, Mummery LJ said at [56] (in the context of a direct discrimination case) that, *“The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal “could conclude” that, on the balance of probabilities the respondent has committed an unlawful act of discrimination.”*

Discussion and conclusions.

226. We are grateful to Ms Sharratt and to Mr Holloway for the helpful submissions. We shall not increase the length of this Judgment by citing extensively from them. We have read them and taken them into account.
227. We shall start this section of the Judgment by looking at the unfair dismissal claim. Adopting the approach in **Khanum** (paragraph [46] of paragraph 184) the first question that arises is whether the person accused knows the nature of the accusation made.
228. The accusations made against the claimant were those identified by Mr Clarke in his letter of 3 November 2023 cited in paragraph 134. The allegations were that the claimant had deliberately caused the damage that had occurred to the laptop on or before 4 July 2023 and that he had given a false explanation of the cause of that damage. Mr Clarke went on to make the claimant aware that deliberate damage to departmental property and dishonesty are gross misconduct and may result in dismissal.
229. Particulars of the dishonesty alleged against the claimant were not given in Mr Clarke’s letter of 3 November 2023. However, it is clear that the claimant knew that which was alleged against him. We refer to our findings in paragraph 136. The claimant’s case that his account of events remained unchanged demonstrates that he knew that the falsity or otherwise of his explanation was in question. Applying the band of reasonableness test, as we must, to all of the steps in determining the fairness of a dismissal (following **Sainsbury’s Supermarket Limited v Hitt** referenced in [43] of paragraph 184) the Tribunal is satisfied that the respondent did enough to notify the claimant of the nature of the accusation against him.
230. The next question, following **Khanum** is whether the claimant had a reasonable opportunity to state his case. This is a core tenet of natural justice. It is analogous to the range of reasonable responses test which applies to the process carried out by the employer. This conveniently describes the issues arising as identified above in [39] to [45] of paragraph 184.

231. The respondent permitted the claimant to be accompanied by Ms Tobin at the investigatory, dismissal and appeal hearings. Ms Diment's investigation report was sent to the claimant on 3 November 2023, well in advance of the disciplinary hearing which took place on 15 November 2023. The claimant was afforded the opportunity of presenting his evidence to both the disciplinary and appeal hearings.
232. Ms Sherratt highlighted three procedural issues in paragraph 33 of her submissions. These were that the respondent failed to interview Mr Bradshaw, the failure to await the second Lenovo report and the unreasonable disregard of evidence which assisted the claimant on the questions of the claimant's use of dark glasses and a bright desk lamp.
233. Ms Sherratt is right to submit (following **A v B** referenced in paragraph 188 above) that unless a witness is interviewed, it cannot be known what they may have said.
234. The question however is whether the decision not to interview Mr Bradshaw was one that fell outside the range of reasonable managerial prerogative. We have little doubt that many employers would have interviewed him. The view was taken by Mr Clarke (as we said in paragraph 166) that Mr Bradshaw would not be able to add to what was noted on the video that (as was accepted by the respondent) the laptop was showing signs of overheating and that Mr Bradshaw credited that as a plausible explanation at that stage for the damage to the laptop.
235. Mr Clarke took the view that Mr Bradshaw would not have been able to say that the lamp could cause the damage. Mr Style adopted a similar stance to Mr Clarke (paragraph 179).
236. The Tribunal takes into account that Mr Bradshaw was a site-based IT support technician. He (obviously) was not present in the claimant's home when the damage occurred. In our judgment, the respondent took a position that fell within the range of reasonable management responses by deciding not to interview Mr Bradshaw and taking the view that he could not add to that which was capable of being ascertained from information otherwise available. There was no suggestion from the claimant that it fell within Mr Bradshaw's remit to diagnose external damage causes.
237. The second procedural issue raised by the claimant was the failure to await the second Lenovo report. Notwithstanding what Lenovo may have said, Mr Clarke accepted, as noted in paragraph 167, that heat from the lamp could have caused the damage to the key. That being the case, the respondent's decision not to await the second enquiry made by Lenovo was not one that fell outside the range of reasonable managerial prerogative. The respondent accepted the proposition that the laptop could be damaged by an external heat source. There was no reason to await proof of this from Lenovo.
238. Our view would have been different had there been no acceptance by the respondent of the possibility of external damage being caused by the lamp. Had that been the case, the respondent's justification for not waiting for the second Lenovo report would have rested upon wishing to avoid unnecessary delay. Such an approach would have been outside the range of reasonable responses given the importance of the matter to the claimant. Simply wishing to progress to conclude matters within a reasonable time is far outweighed by the

importance to the claimant of preserving his career in the civil service. However, that is not this case. The acceptance by the respondent that the incandescent lamp could or did cause the damage to the shift key obviated the need to wait for the further report from Lenovo. There was no suggestion from the claimant that Lenovo could have said anything further than to vouch for that possibility.

239. The third procedural step taken by the respondent impugned by the claimant was the disregard of evidence which assisted the claimant on the questions of his need for dark glasses and a bright desk lamp. We shall take this issue in sequence, dealing firstly with Mr Clarke's approach before turning to that of Mr Style.
240. Mr Clarke impugned the claimant's honesty by reference to his need for dark glasses and the desk lamp (pages 682 and 683 cited in paragraph 161). We agree with Ms Sherratt that Mr Clarke's approach to these matters fell outside the range of reasonable managerial responses.
241. Mr Clarke's disregard of the optician's evidence seems to have been upon the premise that the optician's report had been obtained only the day before the disciplinary hearing of 15 November 2023. That is the case but, in our judgment, is not a good reason to disregard that evidence. Mr Clarke was right to weigh that evidence against the witness accounts that the claimant had seldom been seen wearing dark glasses and the several workplace and occupational health assessments had not mentioned the need for a desk lamp.
242. However, that the claimant needed eyewear because of the Irlen Syndrome was highlighted by occupational health in March 2022 (paragraph 31). That coupled with the optician's recommendation of 14 November 2023 rendered the claimant's need for dark glasses as credible. In our judgment, therefore, it fell outside the range of reasonable responses for Mr Clarke to prefer the lay evidence of the respondent's employees that they had seldom seen him wearing them. This has to be set in the context of the claimant doing much of his work from home.
243. Mr Clarke was on firmer ground in being sceptical about the need for the desk lamp or a back lit keyboard neither of which had been mentioned in any of the workplace or occupational health assessments. Therefore, while acting outside the range of reasonable responses by dismissing the optician's report simply because of its date, Mr Clarke acted within the range of reasonable responses when questioning the claimant's need for a desk lamp or back lit keyboard.
244. Mr Style focused on the fundamental issue of the account given by the claimant at around the time of the incident. As we can see from his letter of 12 January 2024 cited in paragraph 177, he took the view that the need for a desk lamp, its positioning, and the wearing of dark glasses did not change the fundamental issue in the case. Mr Style said he concurred with Mr Clarke's conclusion that a dishonest account had been given by the claimant. Mr Style's focus was upon the conclusion relayed to the claimant on 21 November 2023 recorded in paragraph 12a of the record of the disciplinary meeting of that day referred to above in paragraph 152 – that the claimant's account of the cause of the damage had changed over time. Mr Style paid no heed to the other factors relied upon by Mr Clarke.
245. Considering, as we must, the whole of the disciplinary process (from investigation to appeal) in our judgment Mr Style's conduct of the appeal cured

the deficiencies in Mr Clarke's approach. It is for the Tribunal to assess the whole process per **Software 2000** in paragraph 184 [44]. The fundamental issue was the question of whether the claimant had given a dishonest explanation of matters on or around 4 July 2023. Mr Style discounted the circumstantial evidence which, on our findings, Mr Clarke had impermissibly considered. In doing so, Mr Style (at appeal stage) cured the unfairness to the claimant.

246. It follows therefore that the respondent carried out a fair procedure. The claimant was aware of that with which he was charged. Overall, up to and including appeal stage, the process carried out by the respondent was one which fell within the range of reasonable management responses. The elasticity of the band of reasonable responses was broken (at dismissal stage) by the unfair approach taken to proper consideration of the optician's report of 14 November 2023 and the claimant's need for dark glasses. This breaking of the band of reasonableness was cured on appeal by Mr Style effective disregarding circumstantial matters impugning the claimant's credibility and focusing solely upon the core issue of the veracity or otherwise of the explanation given by the claimant to explain away the damage to the laptop.
247. The next question therefore (in accordance with [32] of paragraph 184) is what was the set of facts known to the employer, or the beliefs held by them, which caused them to dismiss the claimant. Mr Clarke and Mr Style had before them Ms Diment's report and the information within it summarised in paragraph 131. The report itself is at pages 435 to 440 with attachments from pages 441 to 577. To repeat, the attachments comprise the following documents. There is the accident report made to Ms Zemlik, and the claimant's emails and messages referenced in paragraphs 108 to 110, the claimant's report in answer to the template questions referenced in paragraphs 107 to 118, the interviews to which we have referred the witnesses and with the claimant (in the latter case on 2 and 13 October 2023). Also included with the emails and reports referenced above in paragraphs 28, 29, 31, 34, 44, 56, 120 and 122.
248. Mr Clarke and Mr Style also had the information gleaned from the claimant in the disciplinary hearing and, in Mr Style's case, in the appeal hearing. They had the documentation sent by the claimant referenced in paragraph 145 and 147 to 150 and further information from Ms Glover at paragraph 151 to the effect that the claimant did not use a desk lamp.
249. To some degree, there is something of an overlap between this issue and that of the question of procedural unfairness in Mr Clarke impugning the claimant's credibility around the need for dark glasses and a backlit keyboard or desk lamp. Those were matters considered by him which broke the elasticity of the band of reasonable responses to the extent of discounting the optician's report and not crediting the claimant with the need for dark glasses. Mr Style, of course, knew of these matters also but they were discounted by him at appeal stage.
250. What was central to Mr Clarke's decision and what was the sole basis of Mr Style's decision was the failure of the claimant to proffer an explanation to the respondent for the damage without referring to the external factors which could account for it.
251. Upon this issue, we agree with Ms Sherratt that it was outside the range of reasonable responses for the respondent to conclude that the claimant changed his story only upon receipt of the Lenovo report. There was no reasonable basis

to believe that such was the case. The claimant offered the explanation of internal causes on 2 October 2023, before he was in receipt of the Lenovo report on 5 October 2023.

252. Had that been the basis of the respondent's conclusion that the claimant had given a false explanation of matters, the claimant would have succeeded. However, Mr Clarke said that he did not find it credible that the lamp only occurred to the claimant as a potential factor weeks after the incident (paragraph 161). In the disciplinary hearing Mr Clarke said that the claimant had only "*brought external heat sources in as factors once the investigation started*" (paragraph 136). It plainly was within the range of reasonable responses for Mr Clarke to conclude that the claimant had not volunteered the explanation about external factors being the cause of the damage until after the claimant knew that the matter was under investigation. The claimant was notified of this on 9 August 2023 (paragraph 82). He had not proffered the external factors as an explanation before then, even though he knew that the laptop was being sent to Lenovo for investigation.
253. We agree with Ms Sherratt that it was reasonable for the claimant to then not proffer an explanation after 9 August 2023 until the investigation meeting took place. It was not the claimant's fault that the investigation meeting did not take place until 2 October 2023 by reference to the chronology of events between paragraphs 81 and 93 above. However, the key point is that the lamp as the cause of the damage did not feature before 9 August 2023.
254. It was within the range of reasonable responses for Mr Clarke and for Mr Style to conclude that the claimant knew of the external heat source. It was a reasonable conclusion for them to reach that the temperatures required to achieve a meltdown of a computer key were or had to be so significant such that the claimant must have been aware of it at the time.
255. Mr Style concurred with Mr Clarke's view that the claimant's account had changed over time from initially saying that the damage was from the overheating to then focusing on the role of the desk lamp and it not being credible that the claimant would have been unaware of the heat source.
256. Therefore, although Ms Sherratt was right when cross-examining Mr Clarke and Mr Style that they had got the chronology wrong in so far as the Lenovo report was concerned this does not detract from the view which they were reasonably entitled to conclude that the claimant had not come forward with the explanation about the external heat source until after he was notified on 9 August 2023 that an investigation was afoot in circumstances where he knew that the laptop was being sent to Bratislava for further investigation and that Lenovo were asking questions about the event (as referenced in paragraphs 60 and 61).
257. The respondent did not find the claimant to have been dishonest by proffering the explanation of internal heat damage. Had that been the case, that would have been outside the range of reasonable responses in circumstances where the claimant has a history of overheating laptops, Mr Bradshaw credited it as a possibility that the laptop had overheated that day, and a video had been taken in which the cooling fans were audible. The respondent did not question the possibility of the heat being caused by internal factors.
258. The difficulty for the claimant was the absence of the alternative explanation of external damage in circumstances where the claimant must have been aware

of that as a possibility on the day of the incident. That awareness arose from his use of an incandescent lamp which generated a lot of heat sufficient to melt a plastic key. The Tribunal agrees with the respondent's assessment that it is simply not credible that the claimant would have been unaware of that heat source and it certainly fell within the range of reasonable responses for the dismissing and appeals officer to take the view that the claimant must have known that yet did not volunteer it until the investigation stage of which he was notified on 9 August 2023.

259. Having determined what was in Mr Clarke's mind and what was in Mr Style's mind, the next question therefore is whether that was sufficient for them to form a reasonable belief which they decided upon that the claimant was dishonest. By application of the **Burchell** in [39] of paragraph 184, we are satisfied that the respondent had reasonable grounds upon which to sustain the factual basis of their belief in the claimant's conduct in not being forthcoming about a possible cause of the damage. We are satisfied that they had carried out as much investigation into the matter as was reasonable in all the circumstances of the case. The question that arises therefore is whether upon the basis of that reasonable belief, there was sufficient to form a reasonable belief that the claimant had acted dishonestly.
260. The Tribunal must take into account the nature of this employment. The civil service code (cited in paragraph 16) defines honesty as "*being truthful and open*" and entailing setting out facts and relevant issues truthfully, correcting errors as soon as possible, and not knowingly deceiving or misleading others. The common law test of dishonesty in **Ivey v Genting Casinos** is cited in paragraph 185.
261. The Tribunal is satisfied that the claimant knew that his laptop had been damaged and knew of the possibility of this being caused by internal or external sources. The latter was self-evident to him given his set up on the day. Therefore, the question arises as to whether the respondent was reasonably entitled to the view his conduct was honest or dishonest by applying the objective standards of ordinary decent people. This must be seen in the context of the claimant's role which requires truthfulness and openness and not deceiving or misleading others.
262. By application of these tests, it fell within the range of reasonable responses of the respondent to form the view that the claimant had acted dishonestly. We respectfully disagree with Ms Sherratt's submission that the respondent conflated the claimant's honesty with him diagnosing the wrong cause of the damage. The claimant was not dishonest (nor could the respondent reasonably have concluded that he was) by suggesting the internals as a possible explanation for the damage.
263. However, on any view, it was reasonable for the respondent to take the view that the claimant misled the respondent (and therefore acted dishonestly for the purposes of the civil service code) by omitting mention of the externals as a possible cause until the matter fell under investigation. Failing to mention an obvious potential source of damage was in breach of the civil service code's obligation of truthfulness and openness and was misleading. Lenovo were having to take this extremely seriously. The potential implications of a systemic defect with this particular laptop were profound. By the standards of ordinary decent people, the claimant's omission to mention the obvious heat source was

dishonest and it fell within the range of reasonable responses for the respondent to find such to be the case.

264. The next issue therefore is whether, having established the factual reason for the dismissal, such was a potentially fair reason (per [36] of paragraph 184). This unquestionably is the case. Conduct is, of course, a potentially fair reason for dismissal.
265. The next question then is whether the decision to dismiss fell within the range of reasonable management responses. For this, we look at the principles in [36] to [38] of paragraph 184. We also take into account Ms Sherratt's submissions cited in paragraph 188.
266. The implications for the claimant of dismissal are profound. It involved the loss of his career in the civil service. This is bound to be an important factor in the employer's deliberations as are the other matters referred to in paragraphs 189 to 194 above.
267. Ms Sherratt is right to submit that this was a first offence. However, a significant breach of the civil service code is given as an example of gross misconduct (see paragraph 22). This was the relevant part of the disciplinary code cited by Mr Clarke (paragraph 161) and upheld by Mr Style.
268. It did fall within the range of reasonable responses for the respondent to take the view that the claimant's conduct was a serious breach of the civil service code. The omission to mention an obvious cause of damage was the antithesis of truthfulness and openness and served to mislead others. In our judgment, Mr Clarke and Mr Style acted reasonably in taking the view the claimant's conduct fell within the parameters of conduct warranting summary dismissal in the guidance referred to in paragraphs 20 to 22.
269. That there was an act of gross misconduct does not necessarily inexorably lead to the conclusion that dismissal for such is fair. However, we conclude that Mr Clarke acted within the range of reasonable responses in determining that the claimant's conduct was serious enough to destroy the working relationship between the parties. Dishonesty is inimical to a career as a civil servant. The respondent reasonably concluded that trust and confidence in the claimant going forwards and of his adherence to the civil service code had been destroyed or seriously damaged. This was a view endorsed reasonably by Mr Style. That conclusion having been reached, it inevitably follows that dismissal did not break the elasticity of the band of reasonable responses, profound as the implications are for the claimant's career and that this was his first offence.
270. That the respondent did not suspend the claimant does not assist him. The evidence is that suspension within the respondent is rare (paragraph 75). There was no reason for the respondent to suspend the claimant. He spent much of his time working from home. The laptop was returned by him on the day of the incident. There was therefore no realistic prospect of the claimant tampering with the key evidence and no suggestion that he would improperly interfere with witnesses.
271. The claimant can count himself fortunate that Mr Clarke overlooked to refer him to the fraud database. That cannot be taken as an endorsement of the claimant's position that the respondent did not reasonably take the view of the claimant's conduct as repudiatory.

272. It follows therefore that the respondent fairly dismissed the claimant. This therefore renders otiose remedy considerations.
273. The Tribunal wishes to make a couple of observations (although now otiose) about **Polkey** issues. The first of these is the claimant's contention that Mr Bradshaw, if interviewed, would have confirmed the claimant to be wearing dark glasses and hence is one of the reasons why the failure to interview Mr Bradshaw was procedurally unfair.
274. We have already said why we consider that the failure to interview Mr Bradshaw was an action falling within reasonable managerial prerogative. Even if the claimant is right upon this, it would be to little avail for the **Software 2000** exercise referred to in paragraph 200. Firstly, Mr Style disregarded the dark glasses issue anyway and put that and other peripheral matters to one side, focusing entirely upon the claimant's lack of explanation of externals as potential cause of the damage.
275. Secondly, the claimant in any case obtained evidence from others that they had seen him from time-to-time wearing dark glasses (in paragraph 172). Mr Bradshaw seeing him wearing dark glasses on 4 July 2023 would therefore not add to the respondent's stock of knowledge upon this issue which Mr Style in any case determined as something which should not weigh against the claimant in his deliberations.
276. Thirdly, Mr Bradshaw may in fact have given negative evidence as far as the claimant was concerned. As we said in paragraph 138, when asked about this in cross-examination the claimant did not advance a positive case that he had expressly told Mr Bradshaw that the damage was possibly caused from the heat emanating from the lamp. The height of the claimant's case was that Mr Bradshaw would, if asked by the respondent, have said that he had seen the lamp when the claimant showed it to him on the video call. Had he been interviewed therefore Mr Bradshaw may in fact have corroborated the respondent's case that the claimant did not proffer as an explanation the external heat source consistent with his failure to do so until notified that an investigation was afoot. Had it arisen for consideration, therefore, on a **Polkey** assessment the Tribunal would have held that interviewing Mr Bradshaw would have made no difference to the outcome. Had that been required as part of a fair process the conclusion which this respondent would reasonably have reached would have been the same.
277. The other procedural matter which we mention at this stage touched upon by Ms Sherratt was that of Ms Diment's willingness to change her report as mentioned in paragraphs 127, 128 and 132. The suggestion made by Ms Sherratt was that there was procedural unfairness in Ms Henderson prevailing upon Ms Diment to change her report to the effect that there was a case to answer.
278. Although we were not referred to the relevant case law upon this issue, a dismissing and appeals officer is entitled to seek guidance from human resources but such should be limited to matters of law and procedure and to ensuring that all necessary matters have been addressed and to achieve clarity. We refer to **Chhabra v West London Mental Health NHS Trust [2014] ICR 194** as authority for this proposition. Inappropriate lobbying of disciplinary and appeals officers by HR can cross the line into unfairness as was the case in

Ramphal v Department of Transport [UK EAT/0352/14]. Here, a dismissing officer was prevailed upon by HR to dismiss the complainant.

279. In our judgment, Ms Henderson did not cross the line into inappropriate lobbying. Ms Diment sought HR advice and Ms Henderson guided her that she was the investigating officer and it was for others to make the decision. Ms Diment was not the decision maker. The decision makers were, of course, Mr Clarke and Mr Style whose decisions have been impugned by the claimant.
280. We now turn to the complaint of wrongful dismissal. In accordance with the principles set out in paragraphs 201, 202 and 203, it is for us to determine objectively whether the claimant was in repudiatory breach of contract by his conduct. This contrasts with the position on unfair dismissal where the Tribunal is conducting a reviewing function as to whether the respondent was reasonably entitled to take the view that the claimant had committed an act of misconduct and that dismissal was within the range of reasonable responses of the reasonable employer.
281. There can be little doubt that the claimant, as a fact, did not report externals as a possible cause of damage until after he was notified that the matter was under investigation. By application of the test of a dishonesty in **Ivey v Genting Casinos**, we have determined that this was dishonest conduct by the standards of ordinary decent people. Failing to mention to the respondent the external heat source as an obvious possibility as the cause of the damage was dishonesty in accordance with that standard. It follows therefore that the respondent has established that the claimant was in repudiatory breach of contract which the respondent was entitled to accept by summarily terminating the contract of employment.
282. There is another feature relevant to the question of the common law wrongful dismissal claim. This was not in fact raised by Mr Holloway in his submissions. We hold the claimant to have been in repudiatory breach even without it and therefore it is unnecessary to canvas the parties' representations upon it.
283. The claimant said (as we recite in paragraph 112) that 4 July 2023 was one of the hottest weeks on record. However, the highest maximum temperature recorded by the Met Office that day was 22 degrees (paragraph 54). This was the temperature recorded in Hull. It is highly unlikely that the temperature recorded in Sheffield were significantly different.
284. The Tribunal takes judicial notice that a temperature of 22 degrees in early July is by no means exceptional and may in fact be regarded as the norm. It follows therefore that in our judgment the claimant was giving misleading information to the respondent about the temperatures that day.
285. This was not something of which the respondent was aware when dismissing the claimant. It cannot therefore be something which they considered when dismissing him. That did not comprise part of the set of facts known to the employer causing them to dismiss the claimant. As we said in paragraph 205, however, that does not preclude information found out after dismissal justifying summary dismissal for gross misconduct. The claimant therefore praying in aid extreme weather conditions when the evidence is that such was not the case gives scope for a further ground for determining that the claimant was in repudiatory breach and was not wrongfully dismissed by the respondent.

286. We now turn to the claimant's complaint of unfavourable treatment for something arising in consequence of dismissal brought pursuant to the Equality Act 2010. We remind ourselves that the unfavourable treatment extends not just to the dismissal but also to being subjected to disciplinary action because of damage to the plastic key on the laptop.
287. We have little hesitation in determining that being dismissed and being subjected to disciplinary proceedings is unfavourable treatment. Both are things that a reasonable person would complain about. There was no suggestion that the claimant wished to be dismissed or subjected to a disciplinary process as postulated by Mr Holloway per paragraph 209 above.
288. The next question that arises therefore is what the cause of the impugned treatment was. The treatment of being subjected to disciplinary action was caused by the claimant presenting a damaged laptop to the respondent and whether the explanation proffered by the claimant was truthful. This is what the claimant was told by Ms Diment on 9 August 2023 (paragraph 82).
289. Upon following investigation, the respondent took matters further to the disciplinary stage. The allegations as recited in paragraph 134 were of deliberate damage to the laptop and the giving of a false explanation.
290. As we know, the allegation of deliberate damage to the laptop was in the event not found by the respondent and was not pursued against the claimant. He was, of course, dismissed for the giving of a false explanation.
291. The next question which arises therefore is whether the something in question (the investigation and disciplinary charges around the falsity of the explanation and causing deliberate damage to the laptop and ultimately dismissal for the former) was something which arose out of the claimant's disability. We shall start with the claimant's complaint that he was dismissed for something arising in consequence of disability.
292. The claimant accepted that the admitted disability does not impact upon his ability to tell the truth. It follows therefore that the "*something*" (the dismissal of the claimant) was not causally connected with the disability. The necessary causal links are therefore missing. The claimant was dismissed for dishonesty, and the dishonesty was not something arising in consequence of dismissal. This aspect of the section 15 claim therefore fails.
293. The other limb of the section 15 complaint concerns the question of alleged deliberate damage to the laptop. This was the "*something*" which in part gave rise to the investigation and the disciplinary hearing upon it. Ultimately, that charge or allegation was not pursued by the respondent and was not found against the claimant.
294. The first issue therefore is whether the "*something*" (the damage to the laptop) arose in consequence of the claimant's disability.
295. There was no challenge at the time of the disciplinary process or at the hearing that the claimant was using an incandescent desk lamp. The respondent was questioning the need for him to do this but that is a different thing from the fact of him using it. We are satisfied that the claimant's need to use the incandescent desk lamp arose from the fact that the laptop was not backlit and the claimant's Irlen Syndrome therefore made it difficult for him to see the keys such that he shone the desk lamp upon them. That the claimant needs a backlit keyboard

and/or a desk lamp was evidenced by his optician's report of 14 November 2023.

296. We are therefore satisfied that the something (being the damage to the shift key on the laptop caused by the external light) arose in consequence of Irlen Syndrome because of the claimant's need for illumination.
297. Knowledge of the Irlen Syndrome not being in dispute, the issue which arises then is one of justification. It is not necessary that the respondent knew or ought to know not only of the Irlen Syndrome but also that it led to the claimant's need for illumination of the keyboard.
298. Was the treatment of the claimant a proportionate means of showing a legitimate aim. The legitimate aim in question in this case is having honest and trustworthy employees and the maintenance of fair, consistent and effective management of the conduct of the workforce. It was not put in dispute by Ms Sherratt that these were not legitimate aims.
299. The question therefore which arises is whether the pursuit of the investigatory and disciplinary process was a proportionate means of achieving that aim. This requires an objective balance to be struck between the discriminatory effect of the measure and the needs of the employer's undertaking. The pursuit of the measure must correspond to a real need, be appropriate with a view to achieving the objective pursued and be reasonably necessary to that end.
300. The circumstances which presented in this case were that the claimant reported damage to his laptop through the melting of a key. The laptop was taken by him to Quarry House in Leeds the same day. The acceptable use policy referred to in paragraph 23 provides that users shall not expose IT equipment to (amongst other things) deliberate external stress. It would have been a derogation of responsibility for the respondent not to investigate the cause of the damage.
301. For Mr Carter's part, this was a catastrophic issue and a novel one (paragraph 50). Internal diagnostics uncovered nothing untoward (paragraph 55). It was also a novel matter as far as Mr Thompson was concerned (paragraph 66). It was Mr Thompson who, after receipt of the Lenovo report, postulated the possibility of an investigation (paragraph 70).
302. As none of those within the respondent, experienced as they were, had encountered anything of this kind before it is difficult to see what option the respondent had other than to investigate. An investigation plainly was warranted. It corresponded to a real need on the part of the respondent to get to the bottom of matters and it was appropriate to achieve that object. It is difficult to see how an investigation into this matter was not reasonably necessary. Such went towards the aim of maintaining effective management of the conduct of the respondent's workforce as highlighted by Mr Thompson who raised legitimate concerns as to the cause of the damage. An investigation also went towards the pursuit of the aim of having honest and trustworthy employees to whom the respondent's equipment is entrusted.
303. The next step along the way therefore is whether it was proportionate in pursuit of the legitimate aim to pursue the matter to a disciplinary hearing. Ms Diment took the view that there was a case to answer, there being unresolved issues to be explored upon the question of the cause of the damage. It was not for her as investigating officer to decide a matter proven or not.

304. In our judgment it was proportionate to take matters to a disciplinary hearing for the purposes of achieving a legitimate aim. Only by presenting matters at a disciplinary hearing to enable factual findings was it possible to determine whether a breach of the acceptable use policy had occurred. It was reasonably necessary, in our judgment, to take matters that stage further following Ms Diment's investigation in pursuit of the aim of effective management of the conduct of the respondent's workforce and having honest and trustworthy employees.
305. We have little doubt that this was unwelcome as far as the claimant was concerned. However, the principle of proportionality requires an objective balance to be struck between the discriminatory effect of the measure and the needs of the undertaking. Those were to get to the bottom of the cause of the damage in this unusual situation. This did have a disparate impact upon the claimant. He was subjected to a disciplinary hearing. However, this was proportionate as there were procedural safeguards. He was always accompanied by his trade union representative. A fair process was followed in that the respondent did not pursue the allegation of causing deliberate damage against the claimant and in any case the claimant was afforded the safeguard of an appeal should such have been pursued.
306. There was, in the end, no evidence that the claimant had deliberately caused damage to the laptop. The matter was not in the event pursued by the respondent. Objectively, the respondent was entitled to pursue matters as far as they did in the effective management of the claimant as part of the respondent's workforce. Short of abrogating their responsibility for the maintenance of the acceptable use policy, it is difficult to see a less intrusive way in which the respondent could have gone about matters.
307. The claimant has therefore done sufficient to shift the burden to the respondent to explain their conduct in subjecting him to unfavourable treatment for something arising in consequence of disability in accordance with the principles in paragraph 221 to 225. However, the respondent has succeeded in discharging the burden upon them to justify the treatment of the claimant as a proportionate means of achieving their legitimate aims.
308. The cause of the damage to the laptop was in the event not proven. The claimant was not dismissed for deliberate damage caused to it. The root cause of the difficulty for the claimant was his failure to give an honest and candid account of the possible causes of the damage between 4 July and 9 August 2023. This was even more the case given that the external heat source must have been so significant as to be an obvious candidate for the cause of the damage. The failure to mention it constituted dishonesty and a serious breach of the civil service code requiring truthfulness and openness.

Case Number: 1801774/2024

Approved by Employment Judge Brain

Date: 26 June 2026.