EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4105478/2020 (P)

Held on 11 May 2021

Employment Judge J M Hendry

Mr D Dawson	**Claimant** **In Person**
University Of Aberdeen	**Respondents** **Represented by:** **Mr. N MacLean,** **Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Tribunal finds as follows:

1. **Any claim for harassment arising from Incident 1 having been withdrawn is dismissed.**
2. **Any claims arising from Incidents 23 and 30 (Paragraphs 15-32) and are struck out as having no reasonable prospects of success along with any claims for detriment said to arise from incidents described in Paragraphs 17, 18, 19, 20, 21, 23, 26 and 28.**
3. **Any claims arising from Paragraphs 37, 39, 44, 45 are stuck out as having been already struck out previously and as such being *res judicata* and in any event having no reasonable prospects of success.**

4. **Any claims for detriment or discrimination under Section 20 of the Equality Act 2010 arising from Paragraph 77 are struck out as having no reasonable prospects of success**.

5. **The claim for automatically unfair dismissal in terms of Section 100 or otherwise having little reasonable prospects of success will be subject to a Deposit Order the amount of which to be afterwards ascertained.**

6. **Any claims in Paragraph 82 that the Claimant's dismissal related to either his Religious or other beliefs having no reasonable prospects of success are struck out.**

7. **Any claims for harassment/victimisation arising from Paragraphs 7-15 are struck out on the grounds that they have no reasonable prospects of success.**

8. **Any claim for detriment arising from Paragraphs 7-15 (Incidents 3 and 5) will be subject to a Deposit Order the amount of which to be afterwards ascertained.**

9. **The claim for a reasonable adjustment in Paragraph 35 relating to delay in concluding the claimant's grievance shall be allowed as an amendment and shall proceed to a hearing reserving the issue of time bar.**

10. **The claim for a reasonable adjustment relating to change of the claimant's line manager on 4 October 2019 shall be allowed as an amendment and shall proceed to a hearing reserving the issue of time bar.**

11. **The application for expenses is reserved meantime.**

REASONS

1. The claimant raised various claims against his employers having commenced some claims whilst in employment and following his dismissal, further claims including a claim for unfair dismissal. I will refer to claims 4110829/2019 and 4114716/2019 as the first and second claims and claim numbered

4104157/2020 as the third and 4104107/2020 as the fourth. The claims have been conjoined.

2. It would be pointless rehearse the long procedural history of the case at least at the outset. The claimant's Better and Further Particulars lodged on 16 December 2020 superseded all previous pleadings and encompasses all claims both pre and post dismissal.

3. Some historical matters however, must be touched on. The first and second claim proceeded to a strike-out hearing on 18 June 2020 (June PH Judgment) and following that hearing many of the claims made were struck out. However, the claimant was given an opportunity of recasting his pleadings in relation to some remaining claims which he has done in his Better and Further Particulars.

4. Both parties lodged written submissions. The respondent's submissions were lodged on 4 February 2021 and the claimant's submissions were contained in correspondence but his primary position was set out by him in the Better and Further Particulars itself which contains an amalgam of pleadings and submissions.

5. One further matter should be mentioned and that is there was a fifth claim (4105478/2020). The Tribunal understood that because the fifth claim was in effect a duplicate of earlier claims (which the claimant accepted) and that as such it given it served no purpose should be dismissed. I accordingly dismissed the fifth claim believing that the claimant had consented to this. There appears perhaps to have been some misunderstanding about this matter with the claimant later arguing after the dismissal that it should not have been formally dismissed but simply rolled up into the other claims. The claimant seems in retrospect had become concerned that the recording of the dismissal in the public record might reflect in some adverse way on his current claims against the University. The dismissal as is normal practice simply refers to the claim number and not the type of claims that have been dealt with. The

decision in any event has not been appealed and the fifth claim remains dismissed.

6. The claimant also wrote to the Tribunal on 3 February 2021 enclosing a copy of a report from a Dr. Michael Bott, a Consultant Psychiatrist. In the conclusion of the report the claimant is noted as having been diagnosed with having what is termed an ‘‘Adjustment Disorder and Post Traumatic Embitterment Disorder’’. I record this as the claimant has asked the Tribunal to take this into consideration when determining the respondent’s strike out application. It is not clear how such information can impact on the strike-out application itself which is an exercise in considering the pleadings. The strike out application must be dealt with in accordance with the Employment Tribunal Rules and any sympathy the Tribunal has for the claimant’s medical condition (which has not yet been the subject of any factual enquiry by the Tribunal or acceptance by the respondent) cannot sway it’s decision except perhaps in the limited circumstances where it is considering whether the claimant is likely to succeed at some point in proving he was disabled by this condition at the time of events. It is unclear if the report is being used to try and assist the claimant with any issue of amendment but I think not as it does not suggest that the claimant was hindered because of his condition in taking timeous action against the University but it may have some relevance is assessing the claimant’s behaviour when considering expenses.

Strike Out Application

7. The respondent’s application for strike-out is made under Rule 37. They seek strike out of the whole claim which failing strike out of various claims. In relation to certain incidents, they also seek as an alternative a Deposit Order to be put in place before those claims proceed. This case is not easy to follow so I will begin with the respondent’s submissions but this Judgment should be seen as a continuation of the earlier strike out Judgment.

Respondent's Submissions

8. The respondent's solicitors remain concerned at the claimant's behaviour in particular the lodging of multiple claims and the reintroduction of ''old'' claims causing the maximum burden on the respondent and their agents. They doubt that he is acting in good faith. They draw attention to the report from the claimant's physician Dr Bott and how his condition may be driving his behaviour.

9. The respondent's position was that the June PH Judgment allowed the claimant to articulate claims arising from the events pled at the point of the first strike out application namely in relation to specific incidents (58,59 and 60). After the first strike out hearing we were left dealing with two disability discrimination claims involving an adjustment relating to expediting the internal appeal/grievance process and change of a line manager (60). The claimant referred to four incidents in his pleadings (58 and 59): a change of line manager in October/November 2019 and (60 and 61) delays around the grievance process.

10. The claimant has they noted expanded the list of possible reasonable adjustments (Paragraphs 33 onward). The respondent's position was that matters dealt with in the June PH Judgment are now *res judicata* and the new adjustments that are pled should be dealt with as an amendment. They submitted that the application should be refused as being considerably out of time and that it would significantly add to the breadth of the matters before the Tribunal with the implication that it would add considerably to the time and expense involved in dealing with these matters.

11. The new or resurrected causes of action according to the respondent's agents were detailed as follows:

a) Paragraph 34 – the claimant's allegations in relation to the reallocation of the CCTV project originally cast as "Incident 37" and which was struck out by para 139 of the PH Judgment. The incidents cited by the claimant took place on 04/03/2019 and 28/03/2019 and therefore to the extent not covered by the strike-out decision in para 139 of the PH Judgment, are out of time.

b) Paragraph 36 – the claimant's objections to the Occupational Health appointment on 31/01/19 and the warning that not attending Occupational Health appointments was a breach of his contract were originally cast as "Incident 36" and was struck out by para 137 of the PH Judgment. The incidents cited by the claimant took place on 30/01/19, 21/02/19 and 29/03/19 and therefore to the extent not covered by the strike-out decision in para 137 of the PH Judgment, are out of time.

c) Paragraph 37 – the claimant's dissatisfaction with his meeting with Professor Leydecker was originally mentioned under "Incident 42" and allegations in relation to this, including a failure to make reasonable adjustments, were struck out by para 146 of the PH Judgment. The claimant's attempt to resurrect this claim should be refused on the grounds of *res judicata*.

d) Paragraph 38 – this is the first time in the context of the claimant's various tribunal claims that the claimant has formally raised complaints about not being able to send an email to colleagues to "clear his name" in September 2019, and not being allowed to work from home. To the extent the BFPs are taken as an application to amend, the events having taken place in September 2019, the application should be dismissed in this regard on the basis of time-bar.

e) Paragraph 39 – the claimant's issues with what he regarded as the recommended HSE risk assessment tool were originally cast as "Incident 51" and were struck out by para 161 of the PH Judgment. The incident cited took place on 11/09/19 and therefore to the extent not

covered by the strike-out decision in para 161 of the PH Judgment, is out of time.

f) Paragraph 41 – this is the first time in the context of the claimant's various tribunal claims that the claimant has stated a belief that the Respondent failed in its duty to make reasonable adjustments by not referring him to counselling on 30/08/19. To the extent the BFPs are taken as an application to amend, the alleged failure having taken place in August 2019, the application should be refused in this regard on the basis of time-bar.

g) Paragraph 42 - this is the first time in the context of the claimant's various tribunal claims that the claimant has stated a belief that the respondent failed in its duty to make reasonable adjustments by not allowing him to acquire additional annual leave on 03/09/19. To the extent the BFPs are taken as an application to amend, the alleged failure having taken place in September 2019, the application should be refused in this regard on the basis of time-bar.

h) Paragraph 43 – this is the first time in the context of the claimant's various tribunal claims that the claimant has stated a belief that the Respondent failed in its duty to make reasonable adjustments by Mr Henderson not progressing a referral to Occupational Health. To the extent the BFPs are taken as an application to amend, the alleged failure having taken place in November 2019, the application should be refused in this regard on the basis of time-bar.

i) Paragraph 44 – the claimant's issues with Dr Marie's grievance appeal hearing was originally described under "Incident 62" and allegations in relation to this, including a failure to make reasonable adjustments, were struck out by para 183 of the PH Judgment. The claimant's attempt to resurrect this claim should be refused on the grounds of *res judicata*.

j) Paragraph 45 – the claimant's inability to self-refer to Occupational Health was originally cast as "Incident 63" and was struck out by para 185 of the PH Judgment. By the claimant's own narration, "*the Respondent then made a replacement, non-consented referral on*

17/12/19". The claimant complains both that he was unable to refer himself to Occupational Health, and that a referral was made by the respondent. The claimant's attempt to resurrect this claim should be refused on the grounds of *res judicata*. To the extent that the BFPs are taken as an application to amend, the time period of the alleged failures was December 2019 to February 2020, and therefore to the extent not covered by paragraph 185 of the PH Judgment it should be refused on the grounds of time bar.

k) Paragraph 35 – contrary to the paragraphs discussed immediately above, this paragraph recasts the pleadings previously made under "Incident 61" (delay in actioning a grievance) accordingly conforms to the instructions given in the PH Judgment. However, the respondent submits that the pleadings on this issue do not meet the test of having reasonable prospects of success, in that they do not disclose that the claimant was put to a substantial disadvantage by virtue of any alleged provision, criterion, or practice of the respondent's. This claim should be struck out, or, in the alternative, only be allowed to proceed subject to a deposit order under Rule 39 of up to £1,000 on the basis that the claim has little reasonable prospect of success.

l) Paragraph 40 – similarly, it is acknowledged that this paragraph recasts the pleadings previously made under "Incident 58 & 59" and accordingly conforms to the instructions given in the PH Judgment. However, the respondent submitted that the pleadings on this issue do not meet the test of having reasonable prospects of success, in that they do not disclose that the claimant was put to a substantial disadvantage by virtue of any alleged provision, criterion, or practice of the respondent's. This claim should be struck out, or, in the alternative, only be allowed to proceed subject to a deposit order under Rule 39 of up to £1,000 on the basis that the claim has little reasonable prospect of success.

Claimant's Submissions

12. The claimant opposed the application. He wrote on the 3 February that he was unable to work and incapable of submitting a more

detailed submission. His position was that he had assisted in saving expense by agreeing that the strike out should be dealt by submissions rather than at a public hearing. He expressed disappointment at what he saw as the respondent's behaviour and was disappointed that the Tribunal had not taken a stronger line with them. He had he wrote set out the unvarnished truth.

Discussion and Decision

13. This Strike Out application is in effect round two following, as it does the issue of a Strike Out Judgment following a hearing on 18 June 2020. Parties fully canvassed the legal framework at that hearing but I will summarise that framework and then deal with amendment and expenses.

The Legal Principles

14. Rule 37 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 provides that:

"37. Striking out

(1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds -

(a) that it is scandalous or vexatious or has no reasonable prospect of success;…..

(c) for non-compliance with any of these Rules or with an order of the Tribunal …"

15. In applying the Rules the Tribunal must have regard to the overriding objective in Rule 2:

"*Overriding objective*

2. The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable— (a) ensuring that the parties are on an equal footing; (b) dealing with cases in ways which are proportionate to the complexity and importance of the issues; (c) avoiding unnecessary formality and seeking flexibility in the proceedings; (d) avoiding delay, so far as compatible with proper consideration of the issues; and (e) saving expense. A Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any

power given to it by, these Rules. The parties and their representatives shall assist the Tribunal to further the overriding objective and in particular shall co-operate generally with each other and with the Tribunal."

13. It has been recognised that striking out is a draconian power that must be exercised carefully. If exercised it would prevent a party from having their claim determined by a Tribunal. The legal principles applicable in relation to the striking out of discrimination complaints pursuant to this Rule are well-established. In the House of Lords case of **Anyanwu & Ano v South Bank Student's Union and Ano 2001 ICR 391**, Lord Steyn said as follows:

"24. *… Discrimination cases are generally fact-sensitive, and their proper determination is always vital in our pluralistic society. In this field perhaps more than any other the bias in favour of a claim being examined on the merits or demerits of its particular facts is a matter of high public interest. Against this background it is necessary to explain why on the allegations made by the appellants it would be wrong to strike out their claims against the university*."

At paragraph 39 in the judgment of Lord Hope of Craighead, said as follows:

"Nevertheless, I would have held that the claim should be struck out if I had been persuaded that it had no reasonable prospect of succeeding at trial. The time and resources of the employment tribunals ought not to [be] taken up by having to hear evidence in cases that are bound to fail."

14. In **Ezsias v North Glamorgan NHS Trust 2017 ICR 1126,CA** ,a case referred to by both sides, the Court of Appeal was considering a case involving public interest disclosure and held that a claim should not ordinarily be struck out where there was a:

"*29. … crucial core of disputed facts in this case that is not susceptible to determination otherwise than by hearing and evaluating the evidence. … It would only be in an exceptional case that an application to an employment tribunal will be struck out as having no reasonable prospect of success when the central facts are in dispute. An example might be where the facts sought to be established by the applicant were totally and inexplicably inconsistent with the undisputed contemporaneous documentation. …"*

15. In the more recent case of **Ahir v British Airways plc [2017] EWCA Civ 1392**, Underhill LJ said as follows:

"*16. … Employment tribunals should not be deterred from striking out claims, including discrimination claims, which involve a dispute of fact if they are satisfied that there is indeed no reasonable prospect of the facts necessary to liability being established, and also provided they are keenly aware of the danger of reaching such a conclusion in circumstances where the full evidence*

has not been heard and explored, perhaps particularly in a discrimination context. Whether the necessary test is met in a particular case depends on an exercise of judgment, and I am not sure that that exercise is assisted by attempting to gloss the well-understood language of the rule by reference to other phrases or adjectives or by debating the difference in the abstract between 'exceptional' and 'most exceptional' circumstances or other such phrases as may be found in the authorities. Nevertheless, it remains the case that the hurdle is high, and specifically that it is higher than the test for the making of a deposit order, which is that there should be 'little reasonable prospect of success'."

16. I will deal with the application for strike out of the entire proceedings first of all. While I sympathise with the respondent's position and agree that this case has become unusually burdensome I do not accept that matters have reached the high threshold required to allow me to strike out the entire claim at least at this stage. The claimant has statutory rights and a Tribunal must be slow to remove those rights without an enquiry into the facts. The respondent can challenge and continue to challenge the claimant's behaviour and seek expenses which is what they have done. I also bear in mind that the claimant was dismissed and is entitled to challenge that dismissal. The difficulties arise in relation to the multitude of other claims that the claimant says predate the dismissal. Quite correctly the respondents refer me to the report of Dr Bott which suggests that the claimant's behaviour is driven by his condition. I am not clear on the claimant's position and how he regards the terms of the report but that is likely to be a matter that will ultimately almost certainly be canvassed at a full hearing when the Tribunal will be in a far better position to assess the claimant's motivation.

Amendment

17. The first matter to consider is the claimant's application for amendment.

Relevant Law

18. The claimant seeks to amend his application to include claims for disability discrimination. The Tribunal has wide powers of amendment. The starting point for the Tribunal is the "Overriding Objective" in Rule 2 which provides:

"***2. The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly.***

Dealing with a case fairly and justly includes, so far as practicable—

(a) ensuring that the parties are on an equal footing;

(b) dealing with cases in ways which are proportionate to the complexity and importance of the issues;

(c) avoiding unnecessary formality and seeking flexibility in the proceedings;

(d) avoiding delay, so far as compatible with proper consideration of the issues; and

(e) saving expense.

…….."

19. A Tribunal must seek to give effect to the overriding objective in interpreting, or exercising any power given to it in the Rules. In the context of applications to amend the Tribunal should have regard to the case of **Selkent Bus Company Ltd v Moore** [1996] IRLR 661 (which was followed by the EAT in Scotland in **Amey Services Ltd and another v Aldridge and others UKEATS/0007/16**). The EAT held that, when faced with an application to amend, a Tribunal must carry out a careful balancing exercise of all the relevant circumstances, weighing up the balance of injustice or hardship that would be caused to each party by allowing or refusing the application. This would include the nature of the amendment, the applicability of time limits, and the timing and manner of the application.

20. In this case the amendment purports to introduce claims which appear clearly time barred. Given that the claimant was already underway with his various discrimination claims against the University it is difficult to believe, and he does not specifically say this, that he was not aware of the three-month time limit. Time bar was raised by the respondent in their Agenda for the case management hearing in November 2019 (case 4110829). It was discussed at the June PH in 2020. The time limit for a discrimination claim to be presented to a Tribunal is 3 months starting with the act complained of (section 123(1), Equality Act 2010). Section 123(3)(a) of the Equality Act 2010 provides for continuing acts of discrimination, where acts of discrimination extend over a

period are treated as having occurred at the end of that period. The question a Tribunal should ask in such circumstances is whether the employer is responsible for an "an ongoing situation or a continuing state of affairs" in which the acts of discrimination occurred, as opposed to a series of unconnected or isolated incidents (**Hendricks v Metropolitan Police Commissioner** [2002] EWCA Civ 1686). There must be facts and circumstances which are linked to one another to demonstrate a continuing discriminatory state of affairs. The Tribunal should consider the nature of the conduct and the status or position of the person responsible for it. I have some difficulty finding a 'golden thread' between the various incidents involving as they do different people and situations.

21. The Tribunal has the power to grant a just and equitable extension of time if a claim is out of time. It can allow a late claim to be presented in such further period as it considers just and equitable (section 123(1)(b)). In the case of **British Coal Corporation v Keeble & Others** [1997] IRLR 33 sets out a checklist of factors which a Tribunal should consider when deciding whether to refuse or grant an application to extend the time limit. These are: a) The length of and reasons for the delay, b) The extent to which the cogency of the evidence is likely to be affected by the delay, c) The extent to which the party sued had co-operated with any requests for information, d) The promptness with which the Plaintiff acted once he or she knew of the facts giving rise to the cause of action. e). The steps taken by the Plaintiff to obtain appropriate professional advice once he or she knew of the possibility of taking action.

22. In the case of **Mensah v Royal College of Midwives** UKEAT/124/94, Mummery.J. said that knowledge is a factor relevant to the discretion to extend time. Tribunals are therefore entitled to ask questions about a claimant's prior knowledge, including: when did the claimant know or suspect that they had a claim for discrimination; was it reasonable for the claimant to know or suspect that they had a claim earlier; and if they did know or suspect that they had a claim, why did they not present their complaint earlier. Amendment is more

often granted where it can be argued that the ET1 contains facts which support the amended claim and that the exercise is one of '' relabelling'' In this context although the claimant has pointed to references to events in a Chronology he cannot point in general to the pleadings as such for assistance except in relation to the matters of adjustments mentioned in the June PH Judgment.

Better and Further Particulars 16 December 2020.

23. I accept that the respondent's agents have correctly identified the matters that would entail amendment. Whether to allow such amendment also entails considering the pleadings and whether sufficient notice is given of individual claims and significantly in this case whether such new claims are out of time.

24. I remind myself that following the last hearing I wrote at follows at paragraph 199 :

''*I accept that striking out is a draconian step and that it should be done in limited circumstances. I considered this case to be exceptional on the basis firstly that the various incidents pled did not seem to justify the multitude of claims made even when read together with other incidents and reading those pleadings liberally and in a non-technical way. After reading the pleadings it is not clear in general why the claimant believes any particular type of discrimination arises. He fails to set out why he thinks his employers in breach of their legal obligations. He employs a large cast list of individuals and a multitude of incidents but despite his labours the same criticism applies all the claims namely the nexus between the facts and the claims made is not apparent. The reasons ''why'' actions are taken and in what way those actions are therefore discriminatory are not even speculated upon. The second exceptional matter is that the claimant himself does not give the reason why he believes a particular type of discrimination is in play and in a number of instances, he provides explanations for decisions taken which are perfectly plausible and yet not discriminatory. After every narrative incident the reader is left wondering how the facts pled amount could possibly amount to this or that type of discrimination. It is worse than a scatter gun approach as there seems to be no answer to the query why this particular type of discrimination and not another arises when we are given a multiple choice of several possibilities''.*

25. Before finalising this Judgment I asked the claimant to confirm whether he accepted the respondent's analysis that these matters were new and required to be addressed as amendment. I had the Tribunal Clerk write to the claimant

on the 9 June 2021 bringing this matter to his attention and referring him to the ***Selkent*** principles. His initial response was that some matters could be traced back to a Chronology lodged on the 10 January 2020 and were in time (Incident 56 and 59). Mr McLean responded indicating that he did not accept the brief references in that document gave his client's notice of properly articulated claims. He once more drew the Tribunal's attention to the claimant going further than the first strike out Judgment allowed. He pointed out that although some matters were raised on the Chronology document the duties to which they related arose some time before and were time barred by the 10 January 2020. He reaffirmed that matters contained in Paragraph 46,47,48 and 49 were raised for the first time.

26. The claimant responded on the 11 June stating that Incidents 56, 58 and 59 were put before the Tribunal in case 4114716/19 on the 17 December 2019. His position was that Para 24 refers to his BFP of 12 January 20121, Para 46 traced back to earlier claims, Para 47 traced back to emails to the Tribunal in March 2020 and the hearing in June 2020, Para 48 to the hearing in June 2020 and 49 to the fourth claim and the hearing on 18 June 2020. This prompted a further response from Mr McLean essentially that tracing an issue back to some factual matter is insufficient to give notice of a claim. The claimant responded at length on the 14 June now addressing the sort of factors that ***Selkent*** indicates are important. He stressed he was a litigant in person and had responded to Tribunal orders timeously.

27. The June PH Judgment dealt with the claimant's pleadings (at that point) and I will not repeat what was decided. Suffice to say the claimant did not set out an adequate claim for reasonable adjustments either at that point or at an earlier point in the first and second claims and that is why he was given the opportunity of recasting his pleadings on this matter to set out a claim for reasonable adjustments specifying what adjustments he was seeking and when the duty arose. Mr McLean is correct in his submission that the original pleadings were wholly insufficient to give anything more than notice of vague allegations. One example being that in the meeting that occurred on the 4

October 2019 which the claimant originally gives as background and contains no ‘‘acts complained of’’ (as he puts it) is an invitation to change his line manager. It is not stated by him as a reasonable adjustment at that stage. Nevertheless, the Judgment allowed him to recast his pleadings around the matters described as incidents on the 4 October and 4 November 2010. That has now been expanded to some 16 separate claims for reasonable adjustments.

28. One matter that I have noted is that the Judgment ordered the claimant to provide further details of the proposed claims but made no specific reference to the substantial disadvantage that would be alleviated by the adjustment. He has been frequently referred to the Equality Act and should have realised that he needs to plead what substantial disadvantage he suffered which would be alleviated by the adjustment. Similarly, there is no reference to PCP’s. There are many problems with the multitude of adjustments sought and the claimant’s own pleading of when the duties arose to make them shows that the claims are considerably out of time. Some adjustments contended for appear impossible (Para 37). The unsatisfactory meeting with Professor Leydecker has become an adjustment not to have had the meeting or frankly to have had a meeting that the claimant liked more. This is nonsense and I am sure as a rational person the claimant must be aware of that.

29. Time bar is only one factor that requires to be considered. Even if the claimant was correct and some of these matters can be seen to have their genesis earlier in the chronology this is not a straightforward relabelling exercise: these are new claims.

30. The proposed amendments if allowed would considerably lengthen and make more complex an already difficult case and hearing. The respondent would have difficulty in responding to the claims given the way they have been articulated. In Para 36 one adjustment there is that the respondent should have obtained the claimant’s consent for an Occupational Health referral. The claims are often vague for example a meeting should have taken place ‘‘consistent

with the Occupational Recommendations'' (Para 37). The claims have not been properly formulated and looking not just at the pleadings but at the basis on which adjustments are contended for it is unclear what substantial disadvantage the claimant could have faced that would have been ameliorated.

31. These are all factors which the Tribunal is entitled to consider when exercising its discretion whether to allow amendment. The claimant on the other hand will lose potential statutory claims.

Examination of the Pleadings

32. I will now set out portions of the claimant's Better and Further Particulars to assist in an understanding the various claims now being pursued and the issues that arise and how I intend dealing with them.

33. The PH Judgment did not strike out some incidents and is summarised below (reference is made to various numbered paragraphs that narrate factual happenings ('Incidents') that occurred and these were the paragraph numbers used in the claimant's original pleadings that were scrutinised in the PH Judgment): (Harassment 23 and 32). Detriment alternatively incidents 23 and 30, incidents 58, 59 and 60 and 61(Reasonable Adjustments). Incidents 3 and 5 were also permitted to continue subject to a Deposit Order.

34. In relation to Incident 1 (Harassment/detriment) this related to an interaction with another staff member. I note that this (has not been proceeded with and is solely background). **Accordingly, any claim arising from Incident 1 shall be dismissed.**

35. The respondent's agents helpfully expressed their submissions on the basis of four categories of incidents that had to be addressed firstly in Category I those reflecting matters that had to be determined following the original PH Judgment; secondly matters which related to the period of time dealt with by that Judgment (Category 2); thirdly new matters raised in the Better and Further Particulars (Category 3) and finally fourthly matters raised in the third

and fifth claim which the respondent believes has no reasonable of success (Category 4).

Incidents 3 and 5

36. As described by the claimant:

"On 13/03/18, as part of a protest, students had occupied the management corridor at the University. The incident was commanded by Mrs Caroline Inglis and Professor Mike Greaves (Interim Senior Vice-Principal). The students' understanding was that they would be given free access in and out of the building, as both Mrs Inglis and Professor Greaves signed a note approving free access in and out, but this was subsequently not permitted. The students' posted on social media that they were being denied access to a disabled toilet. In response to these events, I posted a photograph of an unnamed senior managers car (with the number plate obscured) parked in a disabled parking bay in violation of the parking policy. An Aberdeen UCU member had witnessed the parking infringement and reported it to me. The car was that of Mrs Inglis, and at her request of even date, I removed the post.

8. On 14/03/18 I was involved in an incident at the University that caused me considerable distress. On the day of the incident some students were attempting to access the occupied building but were prevented from doing so by security staff. The students within the building were enclosed within a corridor. I was outside the building at the time of the incident and was concerned for the students' safety. The decision was taken to send in two members of staff to check on the students' welfare. Despite being the least experienced of the available staff in terms of student welfare, I was instructed by Mrs Inglis to go into the building against my wishes.

9. Once I had entered the building, I noticed that the atmosphere was very charged and that the students were very upset. I stayed with the students and tried to mediate between them and the security staff and senior management. The aggressive attitude of the security staff and senior management made it an intimidating and hostile environment. I later established that some of the students had been assaulted by a member of senior management, Mr Angus Donaldson (Director of Estates & Facilities).

10. Following the incident, I found myself thinking about the events on a regular basis. My sleep was disturbed, and I became extremely distressed. I felt that my values in terms of fair play and transparency had not been honoured. My family and colleagues noticed that I was not myself. I was angry and making out of character outbursts.

11. On 20/03/2018 I advised several senior managers of my severe psychological distress but no action was taken.

11. [Incident 5 - PH 18/06/20 Judgement, extract from para 78: "The claim in relation to the claimant having been victimised in relation to the alleged protected disclosure relating to the alleged abuse of disabled parking spaces and "victimisation" (harassment of a trade union representative) shall be treated as a claim for detriment and shall be allowed to proceed subject to a deposit order."]

12. On 26/03/18 I repeated my concerns to Mr Lynch, unexpectedly appointed as my temporary line manager the previous month, and Mr Henderson, my Head of Section. On the same day I was signed off work by my GP due to stress, until 01/04/18, followed by two weeks of annual leave. No further action was taken by the Respondent.

13. The Respondent investigated the 14/03/18 incident and an injury reported by a member of security staff. The investigation concluded 08/05/18. A colleague (Dr Dannette Marie, the AUCU vice-president/vice-chair, my deputy) and I were named in the report. I was not interviewed. I felt unfairly discriminated against by association and this added to my distress. I was also upset about the allegations made against my colleague and her subsequent treatment. This was compounded when the investigation report was leaked by Principal Diamond before he left his post in June 2018. The report targeted me without justification, and I felt victimised. I continued to report my distress to my managers, but no action was taken.

13a) On 1st June 2018 Principal Diamond emailed myself and others to advise "As you may already be aware, I commissioned a report into the disturbance involving members of staff and students which took place on 14 March 2018 during the recent student occupation of the University Office building. I have considered this report in detail and have decided to convene a short-life working group to identify key "lessons learned" from the incident.". Representatives from each of the four recognised trade unions were invited to participate. The Aberdeen UCU executive committee appointed me to the UCU seat. However, before the inaugural meeting of the group I was advised by Mrs Crabb, the clerk, that "Your participation in the meetings during the occupation means that you are conflicted in terms of your membership of the working group". Professor Margaret Ross was allowed to participate in the working group in her capacity as a senior manager, despite - as I found out later - her being the person who facilitated the students entry into the University Office building on 13 March 2018.

13b) In September and October 2018 I endeavoured to use functions bestowed upon me via the Safety Representatives and Safety Committees Regulations 1977 to investigate the Student Occupation. However, I had no choice but to conclude my investigation after receiving a "cease and desist" style letter from my employer, who refused to co-operate with me.

14. *I found myself unable to continue in my trade union roles, resigning on 02/11/18. All members of the Respondents' staff are responsible to the University Court through a line management structure that includes a reporting line to the Principal. I intimated a protected disclosure in writing to Professor George Boyne, Principal & Vice-Chancellor on 07/11/18 (Professor Boyne having succeeded Professor Sir Diamond on 01/08/18). In summary the disclosure was that the Respondents' investigation into injuries reported by a security guard on 14/03/18 was a cover up to excuse the serious failings of senior managers (Mr Donaldson, Mrs Inglis and Professor Greaves) and the security guard (Mr Cox), by improperly shifting blame to Dr Marie. The former Principal described the investigation report as "non-factual". I assert there is a danger to health and safety; wrongdoing is being covered up; there has been criminal activity and a miscarriage of justice. Professor George Boyne acted by passing my disclosure of 07/11/18 own and inward within the organisation, through the hierarchy of Mrs Inglis (Professor Boyne's direct report) and onto Mrs Debbie Dyker (Mrs Inglis direct report) for handling, meaning Mrs Inglis, who was implicated in the disclosure (eg. incident 3,5), had had influence and control over its investigation. The investigation was facilitated by Mrs Dyker, who had history of antagonising me because of my trade union activity. Acting as a trade union representative, I had shared details of an email exchange between Mrs Dyker and myself (without naming either party) with union members in 2017, which had seemingly embarrassed Mrs Dyker. She took umbrage and cancelled various trade union meetings for many months, citing me as the reason, and refusing to attend meetings with me. On or around 05/03/18, I met Mrs Dyker and Mrs Fiona Smith (HR Manager) unexpectedly on the pavement outside the university whilst I was on strike and fulfilling the statutory role of "Picket Supervisor". Mrs Debbie Dyker entered into conversation with me. She enquired if I thought that she woke up every day thinking "whose life am I going to ruin today" and accused me of deliberately causing damage to her mental health, as per Incident 1.*"

37. The respondent seeks strike out of these incidents which failing Deposit Orders. I note in passing that Paragraph 5 relates to a financial settlement made with the former Principal and the role of Mrs Inglis and Mrs Dyker in that. This seems to be part of a pattern of trying to bring Professor Ian Diamond and controversy around his tenure into these proceedings for no obvious purpose. This appears to have no relevance whatsoever to the claims being advanced yet by being pled invites the respondent to answer the irrelevant allegations.

38. If the posting of the photograph is capable of being a protected disclosure, (and this is not accepted by the respondent) or the health and safety ‘‘disclosures’’

then the claimant must assert a link between the disclosure relied upon and subsequent events. The earlier Judgment found that what appeared to be being asserted was that Mrs Kinmond was acting as she did because of Mrs Inglis (or because of someone else being able to influence future events) was angered at the claimant for photographing the car in a disabled bay or having the matter posted on the internet. On re-reading the amended pleadings the claimant has failed to make such a link. I am not surprised given that it seems inherently unlikely. The third incident appears to be the claimant being asked to go and find out what was happening during the occupation. How this constitutes or could constitute a detriment is still unclear. It may be that the claimant has sustained some psychiatric injury by witnessing some events at the occupation but this is looking at the matter with the benefit of hindsight. At the time Mrs Dyker asked the claimant to find out what was happening and there is no pleadings to infer that she thought she was putting him in some sort of danger or aware of that this might cause him future problems.

39. In relation to the claim for harassment/victimisation that is said to arise from these events I allowed it to proceed as a claim for detriment (on the basis that the claimant could demonstrate some detriment). I am not sure he has done so. Unfortunately, I have issued a Judgment indicating that Deposit Orders should be made and this was neither appealed nor was a reconsideration sought. In retrospect, I was premature in making such an order until the pleadings were clarified. I am concerned that the respondent will be put to considerable cost in rebutting unspecific claims for detriment that seem to have a tenuous connection with the remaining claims. It will of course be open to the respondent's agents to raise issues of relevancy at any merits hearing. These claims for detriment have little prospects of success. A Deposit Order will be made in a sum to ascertained later.

40. The Incidents 23 and 30 (Detriment) claims were described as follows:

> "*[Incidents 23 and 30, 18/06/20 Judgement, extract from para 112: "It might be that the pleadings could be recast and I am reluctant to strike out the claims here without giving I a chance to argue he should be allowed to do so despite the claim not being listed by him as a detriment."; extract from para 129: "Put shortly I believes that his disclosures were not treated properly and were misconstrued. If that is his position then that might*

possibly constitute a detriment. I will reserve the question of strike out meantime to allow I to consider this matter. He needs to set out which disclosure is at issue and what he says was the detriment."]

16. An external solicitor, Mrs Erica Kinmond, was appointed by Mrs Dyker as an agent of the Respondent to investigate my protected disclosure of 07/11/18. As far as I am aware, the appointment of an external solicitor to carry out the investigation of a complaint was unprecedented. I was assured Mrs Kinmond "is bound by professional obligations which mean that in accepting our instruction to conduct an independent investigation she cannot and would not favour any particular party in that investigation". Following conclusion of the investigation it transpired Mrs Kinmond had been instructed with the "principal purpose of gathering evidence where legal proceedings against the University are a reasonable prospect". As such, the Respondent recognised at the outset that it had likely acted unlawfully. Mrs Kinmond did not investigate my disclosure fairly or thoroughly, she endeavoured to prepare a robust legalistic defence for her client, to cover up wrongdoing. Due process was intentionally corrupted to avoid confirming the veracity of my disclosures and the legitimate concerns they contained. This is a form of detriment arising because of my disclosure of 07/11/18.

17. Incident 28, struck out as standalone therefore background: The minute of the first of two investigation meetings between Mrs Kinmond and myself, on 06/12/18, was misrepresentative and misconstrued. The minute attributed words and phrases to me that I did not use, the most significant of which was "I have trust and confidence issues". This was done deliberately, in order to facilitate dismissing me. The misconstruction of the meeting minute is a form of detriment arising because of my disclosure of 07/11/18. The second and final investigation meeting between Mrs Kinmond and I took place on 16/01/19 at her firm's office. I attempted to show Mrs Kinmond the photographic evidence in high resolution on my laptop and talk through the photographs. I had previously made available to Mrs Kinmond very small and blurry thumbnails of the photographic evidence, as part of my disclosure of 07/11/18[i]. I showed Mrs Kinmond the first photograph and started to orate a detailed description of the photograph, including pointing myself out within it, which could not have been determined from the thumbnail. Mrs Kinmond stopped me from proceeding, and therefore failed to act to review the available evidence. Mrs Kinmond was aware there was something in the photographs that she sought to deliberately avoid. The overlooking of evidence in the investigation is a form of detriment arising because of my disclosure of 07/11/18.

19. At the meeting of 16/01/19, Mrs Kinmond spent around one hour reviewing the video evidence on my laptop, taking extensive notes and asking questions. As part of my response, I drew a detailed diagram of the scene to aid her understanding. Mrs Kinmond declined to share a note or minute for review. It was later evidenced her notes on the video evidence were

misconstrued. The misconstruing of evidence in the investigation is a form of detriment arising because of my disclosure of 07/11/18.

20. *At the meeting of 16/01/19, Mrs Kinmond asked me various questions in relation to the extensive documents I had shared with her via Dropbox. No minute or note was taken or shared. The failure to share a note or minute of the meeting is a form of detriment arising because of my disclosure of 07/11/18.*

21. *At the meeting of 16/01/19, Mrs Kinmond provided me with a printed document which outlined her interpretation of my disclosure, separated into two sections titled whistleblowing and grievance. Her interpretation trivialised whistleblowing and maximised grievance, forking one disclosure into two different investigations. This separation and the Respondents use of separate decision makers for each investigation, without sight or regard of the alternate investigation report, meant a fair outcome could never be achieved. The disclosure should have been investigated as considered as one. This is form of detriment arising because of my disclosure of 07/11/18.*

22. *The Respondents grievance procedure states "Meetings will be conducted in a manner that enables all parties to explain their cases" yet this did not occur, as described above. This is a form of detriment arising because of my disclosure of 07/11/18.*

23. *The Respondents grievance procedure states "a Human Resources Adviser will be in attendance in the role of clerk" "at any investigation, grievance or appeal meeting" yet this did not occur. This is a form of detriment arising because of my disclosure of 07/11/18.*

24. *The Respondents grievance procedure states "each step and action under the procedure will be undertaken as quickly as practicable and without unreasonable delay" yet there was unreasonable delay, the process only concluding after 499 days on 20/03/20. This is a form of detriment arising because of my disclosure of 07/11/18 As evidenced by the grievance investigation report, Mrs Erica Kinmond did not interview anybody who was likely to corroborate my disclosure of 07/11/18[i], nobody whose name I put forward as a suggestion, and asked only one simple written question of a person likely to corroborate the disclosure (that the Principal Diamond had described the investigation report as "non-factual"). Mrs Kinmond saw fit to interview 12 other individuals, and question in writing 2 other individuals, none of whom were likely to corroborate my disclosure. Most significantly, and most obviously, not even Dr Marie was interviewed prior to Mrs Kinmond concluding her investigations. This is a form of detriment arising because of my disclosure of 07/11/18…..*

29. *Described within multiple incidents which have been struck out, following my disclosure of 07/11/18[i] I have been subject to humiliating and demeaning comments or behaviour; "gaslit"; insignificant issues about conduct being unduly highlighted; the Respondent subsequently not handling grievances,*

whistleblowing and health and safety issues such that the Respondent did not take them seriously or deal with them in a proper manner.

30. *My disclosure of my 07/11/18 describes in detail my severe psychological distress, but no action was taken. Such intervention could have been to offer support, timeously refer me to the Occupational Health Service or meet with me informally or formally. This is a form of detriment arising because of my disclosure of 07/11/18.*

31. *The Respondent did not follow the Acas Code of Practice on disciplinary and grievance procedures……. As described herein, the Respondent fell markedly short of this. This is a form of detriment arising because of my disclosure of 07/11/18.*

32. *I also contend that as a form of detriment arising because of my disclosure of 07/11/18[i] the Respondent failed to make reasonable adjustments for me, as described below. It did so in a futile attempt to affect my resignation.''*

41. The respondent's agents point to the original strike out Judgment in which I observed that it was unclear how the various alleged events interact with the possible disclosure. Their position was that although recast the pleadings do not provide any greater clarity. They say that an unjustified sense of grievance cannot amount to a detriment.

42. I agree with the respondent's criticisms of the pleadings. It should be borne in mind that we are now looking at a second alleged disclosure made on the 7 November 2018. The pleadings are still no more than a narrative of events that the claimant did not like. How some of these matters could in any event amount to a detriment is unclear. The claimant alleges that some of his evidence for example was misconstrued. It is not made clear how this could be a detriment or how it could lead to a detriment. The claimant simply does not address the issue of cause and effect despite invitations to do so. How did or could the disclosure impact on later events and what was the detriment caused to him? In addition, it is disappointing that the claimant has referred to Mrs Kinmond allegedly being involved in unprofessional behaviour, covering matters up as he sees it and preparing a ''legalistic defence'' to cover up wrongdoing.

43. Turning to Paragraph 29 it is not good enough to refer to ''multiple incidents'' or demeaning comments. This does not give the respondent fair notice of

the claimant's position. If as he seems to indicate it refers to claims previously struck out then there should be no reference to them unless some of the factual background supports remaining claims.

44. Additionally I would also specifically mention Paragraph 31 contains reference to the ACAS Code and it is alleged that the respondent's actions fell short of the guidance contained there. It remains unclear exactly what the precise detriments were although the claimant has set out some general matters and how they relate to the alleged whistleblowing.

45. The matter of causation is straightforward. Section 47B(1) of the Employment Rights Act 1996 says that an employee shall not suffer any detriment ''*by his employer done on the ground that the worker has made a protected disclosure''*. (my emphasis). The claimant's pleadings are still wholly deficient in identifying exactly what the detriments amount to and why the flow from the disclosure.

46. I repeat the claimant's pleadings here as the beginning of disability discrimination claims and paragraph 26 related to a further alleged detriment.

"25. Incident 35, struck out as standalone therefore background - Mrs Kinmond continued to ask me questions via email. On 30/01/19 she asked "When did you receive a diagnosis that you are suffering from Post Traumatic Stress Disorder?". The same day the Respondent made a referral to the Occupational Health Service, requesting a medical assessment by a named physician, to ask the question "Has Mr Dawson received a formal diagnosis of PTSD?". The referral was made without my knowledge or consent and is therefore deeply suspicious. When I determined what had occurred, I was advised I would be in breach of the terms and conditions of my contract of employment if I did not attend the appointment. This is improper use of the Occupational Health Service and evidences the improper nature of the investigation of my disclosure being used to gather "evidence where legal proceedings against the University are a reasonable prospect", rather than investigate the disclosure impartially and properly, as I had been assured."

47. **These incidents narrated in paragraphs 16-32 do not give rise to validly plead claims and any such claims have no reasonable prospects of success and are stuck out.** It is not clear where the claims

for detriment end and background begins so for the avoidance of any doubt any claims for detriment arising from paragraphs 17, 18, 19,20, 21,23. 26 and 28 are also struck out for the same deficiencies that I have identified.

49. Claims relating to alleged failures to make reasonable adjustments (Paragraphs 33 49) were made as follows (the original incidents were 58,59,60 and 61. First he sets out the background.

"33. When: 22/02/2019 How: My Occupational Health Report of 21/02/19 states "Mr Dawson has been experiencing symptoms affecting his psychological wellbeing following a workplace incident in March 2018. He is receiving appropriate advice from his GP and has been referred for specialist opinion and for therapy with another specialist support service. His symptoms are persistent and are likely to be considered long term. His symptoms have a substantia impact on his normal day to day activities and as such, although it is ultimately a legal question, an Employment Tribunal is likely to consider his condition as covered by the disability provisions of the Equality Act 2010."
What that disability is: A consultant psychiatrist has diagnosed me with an Adjustment Disorder with Mixed Anxiety and Depressive Reaction and Post Traumatic Embitterment Disorder.

34. Reasonable Adjustments: CCTV Project

- *When duty arose: 22/02/19*
- *Factual basis for failure to make reasonable adjustments: My Occupational Health Report of 21/02/19 states "I recommend that he is not allocated to the CCTV project as the nature of this project is that it is likely to trigger an exacerbation of his symptoms". At my request, the CCTV project work had previously been reallocated by Mr Lynch on 14/12/2018. However, it had not been progressed, and was given back to me on 04/03/2019. I was advised nobody else could undertake the work, which was unreasonable given the nature of the project and size of/resources available to the Respondent. I duly commenced work on the project, which I found difficult and stressful, but ultimately delivered a key document. Having done so, the project was put on indefinite hold on 28/03/2019, meaning the stress of the work was wholly unnecessary. It therefore felt like a cruel form of punishment.*
- *What reasonable adjustments should have been made: I should not have been reallocated to the CCTV project.*

35. Reasonable Adjustments: Prolonged uncertainty and undue delay

- *When duty arose: 22/02/19*
- *Factual basis for failure to make reasonable adjustments: My Occupational Health Report of 21/02/19 states*
  "University processes ... may be distressing and prolonged uncertainty may be detrimental to his health and well being. I therefore advise that they are concluded without undue delay.". The "University processes" refer to the protected disclosure I intimated to Professor Boyne on 07/11/18.

I signposted Professor Boyne to the UK Government "Guidance for Employers and Code of Practice" on 20/11/18. This states, as an example of good practice, to "Manage the expectations of the whistleblower in terms of what action and/or feedback they can expect as well as clear timescales for providing updates". I repeatedly made this and other similar requests, yet next to no meaningful information was provided and uncertainty was prolonged.

The timeline is represented ……

Principal Boyne refused to meet or talk with me. My line manager Mr Lynch was unable or unwilling to provide meaningful support. I was passed from pillar to post, receiving scant little feedback along the way.

The grievance "hearing" on 20/05/19 was nothing of the sort: the outcome was predetermined and I was handed a letter detailing the outcome. The grievance stage one appeal "hearing" on 02/09/19 was a charade, as the outcome had already been predetermined. The Respondent advised it could not follow its grievance procedure as it applied to me. The grievance process was then concluded by the Respondent unilaterally and the second stage appeal process/hearing did not take place, much to my disappointment and distress. The grievance process concluded on 20/03/20, 392 days after the duty arose to avoid prolonged uncertainty and undue delay. The whistleblowing process concluded on 21/04/20, 424 days after the duty arose to avoid prolonged uncertainty and undue delay.

The Respondents grievance procedure states allows 15 working days for an appeal to be lodged, and permits appeals at two stages. As can be seen the "ball was in the Respondents court" for the overwhelming majority of the circa 500 days processes were active. It is unreasonable, given the size of and resources available to the Respondent, for it to have let these processes run for so long. The respondent deliberately protracted these processes, processes which the Respondent directly controlled (and of which I had no control), in order to maximise damage to me.

Prolonged uncertainty and undue delay in terms of the 05/09/19[ii] disclosure was also evident. I was advised this was to be subsumed into the extant 21/02/19 "Grievance" process which was pending a stage 2 appeal hearing. Ultimately, the process was concluded unilaterally by the Respondent on 20/03/20, 197 days later, without evidence of any investigation having taken place in relation to the 05/09/18 disclosure.

- *What reasonable adjustments should have been made: The Respondent should have concluded the processes much sooner, to avoid or minimise uncertainty and delay. The Respondent should have managed my expectations in terms of what action and/or feedback I could expect as well as clear timescales for providing updates. The Respondent should have followed its processes and procedures as they applied to me, or mutually agreed a deviation from those processes and procedures.*

36. Reasonable Adjustments: Occupational Health Review Meeting

- *When duty arose: 22/02/19*
- *Factual basis for failure to make reasonable adjustments: An outcome of my Occupational Health Report of 04/01/19 was the scheduling, by the service and at my request, of a review appointment on 29/03/19. In the interim I received an unexpected appointment for 21/02/19. It transpired the Mr Lynch had re-referred me to the service without my knowledge or consent on 30/01/19. I objected but was told I would be in breach of contract if I did not attend. As such I attended the appointment, notwithstanding being on bereavement leave arising from the sudden death of my father a few days prior. My Occupational Health Report of 21/02/19 states "Mr Dawson will be reviewed by my colleague Karen Hudson, Nurse Advisor, on 29/3/19". I expected the telephone appointment to take place on 29/03/19 but it did not. I brought this to the Respondents' attention. It transpired the surreptitious referral had caused the cancellation of the 29/03/19 meeting. As such, the review meeting did not take place. I made the Respondent aware of this. No further action was taken.*
- *What reasonable adjustments should have been made: The Respondent should have obtained my consent and agreement for the February 2019 referral to Occupational Health. The Respondent should not have threatened me to be in breach of contract if I did not attend. The Respondent should have rearranged the appointment after I made it aware of the sudden death of my father. The Respondent should have rearranged the scheduled review meeting, cancelled because of its actions, I could not have rearranged it.*

37. Reasonable Adjustments: Meeting with the Senior Vice-Principal

- *When duty arose: 22/02/19*
- *Factual basis for failure to make reasonable adjustments: My Occupational Health Report of 21/02/19 states "University processes ... I recommend that he is accompanied for support, that he is notified in advance of the participants and provided with an agenda for any meetings". Professor Karl Leydecker, Senior Vice-Principal, telephoned me on the evening of 20/06/19 and requested to speak urgently and privately me about my disclosure of 07/11/18[i]. A meeting was duly arranged to take place at 10am the following day, 21/06/19. I had arranged annual leave for 21/06/19 and had commitments which meant a telephone call was arranged. I then rescheduled these commitments and advised Professor Leydecker we could meet in person as first envisaged. The meeting duly took place. Given my repeated stonewalling by Professor Boyne, given the passage of time, given I was aware that Professor Leydecker had arranged a meeting with Dr Marie later that day, I "fell over myself": I thought this was a 'break-through' and that the Respondent was finally going to acknowledge harm. I had incorrectly assumed that the meeting Professor Leydecker had requested was in order to provide me with an apology, in private, as this was one of the four outcomes I had sought from the outset. Furthermore, I had incorrectly assumed that Professor Leydecker would discuss with Dr Marie her exoneration to realise another outcome I sought. In fact, the meeting served absolutely no meaningful purpose and it was unclear what, if anything, Professor Leycker sought to achieve by meeting with me, other than to satisfy his curiosity and "get the measure" of me. Dr Marie's meeting went similarly. I was emotionally crushed and overwhelmed. As a consequence of my disability, I cleared my office of personal belongings over*

the weekend. I was absent through "Stress at Work" from 24/06/20 returning 09/09/20. On 26/06/20 my line manager made an unfounded accusation to me that I had stolen University property, later withdrawn.

- *What reasonable adjustments should have been made: The meeting with Professor Leydecker served no purpose, caused me more harm than good, and should either not have taken place or taken place consistent with the Occupational Health recommendations. I should not have been accused of theft without any evidence or investigation.*

38. Reasonable Adjustments: Communicating with Colleagues

- *When duty arose: 19/08/19*
- *Factual basis for failure to make reasonable adjustments: During my sickness absence for "Stress at Work" between 24/06/19 and 09/09/19, I shared with Mr Lynch a resource titled "Return to Work - Communicating with colleagues" which described its purpose to help "employees successfully return to work following depression, anxiety or a related mental health problem". The resource included various recommendations for supervisors and employees. The advice for employees was to "discuss and come to a clear agreement with your supervisor about who is to be told and what they will be told". A significant barrier for me, as discussed with Mr Lynch, was the leaked report of the 14/03/18 incident which targeted me without justification and how I could "clear my name" with his colleagues. I contacted Mr Henderson, head of section, and requested we speak before my planned return to work. He was unavailable. I requested to work from home until I could speak with Mr Henderson, this was refused. As such and because agreement could not be reached, I returned to work without being able to communicate my mental health problem to colleagues. Ultimately, on 01/10/19 the Respondent advised the leaked report had "no standing" and on 02/10/19 announced the departure of Mrs Inglis, which did little to nothing to exonerate me and mitigate the damage so unnecessarily caused to the reputation and health of Dr Marie and myself.*
- *What reasonable adjustments should have been made: I should have been supported and permitted to send an email to colleagues to "set the record straight" and facilitate my return to work. I should have been allowed to work from home until I could speak with my head of section. The Respondents censuring the report should have occurred much earlier, and the mitigation should have went much further to undo the damage caused.*

39. Reasonable Adjustments: Stress Risk Assessment

- *When duty arose: 30/08/19*
- *Factual basis for failure to make reasonable adjustments: Occupational Health Report of 22/08/19 states "I would suggest that on Derek's return to work a stress risk assessment is completed. This will highlight any particular areas of difficulty that Derek may experience, and a managerial solution can be explored. You can find this resource online - http://www.hse.gov.uk/stress/risk-assessment.htm"*
- *What reasonable adjustments should have been made: Following sickness absence for "Stress at Work" from 24/06/19 I returned to work on 09/09/19, attending the first supervision with my line manager Mr Lynch on 11/09/19. Mr Lynch advised that rather than use the recommended HSE risk assessment tool, he felt an alternate questionnaire would be better. Mr Lynch*

had printed two copies of a single page template document titled "NHS Grampian Occupational Health Service Stressor Assessment Questionnaire". I suggested I take away the questionnaire, complete it, and return it, allowing the meeting to focus on workload. Mr Lynch insisted on talking through the questionnaire and that he would take notes, type them up, and share them for review. The entire meeting was therefore focused on the questionnaire, during which Mr Lynch made succinct notes written within the limited space for notes (the form being designed to be used electronically and expand accordingly). I took the other copy away with me to study further. Mr Lynch then typed up his notes, sharing them with me 16 days later on 27/09/19. As requested, I reviewed the notes, made some changes, and returned the document of even date. I had a supervision meeting with Mr Lynch on 30/09/19 during which Mr Lynch advised I that I had included a lot in the revision which he felt we hadn't discussed, although when challenged conceded this. Mr Lynch stated his view that I was restating his case for the purposes of bringing my Employment Tribunal Claim [I had lodged a claim on 12/09/2019] and that what I had provided him was "not helpful" and that I was "looking back in the past and looking for reasons to throw up problems". Following these unwanted comments, I excused myself from the meeting. The recommended "HSE risk assessment tool" records who might be harmed and how; what is being done to control the risks; what further action needs to be taken to control the risks; who needs to carry out the action; and when the action is needed by. In contrast, the "NHS Grampian Occupational Health Service Stressor Assessment Questionnaire" is a basic questionnaire intended to be completed by a person experiencing work related stress, from their perspective. If any actions or managerial solutions were subsequently explored, they were not communicated to me. From my perspective, no action was taken.

- *What reasonable adjustments should have been made: The HSE risk assessment template should have been used. I should have been allowed to complete the questionnaire myself, without any undue pressure. My expectations should have been managed in terms of what action and/or feedback they can expect as well as clear timescales for providing updates. Managerial solutions should have been explored and the appropriate action taken.*

40. Reasonable Adjustments: Supervision & Line Management Support

- *When duty arose: 30/08/19*
- *Factual basis for failure to make reasonable adjustments: My Occupational Health Report of 22/08/19 states "I believe Derek would benefit from having weekly supervision on his return to work and for the duration of his phased return as a way of offering further support at this time. It may be useful to ensure supervision is carried out with a person whom is up to date with the incident and the processes that are ongoing as this will make the process more meaningful. You may reduce this to monthly at a time agreeable to both parties.". I sought to establish who could keep, or how I could be kept, up to date with the incident and processes that were ongoing. Mr Lynch advised me that I would need to speak to "the appropriate member of management within the University" yet was unable to clarify who this was. Supervision in week one*

had comprised the "stressor assessment questionnaire" described above. Supervision in week two was cancelled because Mr Lynch was ill. Supervision in week three comprised the "stressor assessment questionnaire" described above, during which I had to excuse myself from the meeting due to Mr Lynch's unwanted comments and behaviour, as described above. I raised concerns about Mr Lynch in a grievance with Mr Henderson, line manager of Mr Lynch and head of section. Mr Henderson and I met on 04/10/19. I requested a change of line manager. The request was declined. On 04/10/19 Mr Henderson emailed me to advise he declined to progress the grievance. Mr Lynch unilaterally ended weekly supervision with me. On 12/11/19 I emailed Mr Henderson to query the current situation. On 22/11/19 Mr Henderson advised he was now able to progress the grievance but would not change my line manager until he personally had heard the grievance. This was contrary to the Respondent's grievance policy, which states another appropriate individual shall take the matter forward. I responded of even date and withdrew my grievance by virtue of the fact the Respondent had by then confirmed it was unable to follow its grievance procedure as it applied to me and the Respondent refused to concede I was a disabled person for the purposes of the Equality Act 2010. Upon withdrawal, 52 days had elapsed with no action by the Respondent consistent with its procedure.

- *What reasonable adjustments should have been made: Meaningful supervision should have taken place as described by the Occupational Health Service. The Respondent should have followed its grievance procedure. Prolonged uncertainty and undue delay were not avoided (as per para 35 above). The Respondent should have changed my line manager on a temporary or permanent basis, and ensured the support envisaged by the Occupational Health Service was provided. As per incident 34, struck out as standalone - the temporary re- organisation/restructure unexpectedly made Mr Lynch my permanent line manager without any of the consultation required via the Respondents change management procedure, which should have been followed.*

41. *Reasonable Adjustments: Counselling*
    - *When duty arose: 30/08/19*
    - *Factual basis for failure to make reasonable adjustments: My Occupational Health Report of 22/08/18 states "We explored the benefits of counselling and Derek has expressed an interest in engaging in this. I believe that counselling would provide Derek with further support at this time. I would suggest that a referral be made for counselling on his behalf.". No referral was made for counselling.*
    - *What reasonable adjustments should have been made: A referral should have been made for counselling.*

42. *Reasonable Adjustments: Purchase of annual leave*
    - *When duty arose: 30/08/19*
    - *Factual basis for failure to make reasonable adjustments: My Occupational Health Report of 22/08/19[viv] states "I would also support that Derek should be given time to attend all appointments in relation to his health as this will have a positive impact on his overall wellbeing.". During my sickness absence for "Stress at Work" between 24/06/19 and 09/09/19, I submitted a request on*

03/09/19 to utilise the "Purchase of Annual Leave Scheme" to make a salary sacrifice to acquire up to 10 days of additional leave within the annual leave year 1 October 2019 and 30 September 2020. Mr Lynch declined the request without discussion. Mr Lynch's position was effectively that my previous sickness absence and bereavement leave meant I had already accrued what, in Mr Lynch's opinion, was too much leave.

- *What reasonable adjustments should have been made: I sought to utilise additional annual leave to help manage stress and improve my wellbeing and should have been allowed to purchase up to 10 days of additional leave, to aid my recovery.*

43. Reasonable Adjustments: Mr Henderson's concerns

- *When duty arose: 04/11/19*
- *Factual basis for failure to make reasonable adjustments: Mr Henderson proposed a further referral to the Occupational Health Service on 04/11/19, sharing with them Mr Lynch's original version of the "Stressor Assessment Questionnaire" and my revision. Mr Henderson advised "I feel that I have to write to OH setting out concerns that you are having difficulty with moving on from past events and that this is causing difficulties, at times, in your day-to-day work" also "I have underlying concerns about how safe an environment this is for you, given your potential psychological response to certain situations that may occur in your day-to-day work." also " Once we have the response from OH, I propose we sit down together to see how we secure a safe way for you and Richard to work together safely and constructively.". No such referral was made, no such meeting took place.*
- *What reasonable adjustments should have been made: The proposed referral, appointment and meeting should have occurred.*

44. Reasonable Adjustments: Dr Marie's grievance appeal hearing

- *When duty arose: 22/02/19*
- *Factual basis for failure to make reasonable adjustments: My Occupational Health Report of 21/02/19 states*

  "University ... processes may be distressing and prolonged uncertainty may be detrimental to his health and well being. I therefore advise that they are concluded without undue delay. In addition I recommend that he is accompanied for support, that he is notified in advance of the participants and provided with an agenda for any meetings". Dr Marie invited me to attend as a witness at her first stage grievance appeal on 10/12/19. By this time she had resigned and moved abroad, attending via video conference. Mrs White clerked the meeting, and as HR partner for IT was aware of my disability and Occupational Health Reports. I was only advised of the participants and format whilst waiting in the allocated room on the morning of the meeting. The convenor directed all the meeting participants around the table to introduce themselves, but stopped short of me, moving onto other matters. I requested, but was not allowed, to read a pre-prepared statement, or excerpts from it during the hearing itself.
- *What reasonable adjustments should have been made: I should have been notified in advance of the participants and provided with an agenda. I should have been introduced in the same way as the other participants. My request*

to read a pre-prepared statement, or excerpts from it during the meeting, should have been accepted.

45. Reasonable Adjustments: Self-Referral to Occupational Health

- *When duty arose: 10/12/19*
- *Factual basis for failure to make reasonable adjustments: I had to leave work early following the distress of the above meeting. On even date, I felt better after taking some medication and sought to self-refer to the Occupational Health Service, and returned to work the next day. The Respondents "Sickness and Attendance Management Procedure" permits self-referral but I was advised by the service this was not possible, and instead a consented referral was made on my behalf by the Respondent: "On 10 December 2019, Derek attended a meeting as a witness in support of a former work colleague. He subsequently advised that he found aspects of the meeting distressing and, as a result, has requested to be referred to Occupational Health.". The Respondent then made a replacement, non-consented referral on 17/12/19 which added in "Additionally, Derek has indicated that not progressing his grievance concerns is having an impact on his health. Derek's grievance concerns and the support he provided to the former work colleague relate to events of March 2018 and the aftermath of them." also including the 11 disability questions supplied by Mr Maclean, the solicitor representing the Respondent. A consented referral was not made until 10/02/20 by which time matters had deteriorated further: "Derek is currently working from home due to an ongoing situation in the workplace. Derek reported feeling unsafe and removed himself from the workplace on Monday 13th January. He has been instructed to work from home whilst a process takes place to uncover the nature and mitigation of the danger he feels in the workplace. Derek has reported that prolonged uncertainty and working from home is having a detrimental impact on his health. A referral is sought with a Physician to consider reasonable adjustments and other measures to facilitate Derek's return to the workplace. Advice is sought on whether a joint meeting with Derek, his manager, a trade union representative and the Physician would be appropriate at this time.". With the appointment on 25/02/20, 77 days had elapsed since I first sought to self-refer.*
- *What reasonable adjustments should have been made: A timeous appointment with the Occupational Health Service should have taken place.*

<u>4104107/2020; 4104157/2020 and 4105478/2020 - Reasonable Adjustments</u>

46. Reasonable Adjustments: Line Manager Support & Effective management of workplace stressors

- *When duty arose: 27/02/20*
- *Factual basis for failure to make reasonable adjustments: I shared with Mr Lynch the Occupational Health Report of 13/02/20[vii] which I had obtained privately due to the Respondents failures. This report diagnosed me with an Adjustment Disorder together with Post Traumatic Embitterment Disorder. The report states "symptoms are unlikely to resolve where workplace stressors persist. It is difficult to say at this stage whether his symptoms will continue if/when there is satisfactory resolution of his ongoing workplace stressors but he is likely to require psychological support in order to increase the likelihood*

of a good recovery. Effective management of workplace stressors is key to facilitate recovery". This reiterates advice given in the first Occupational Health report, of 04/01/19[iv], which advised "I would recommend allocating protected time to focus on ongoing Line Manager support with regards to the specific workplace stressors Mr Dawson identifies and will continue to be exposed to throughout an ongoing University investigation.". There was little to no line manager support and effective management of workplace stressors.

- *What reasonable adjustments should have been made: I should have been lined managed by an individual capable of giving effective support to me and managing my workplace stressors. This failure is evident over a long period of time in the reasonable adjustment claims of 4110829/2019 and 4114716/2019, including my request to be appointed a different line manager, which was declined. 47. Reasonable Adjustments: Conclusion & Meetings*
- *When duty arose: 27/02/20*
- *The Occupational Health Report of 17/02/20[vii][vi] recommends "the appeals process is concluded as expeditiously as possible", that appeals process being relative to the grievance the Respondent instigated from my disclosure of 07/11/18[i]. The physician also envisaged physical "meetings related to his absence and to the current procedural issues, but only if these are held in a mutually acceptable location" and a further review in 4 weeks after which "If things are not progressing at this stage then it may be that a joint meeting as suggested in your referral would be a good way to start to move things forward". My Occupational Health Report of 22/08/19 stated "I believe that attending this appeal and reaching an outcome of this issue will allow Derek to move forward.". Contrary to the intent the advice, on 20/03/20 the Respondent concluded the grievance process arising from the disclosure of 07/11/18[i] via a brief email, without hearing the second stage appeal. None of the envisaged meetings regarding my absence or current procedural issues took place. On 21/04/20 the Respondent concluded the whistleblowing process arising from the disclosure of 07/11/18[i], via a brief email.*
- *What reasonable adjustments should have been made: The stage two appeal should have taken place. In person meetings should have been arranged to communicate the conclusion of the processes and their outcome.*

48. Reasonable Adjustments: Post Traumatic Embitterment Disorder (PTED)

- *When duty arose: 01/04/20*
- *Factual basis for failure to make reasonable adjustments: Following a discussion with Mr Lynch, I sent him a link to a resource on the National Bullying Helpline website titled "What is Post Traumatic Embitterment Disorder?" which included a section on advice for employers. Mr Lynch advised me that he had read the material. The advice for employers included:*

a) Engage with the employee and encourage them to talk about what is troubling them. To be both listened to and to feel believed goes to the very heart of the embittered mind.

b) In-house Policies and procedures should be updated to reflect the fact that PTED is a disability. It is an illness. Follow your procedures and work with mental health experts.

c) Do not force Mediation. It will likely be a waste of time, money and resources. The embittered mind is incapable of empathising with others and believes it is others who need to change – not them.

d) Do not rush into a Performance Improvement process. The PTED mind will resent a heavy-handed approach.

e) Don't expect too much from the employee who has trust issues. Be open and honest and reassuring. Appoint a 'workplace buddy' if appropriate.

f) Work with an Occupational Health expert who understands PTED.

g) Consider Coaching. A good Coach will not tell their Client what to do. Coaching may provide the embittered mind with the tools they need to look to the future.

h) Talk openly about PTED to the employee in question. Reference the work of both Professor Michael Linden and The National Bullying Helpline … It will also demonstrate to them that you have a reasonable understanding of what they are going through. The events narrated in 4104157/2020 of May 2020 show Mr Lynch and the Respondent had failed to heed the advice given in any meaningful way.

- *What reasonable adjustments should have been made: The National Bullying Helpline advice should have been considered and implemented: Mr Lynch should have engaged with me and encouraged me to talk about what is troubling me; ensured procedures were followed; avoided a heavy-handed approach; be open and honest and reassuring; appoint a workplace buddy; work with an expert who understands PTED; provided coaching; talk openly about PTED and show an understanding of what I was going through.*

49. Reasonable Adjustments: Joint Review Meeting

- *When duty arose: 07/04/20*
- *Factual basis for failure to make reasonable adjustments: The four week review took place on 06/04/20 amidst the initial disturbance of the COVID-19 pandemic advising of the difficulty of obtaining GP/OHS appointments; and that there would likely be significant disruption to arranging further Occupational meetings to expedite a resolution to my situation in a timeous manner; and it was likely unfeasible to arrange a joint meeting in the short term.*
- *What reasonable adjustments should have been made: A meeting between me, my trade union representative, Mr Lynch and others should have been arranged and taken place, even without Occupational Health input."*

50. The claimant did not directly respond to the respondent's submissions that the amendment came out of time or indeed that amendment was required. Accordingly I instructed my clerk to write to the claimant on the 9 June asking him what his position was and whether he accepted the respondent's position that the Better and Further Particulars were in effect an amendment. In that letter the claimant was referred to the leading case of ***Selkent*** and to the principles around amendment. The claimant quickly responded. He suggested that some claims could be traced back to a chronology that had been lodged in January 2020. The respondent's solicitor wrote on the 11 June reminding the Tribunal of the terms of the original PH Judgment which allowed the claimant to recast some claims and not add new ones. They pointed out that

the Early Conciliation took place in relation to the case between 7 and 28 August 2019 and the claims were out of time before any reference was made to such matters in the Chronology. His position was that the claims had no reasonable prospects of success and that there were no pleadings to point to any substantial disadvantage suffered. The claimant had only mentioned claims in Paragraphs 21.4,21.6,21.7 and 21.8 but that Paragraphs 46,47,48 and 48 are new.

51. The claimant initially did not fully accept Mr McLean's analysis and his response drew a further letter from the respondent's agents on the 14 June ending that being able to 'trace back' a claim was insufficient to articulate one. The claimant in his email dated 14 June formally sought leave to amend ''such that anything which the respondent asserts is new or time barred ..is not treated as such by the Tribunal and struck out''. He then addressed the ''Selkent'' principles dealing with the nature of his amendment (where it was relevant to look at whether it was relabelling existing facts) time limits and the timing of the application. He pointed out that he was a litigant in person with no previous experience of the Tribunal process. He had obeyed Tribunal directions and had done everything possible to keep his claims up to date.

52. Ultimately, I preferred the analysis of Mr McLean and I agree that although some refence to certain facts can be traced back this is not a simple relabelling exercise. The claimant had 'pushed the envelope' by seeking to add additional claims. The Tribunal has wide powers of amendment and a party can seek leave to amend at any stage before Judgement and accordingly the matters identified in the Better and Further Particulars will be treated as amendment as both parties now agree.

53. It might be helpful for the claimant to understand what is meant by a reasonable adjustment and what a claimant must aim to prove to demonstrate a breach of the Equality Act by failing to implement one. Before doing so I would stress that a reasonable adjustment is not just some event or decision that a claimant

wanted to happen differently. A PCP or 'provision criteria or practice' of the employer must be identified that puts the disabled person at 'substantial disadvantage'.

54. The claimant initially made a number of claims for an alleged failure to make reasonable adjustments following his GP's letter putting the respondent's management on notice that he was suffering stress t work. I mentioned in the PH Judgment that time bar issues arose. We now have pleadings that are a mixture of some issues that were struck out, some new issues and some recast 'old' ones. The pleadings for a lawyer are not easy to follow but I accept that some latitude must be given to the claimant who is a party litigant subject of course to the respondent not being prejudiced. As noted earlier he has gone beyond what was envisaged in the PH Judgment by adding new claims without getting the Tribunal's authority to do so. I would observe that the initial adjustment claims were that the grievance process that the claimant had initiated should have been dealt with more quickly and the a more specific adjustment that he should have been given a new line manager at some point.

55. At the outset it is important to identify what relates to matters that were struck out by the PH Judgment and what are new. The matters struck out previously cannot be resurrected and the new matters require to be the subject of amendment. Time bar is of course something that should be taken into account in whether or not to allow an amendment but the Tribunal has a wide discretion as noted earlier and it is only one factor.

56. Turning to paragraph 34 this relates to whether it was a reasonable adjustment to take the claimant off a project involving CCTV. He had initially been allowed to give up involvement but was then reassigned to it. The pleadings are still deficient. There is no reference to a suggested PCP or to substantial disadvantage although reading the pleadings as a whole the claimant alleges that this decision to reallocate the work caused him unnecessary stress.

57. Paragraph 35 related to the issue of delay and on the face of the bald facts there has been a significant delay but there may, of course, be an explanation for those delays. The respondent's lawyers say that no PCP has been identified. The claimant seems to try here and add an additional adjustment relating to the provision of support. The respondent says that there are no pleadings to support a substantial disadvantage being caused.

58. The claimant has done himself no favours by not focusing on the full statutory basis for his claims. However, reading the pleadings as a whole it is apparent that he says the failure to deal with these processes quickly caused him stress and prolonged any such stress unnecessarily. The claimant pleads that the respondent ''*deliberately protracted these processes …..in order to maximise the damage to me*''

59. In his pleadings the claimant adds that he was distressed at a particular hearing not taking place or what happened at a meeting and so on but this is not the issue he is founding upon in that passage. The issue is whether it was a reasonable adjustment to try and expedite the process (and whether this could reasonably be done) and if so what would have been likely to result. It would be open to a Tribunal to consider whether it was a reasonable adjustment in the circumstances and whether it would have then alleviated a possible substantial disadvantage namely the additional stress that an unresolved process could have caused.

60. There are, however, further difficulties. It is not clear why the delay occurred and whether it was a decision of one person or more likely the cumulative effect of a number of decisions. I was not referred by parties to the recent Court of Appeal case of **Ishola v Transport for London** which I think contains important guidance. A one-off act, here a decision not to investigate a grievance before dismissal was held not to be a PCP. There has to be some sort of continuing state of affairs or repetition of behaviour. I would add that the Claimant might benefit from reading the case. At paragraph Lady Justice Simler said this:

"In my judgment, however widely and purposively the concept of a PCP is to be interpreted, it does not apply to every act of unfair treatment of a particular employee. That is not the mischief which the concept of indirect discrimination and the duty to make reasonable adjustments are intended to address. If an employer unfairly treats an employee by an act or decision and neither direct discrimination nor disability related discrimination is made out because the act or decision was not done/made by reason of disability or other relevant ground, it is artificial and wrong to seek to convert them by a process of abstraction into the application of a discriminatory PCP.

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

In that sense, the one-off decision treated as a PCP in Starmer is readily understandable as a decision that would have been applied in future to similarly situated employees. However, in the case of a one-off decision in an individual case where there is nothing to indicate that the decision would apply in future, it seems to me the position is different. It is in that sense that Langstaff J referred to "practice" as having something of the element of repetition about it. In the Nottingham case in contrast to Starmer, the PCP relied on was the application of the employer's disciplinary process as applied and (no doubt wrongly) understood by a particular individual; and in particular his failure to address issues that might have exonerated the employee or give credence to mitigating factors. There was nothing to suggest the employer made a practice of holding disciplinary hearings in that unfair way. This was a one-off application of the disciplinary process to an individual's case and by inference, there was nothing to indicate that a hypothetical comparator would (in future) be treated in the same wrong and unfair way."

61. It might be viewed differently if it had been possible for the claimant to demonstrate some sort of likely repetition or ongoing state of affairs. I bear in mind that we do not have detailed pleadings from the respondent clarifying their position. In Paragraph 177 of the PH Judgment I made reference to a possible claim around a reasonable adjustment to expedite the claimant's grievance because of the stress an unresolved grievance apparently had on him and did not strike it out. The claimant deals with this mater in Paragraph 35 referring to the Occupational Health Report dated 21 February 2019

referring to avoiding ‘‘undue delay’’. The claimant attended a grievance hearing on the 20 May and had an outcome on 20 March 2020. He alleged breaches of the respondent’s policies. We are concerned about the period from February 2019 to March 2020. The previous delay having resulted before the claimant says the duty began.

62. This particular matter does require amendment. It was considered as part of the pleadings at the previous PH hearing and permission given to lodge Better and Further Particulars. In the whole circumstances I am not prepared to strike out this claim (delays in carrying out and concluding the grievance process) and will allow amendment subject to reserving the issue of time bar. I cannot assess whether it has little reasonable prospects of success or not as much will depend on the factual reasons for the delay and as yet there is no detailed response from the respondent explaining the reason for delay.

63. In relation to Paragraph 34 it is noteworthy that the original complaint (Para 138 of the PH Judgment) refers to various forms of discrimination including disability discrimination, harassment and detriment. This is now recast as a reasonable adjustment claim which is out of time. Paragraphs 36 and 38 are new matters and require an amendment.

64. Paragraph 39 relates to the use of an alternative to an HSE stress assessment. This was dealt with in Paragraph 160 of the PH Judgment. The claims were struck out and have been reinstated. I repeat what I wrote there: ‘‘*What happened at the meeting seems on the face of it wholly unremarkable*’’ That is still my conclusion and it is disappointing to note that the issue has simply returned to us and is required to be considered again with the time and expense that causes. The claimant must understand that just because something happened in a way that he did not approve of or would have done differently does not mean that there is a failure to make a reasonable adjustment. Similarly, the unsatisfactory meeting with Professor Leydecker formerly Incident 42 and now Paragraph 37 had made reference to reasonable

adjustments and those claims were struck out. I cannot understand why the matter now reappears. The claimant writes: "*The meeting with Professor Leydecker served no purpose, caused me more harm than good, and should either not have taken place or taken place consistent with the Occupational Health recommendations. I should not have been accused of theft without any evidence or investigation.*'' I am not sure how the claimant could reasonably analyse the situation as having any PCP being in play. The reasonable adjustment sought seems to effectively be things should have gone as the claimant wanted them to. For the avoidance of doubt even if this was not already struck out there is no reasonable prospects of success for such a claim.

65. Paragraphs 41,42 and 43 relate to a suggested reasonable adjustment of referring the claimant for counselling, allowing him to acquire annual leave and not progressing a referral to Occupational Health. The latter does not amount to a valid adjustment as it is a means to an end to identify reasonable adjustments not an adjustment in itself. These are wholly new claims that require amendment.

66. Paragraph 44 relates to the involvement of the claimant in a colleague's grievance hearing. This was previously Incident 62 and was struck out. Once more the matters reappear this time solely under the heading of reasonable adjustments. The claimant attended this meeting and suggests that reasonable adjustments arose: ''*I should have been notified in advance of the participants and provided with an agenda. I should have been introduced in the same way as the other participants. My request to read a pre-prepared statement, or excerpts from it during the meeting, should have been accepted."* Again, this seems to be no more than a complaint that things should have been done differently. There is no PCP nor does one seem to exist from what we are told. **This matter was struck out but for the avoidance of doubt these claims have no reasonable prospects of success.**

67. Paragraph 45 was formerly Incident 63 and which was struck out. There are now some new facts pled which would require amendment. Once more the deficiencies noted earlier are apparent. What is the PCP? If it is the refusal to accept self-referrals then this on it's own seems a policy that is within management discretion and neutral to both those who were disabled and those who are not. An adjustment has to be 'reasonable' and it is foreseeable that self-referral could be readily abused by individual staff member incurring considerable expense. There is no indication of what the substantial disadvantage would be given that the claimant could ask for a management referral and has his own GP to seek support from. **For the avoidance of doubt this matter as pled has no reasonable prospects of success and is struck out.**

68. Paragraph 35 formerly Incident 61.The claimant was given an opportunity to recast his pleadings. He has now stated that the reasonable adjustment is:

> *"The Respondent should have concluded the processes much sooner, to avoid or minimise uncertainty and delay. The Respondent should have managed my expectations in terms of what action and/or feedback I could expect as well as clear timescales for providing updates. The Respondent should have followed its processes and procedures as they applied to me, or mutually agreed a deviation from those processes and procedures.*"

69. There is no reference to a PCP or to what the substantial disadvantage is. However, while I am hesitant to let such an adjustment stand it is capable of giving the respondent's sufficient notice that delay in their processes might be likely to adversely affect the claimant's health (whether they did or not would be a matter for proof) and whether there were any good reasons for such delays. In the circumstances I am of the view that there are little reasonable prospects of success and I fear that any hearing could end up as a long-winded trawl through events both large and small. In addition the issue of time bar remains extent. **A Deposit Order will be made in a sum to be ascertained later.**

70. Paragraph 40 (formerly 58 and 59) related to various matters principally a change in line manager. We have no clear PCP and what appear to be discrete one-off decisions relating to the whole department. The claimant contends:

> ‘‘*Meaningful supervision should have taken place as described by the Occupational Health Service. The Respondent should have followed its grievance procedure. Prolonged uncertainty and undue delay were not avoided (as per para 35 above). The Respondent should have changed my line manager on a temporary or permanent basis, and ensured the support envisaged by the Occupational Health Service was provided. As per incident 34, struck out as standalone - the temporary re- organisation/restructure unexpectedly made Mr Lynch my permanent line manager without any of the consultation required via the Respondents change management procedure, which should have been followed.’’*

71. This is difficult to follow and what for example ‘‘meaningful supervision’’ means is not clear. It is not clear what the substantial disadvantage is that would be avoided other than the general assertion that having the same line manager was stressful. **The issues here are struck out as having no reasonable prospects of success apart from the adjustment relating to a change of line manager.**

72. The respondent’s pointed to Paragraphs 46 (appointment of a new manager in February 2020), 47 (failure to allow a stage two stage appeal), 48 (a failure to make adjustments in April/May 2020) and 49 (a failure to arrange a Joint Review Meeting). These matters all required amendment.

73. The respondents sought Strike out/ Deposit in relation to other claims made in their fourth and fifth categories which related to matters raised in the Fourth and Fifth claim which they argued had no reasonable prospects of success Paragraphs 62 i-iv, 65 onwards Paragraphs 73, 74-76 ,77, 78-79 ,82, 84-88. The claimant had recorded that Paragraphs 50-54 are background but in Paragraph 60 he draws out some potential claims. The respondents submitted that the claimant could not reasonable believe that the events narrated amount to unlawful detriment or harassment.

74. The claimant says that he was harassed because of his protected characteristic namely disability. In his original claim he had alleged that he had been discriminated against on the ground of his religion or philosophical belief. In Paragraph 62ii related the claimant's grievance being dealt with 'seriously' and this is said to be a detriment arising from disclosures. There is no linkage or nexus with the disclosures. The next matter relates to interactions with Mr Lynch that seem unremarkable and again no indication of how this could relate to the disclosures. The word detriment has a wide meaning but it is not so wide as to encompass behaviour that is only subjectively regarded as upsetting. Paragraphs 65 onwards of the BFPs relate to matters which had previously been raised in the Fifth Claim. The Respondent notes that the Claimant has stopped clearly categorising the various claims he makes amidst these paragraphs, and will respond where a claim appears to be identified.

75. In paragraph 73 the claimant says his dismissal was automatically unfair because of whistleblowing yet as the respondent's agents point out this was some two years earlier. As noted earlier the claimant has not pled a causal link between these events. To succeed he would have to demonstrate that the dismissal related to the much earlier alleged disclosure. This would be a time consuming and costly exercise which would be likely to lead to evidence being led and rebutted about the sort of numerous events the claimant has pled over a two year period. I have considerable misgivings about allowing this claim to proceed. It could be seen as an invitation to try and lead evidence about all the peripheral events that seem to prey on the claimant's mind. It would not be such an invitation. It would be up to the claimant to demonstrate, at least a prima facie case that the matters are somehow linked. From the pleadings before me he will struggle to do so but I will not strike out the claim. Considering the matter in the round I am reluctantly of the view that I cannot rule that this has no reasonable prospects of success given that it is so fact sensitive. However, **this matter has little prospects of success and will be subject to a Deposit Order in a sum to ascertained later.**

76. Turning to Paragraphs 74-76 and 87. The claimant writes at 76 and 87:

> ‘‘The Respondent consistently refused to make reasonable adjustments for me, including to change my line manager due to the evidenced history of Mr Lynch's unwanted conduct, lack of support and behaviours which I found antagonistic, harassing and distressing.’’

> ‘‘The dismissal could have been handled in a manner which minimised the severe psychological distress caused to me. For example, holding a meeting with me where I could be accompanied by a trade union representative; suspending me to provide forewarning; providing me with particulars of the allegations and allowing me to give an explanation of the matter; responding to my grievances of 24/04/20 and 02/06/20; responding to the accident I logged on 02/06/20; holding the joint Occupational Health meeting; seeking appropriate medical advice. The respondent should have sought my permission prior to the visit to my house on 01/07/20 and informed me in advance of who was visiting and for what purpose. The Respondent failed to make these reasonable adjustments.’’

77. If these Paragraphs intended to found separate claims then they fail to specify the adjustments properly or provide the basis for them i.e give the PCP etc. I suspect they are more likely to be summarised background but for the avoidance of doubt as a separate stand alone basis for claims they have no reasonable prospects of success and are struck out. In relation to Paragraph 87 the words ‘‘The Respondents failed to make these reasonable adjustments’’ should be removed from the text.

78. Dealing with Paragraph 77 it has two mixed claims the first being under Section 20 of the Equality Act and the second detriment arising from Whistleblowing. The claimant writes:

> ‘‘The 22/05/20 email I sent to colleagues was a consequence arising from my disability and therefore Section 15 of the Equalities Act 2010 affords me protection. I was treated unfavourably because the email arose in consequence of my disability. The Respondents' treatment is not a proportionate means of achieving a legitimate aim: it is a means by which to circumvent protections afforded to employees by statute and dismiss me as a whistle-blower.’’

79. The respondent's position was that the email was only one element in their assessment that there had been a break down in trust and confidence. The claimant does not specify how the email is connected to his disability or was in some way a symptom of it for example of impulsivity and whether he apologised or retracted it. To succeed the claimant would have to show what was in the minds of the people who dismissed him and that they did so because of his disability. The pleading do not adequately support either claim. Neither claim has any reasonable prospects of success and are struck out.

80. In Paragraphs 78-79 the claimant refers to dismissal for Health and Safety reasons or for disability. It is unclear factually how such claims could arise as the respondent 's agents point out. These matters are not thought through and so vague and unspecified that they seem to be simply a way of adding complexity to an already complex situation. There is no basis pled for dismissal under Section 100 of the ERA. These allegations are struck out as having no reasonable prospects of success.

81. In Paragraph 82 the Claimant suggests his dismissal related to his religion or belief. The matter is put thus:

> ''In the "case for dismissal" obtained via a subject access request, it is narrated that it is perplexing why not resigned and to paraphrase, "putting me out of my misery" was a factor in the recommendation and decision to dismiss. As of 10/01/20 the Respondent was fully aware of my Christian beliefs and the doctrine I was endeavouring to apply by "turning the other cheek", as per Joint Bundle for the PH of 18/06/20 p332. At the PH of 18/06/20 the tension between the Respondents continued poor treatment and desire to dismiss me, against my refusal to resign was discussed. This is detailed in an email I sent to the Tribunal following the PH of even date: "I feel that it is wholly incompatible with my religious and philosophical beliefs (particularly "turning the other cheek" - see joint bundle p332) to resign and claim constructive dismissal.". In the 4105478/2020 ET3 it is stated "The Respondent did not know that the Claimant held the belief that his Christian religion required that he not countenance resignation" which is evidentially untrue. I contend I have been discriminated against because of my "religion or belief" and this was a significant factor in my

dismissal. That I endeavoured to "turn the other cheek" placed me at a particular disadvantage, that being that an individual without my "religion or belief" would have found the situation so unbearable as to have resigned long ago. A comparator here is Dr Marie''.

82. How the claimant's religion or belief played a part in his dismissal remains obscure. There is no 'smoking gun' to suggest that someone like the claimant holding conventional/traditional religious or political beliefs was dismissed because of those beliefs and there is no underpinning pleadings to suggest such motivation on the part of the respondent. The claimant had recycled these matters which were struck out in the PH Judgment and they now appear in relation to the unfair dismissal element. **They have no reasonable prospect of success and are struck out.**

83. In Paragraphs 84-88 the claimant complains of harassment that:

''Mrs Dyker obtained my personal email address and used it on 01/07/20 to send me the dismissal letter as an attachment within an email. It is "scandalous, unreasonable or vexatious" for the Respondent to have used the personal data I had supplied to the Tribunal in this way. This action was undertaken without consideration or respect, violated my dignity, and was personally offensive to me. It caused me severe psychological distress.''

84. It is understandable that the claimant found his dismissal unsettling but there is nothing untoward in what occurred given that he was working at home. Nor is there any suggestion that some legal obligation towards him has been broken or that any employment claim arises. Whether any distress was genuine or hyperbole is something that the Tribunal hearing the unfair dismissal may touch on but is of no relevance to the claim for unfair dismissal where injury to feelings is not a relevant head of claim. **These matters have no reasonable prospects of success and are struck out.**

85. The respondent's agents then turned to what they described as Category 5 the Fourth Claim made. Their position was that if the whole

case was not struck out then they did not seek separately strike out of the unfair dismissal claim. They acknowledged that dismissing an employee for a breakdown in trust and confidence in these circumstances without meeting to discuss the proposed termination was unusual. Accordingly, the ("ordinary") unfair dismissal claim will now proceed to a hearing.

Expenses

86. The rules relating to expenses are found in the Employment Tribunal Rules of Procedure. We are concerned with Rule 76. The respondent's position is that the claimant has acted unreasonably (Rule 76(1)(a)).

87. There are two matters that have to be considered before an expenses (costs) order is made. The first is whether the rule is engaged and the second is whether the Tribunal should exercise its discretion to make an award at all.

88. I do not minimise the difficulties that party litigants face when drafting pleadings especially in discrimination cases. The claimant also has mental health issues which are referred to in the report he has lodged. He has not suggested how this impact on his actions. He is clearly an able person and has demonstrated this in a number of ways such as the detailed research he has carried out on issues and the lengthy and complex nature of his pleadings. He was also a Trade Union representative at the University. He is not the average party litigant and has skills and experience (including the ability to research matters on the Internet) which he can deploy.

89. A feature of many of the events relied upon is that the claims he says arise from those events have evolved as the case had proceeded. It is difficult to understand how a claim can mutate from one of say an honest belief in discrimination on the grounds of philosophical belief to one of discrimination on the grounds of disability when that entails a wholly different reason for the alleged discriminatory behaviour. I described the claimant's approach in the previous Judgment as being a scatter gun approach. He has certainly now

focussed on disability discrimination (no doubt because these were the matters left extant following the previous hearing) but it is difficult to understand why he considered so many apparently anodyne interactions with the respondent's staff give rise to so many claims and this in turn gives rise to the suspicions, voiced by the respondent's agents, that the claims are being manufactured; old claims relabelled and matters made needlessly complex with the result, whether intentionally or not, the claimant's behaviour is objectively unreasonable and should attract an award of expenses. I bear in mind that a litigant in person should be judged less harshly than a legally qualified person but the way the litigation is being conducted arguably does not seem to arise wholly out of oversight, ignorance or inexperience.

90. If the respondent insists for the matter of expenses should be decided on the basis of the papers before me then I will consider doing so. However, I have to be convinced that a particular order is appropriate and proportionate. Now that the strike out /amendment process has (I hope) ended this is a convenient point to consider the application. I accept that it might be lost sight of by the time the case is finally heard. I am, however, of the view that it is unsatisfactory to conclude the matter on the basis of the current application which was made some time ago and does not attempt to detail the precise behaviour complained of. This makes it difficult for the claimant as a party litigant to meaningfully respond. In addition, the Tribunal has no indication of the expenses incurred say for the individual strike out hearings. It is not necessary for expenses to be allocated to particular acts of unreasonable behaviour but it would be helpful when considering whether a lesser award that the expenses of the proceedings should be contemplated I would therefore invite the respondent's agents to make additional submissions on this matter particularly in relation to how they allocate the expenses between the hearings (to which the claimant will be entitled to respond) before coming to a concluded view. This will also allow the claimant to provide details of his current financial position which a Tribunal can take into account when considering the level of

expenses and the appropriate sum to fix as a Deposit.

Judge JM Hendry

Employment Judge

12th of July 2021

Dated

12th of July 2021

Date sent to parties