EMPLOYMENT TRIBUNALS

Claimant: Mr B Evans

Respondent: St Helens Borough Council

HELD AT: Liverpool **ON:** 19, 20, 21, 22, 23 26, 27, 28, 29 and 30 September 2016 22, 23, 24, 25 and 29 August 2017 19 September 2017 (In Chambers)

BEFORE: Employment Judge Robinson
Mr J Roberts
Mr P Gates

REPRESENTATION:

Claimant: Ms A Gumbs, Counsel for September 2016 hearing
Mr D Bunting, Counsel for the August 2017 hearing

Respondent: Mr T Kenward, Counsel for both sets of hearings

JUDGMENT

The judgment of the Tribunal is that the claimant's claims relating to constructive unfair dismissal, the constructive unfair dismissal because he made a protected disclosure, unlawful deduction of wages, breach of contract, discrimination arising from disability, indirect disability discrimination, failure to make reasonable adjustments, harassment related to disability contrary to Section 26 of the Equality Act 2010, victimisation contrary to Section 27 of the same Act and a detriment contrary to Section 47B of the Employment Rights Act 1996 because of the claimant's alleged whistle blowing all fail and are consequently dismissed.

Preliminary Issues

1. This matter has taken a long time to be completed because the ten day hearing in September 2016 was taken up for much of the time by the cross examination of Mr Evans.

2. The cross examination of the claimant took time because we had to make various adjustments during the Tribunal hearing which meant that the length of the hearing was extended. The adjustments that we put in place were agreed between the parties representatives and the Tribunal. They included allowing Mr Evans to record evidence so that he could play it back in the evenings to himself and make sure he had given the right responses to the questions put to him. Initially we also allowed Mrs Evans, the claimant's wife to sit next to him in order to make notes so that any questions could be read back to the claimant if necessary. That did not work well so on the second day and during the rest of his cross examination the claimant's own solicitor, Mr Parry, sat next to him and wrote out the questions that were put to him by Mr Kenward. Mr Parry then, if necessary, read those questions back to the claimant so that he could answer. The agreement between Ms Gumbs and Mr Kenward, at the outset of the hearing, was that any recording made by the claimant could only be used in this litigation or in the event of an appeal being lodged to the EAT, the parties would seek permission to apply to the Tribunal to extend the permission to retain the recordings. Other than in those situations the recordings will be destroyed within 40 days of the date of the promulgation of this decision.

3. We also had regular breaks so that the claimant could gather his thoughts. The breaks were given at intervals of 50 minutes and the break lasted for approximately 10 minutes on each occasion.

4. When other witnesses were giving evidence we did not break every 50 minutes but we requested the claimant to tell us if he wanted a break.

5. The respondents accepted that the claimant is dyslexic and therefore disabled within the meaning of Section 6 of the Equality Act 2010 but only for that reason. The respondents did not accept that the claimant is disabled because of stress and anxiety.

6. The person giving evidence on behalf of the claimant other than the claimant himself was Mrs Evans.

7. Mrs Evans gave evidence and was cross examined on the 27 September. Ms Murray was the first witness for the respondent. On the next day Wednesday 28 September 2016 Ms Murray was too ill to give evidence other than for about ten minutes.

8. Ms Gumbs was not ready to cross examine the next witness (Mr Tracy) who was the Disciplining Officer and therefore we adjourned until 10 o'clock on Thursday 29 September.

9. The September 2016 hearing was then adjourned to February 2017. Because of Ms Gumb's illness it did not proceed in February. The hearing started again in August 2017. Mr Bunting kindly stepped in for Ms Gumbs and proceeded to represent the claimant.

Credibility

10. There was considerable conflict between the evidence of Mr Evans and the respondent witnesses and we have had to consider how to resolve such conflicts.

11. We concluded that the respondent witnesses were more reliable historians than the claimant.

12. We set out below in the fact finding section of this judgment reasons where and in what circumstances we did not accept the claimant's evidence on some important contentious issues.

13. We concluded that whatever the claimant might say to us about his inability to take in information we found him more than capable of considering and understanding the questions and the contents of documents. We accepted it took him a little longer to do so than others. However when he put his mind to a particular problem he was, not only capable of reading documents and understanding them, but of producing documents himself with a very high level of relevant detail in response. He was able to put together a 114 page written statement containing 466 paragraphs. The claimant has worked out processes by which he can successfully reduce the effects of his dyslexia on his every day life.

14. We heard very little evidence from the claimant about his stress and anxiety other than him saying the whole process that he was put through by the respondents caused him stress and anxiety. We have little evidence as to how that affected him on a day to day basis. However we decided to treat the claimant as if that was also a disability at the relevant time when working for the respondent.

The facts

15. The Educational Psychologist's report prepared for Mr Evans, when he was in further education in 1997, confirms that he is a man of average to good average ability, with mild specific learning difficulties revolving around the area of short term memory. The learning difficulty inhibits his understanding of text. He has been able to hold down jobs at various Councils over that period. He has obtained a Sociology degree with an Upper Second (2- 1) degree. He tells us that "processes are blocked" when he is stressed.

16. Tiredness and stress cause the claimant to have difficulties in reading and writing. We accepted that that was the case. We did not accept he could not remember things in July 2014 that had gone on in February 2014. He chose not to remember.

17. The claimant was less than open about certain issues. For example he was willing to give his Educational Psychologist's report to Occupational Health but he would not give that document to his managers. If he had done so that may have helped his managers understand his disability a little more. The claimant felt the report was for "academic purposes only and not for work".

18. He praised one of his previous employers, Bury District Council, with regard to their treatment of him but he was disingenuous about how he left. He was absent for four months from Bury in 2007. His GP notes suggest on 2nd March 2007 that he

suffered from stress at work which had been building up over a year and that he suffered "intolerable pressures". He admitted to this Tribunal that he was treated unfairly at Bury, having previously suggested in his evidence that they were good employers, unlike St Helens.

19. The psychiatric report of 30 June 2016 records that Mr Evans told the Psychiatrist, Doctor Majjiga, that he had had no charges or convictions in the past. That was wrong. The claimant has two convictions, one for criminal damage and the other for obstructing police for which he received an absolute discharge and a conditional discharge respectively.

20. He said to us that he did not deliberately lie to the psychiatrist. He thought they were minor issues.

21. Turning now to the relevant facts themselves, the nub of this case relates to the issues between Mr Evans' relationship with the father and mother whom we will call AH and SB who had a child, the subject of family proceedings in July 2014. Mr Evans received a final written warning because of the way he acted during the course of the hearing relating to that family and also in regard to the lead up to that hearing. Mr Evans had acted as a Homeless Care Worker for AH from May 2012.

22. He knew that the father and the mother were known to the respondent and that there was active Social Worker involvement with regard to the child of AH and SB.

23. The claimant suggested that he did not know the whistle blowing policy of the respondents. We have seen his induction check list and he received the whistle blowing policy then. We concluded that the claimant did know the details of the whistle blowing policy whilst he was working at the respondents

24. But he said that he did not read that document. His excuse was that it would take him several weeks so that he was happy simply to initial the document recording that he had received the policy.

25. By January 2014 there were issues between AH and SB as to who should have custody of their baby. The respondent’s Social Services Department were concerned about AH and SB living together. That would not have been good for the child because of SB's personal difficulties. Both suggested to the social worker that they were no longer together and therefore there was no risk to the child going into the custody of AH. The claimant knew that AH and SB living together was not something which the Social Workers could tolerate.

26. The lead Social Worker involved with the case was Jan Dryhurst. It came to her knowledge that the claimant might have seen AH and SB in St Helens together. She initially asked the claimant to produce written confirmation of what he had or had not seen.

27. The claimant knew that SB had been declared unsafe when dealing with "either children and/or animals".

28. For reasons which we never understood the claimant was reluctant to tell Ms Dryhurst, and ultimately the Family Division of the County Court, what he had actually seen. Ms Dryhurst got the firm impression in February 2014 when speaking to the claimant that he had seen AH and SB together in St Helens which suggested that they might be living together. That was an important issue, if true, for the Judge in the Family Court proceedings to consider.

29. The claimant then started to backtrack. At one point the claimant suggested that he only "thought" that he had seen SB with someone who "looked like AH" in St Helens.

30. That attitude did not help either the Social Worker or Emma Murray, the Solicitor at St Helens, preparing for the family court proceedings.

31. The claimant suggested at first that he is a simple Homelessness Officer and therefore unused to going to Court. He then changed his story in cross examination and said that he was very used to going to Court because he was a Homelessness Officer. We accepted that the experience in the Family Court when giving evidence was difficult for him.

32. By May 2014 the claimant realised that he might be asked to go to court to tell the Judge what he had actually seen with regard to AH and SB and his sighting of them in St Helens. He demanded of Emma Murray information as to what Jan Dryhurst had said when she gave evidence at the earlier March hearing.

33. Miss Murray confirmed she would endeavour to obtain that information. She eventually learnt that that evidence was strictly confidential and she could not provide information about what had happened at the Family Hearing in March for the claimant. Mr Evans was upset about that.

34. The Court ordered that his statement should be filed by 3 June 2014. By 10 June it had not been. Ms Murray asked the claimant to email her with his statement attached.

35. The claimant was warned that he may be witness summonsed in the event that the information was not provided by the required date. The claimant suggested in an email dated 10 June 2014 that he was being pressurised by Jan Dryhurst to make a statement and/or attend court.

36. The claimant turned to his manager, Mr Tony McFarlane, to seek advice. Mr McFarlane's advice was simple. The claimant should contact Ms Dryhurst and tell her that he did not want to attend court as he could not be sure of what he had seen.

37. Had the claimant done that that would probably have been the end of the matter. What the claimant then did meant that the Judge demanded his attendance.

38. On 13 June 2014 Ms Murray wrote again to the claimant telling him the court had requested a further statement from him. His first statement had already been lodged.

39. Ms Murray made numerous attempts to try to obtain that second statement from him. She explained to him on 13 June that all he had to do was to prepare a letter or statement in a similar format to his initial letter and for him to send that statement or letter to her.

40. On 13 June 2014 the claimant then added to his statement the following extra words:-

> "I apologise to the court for any delay. I work in a very busy office, however the delay has been exacerbated by the legal team taking several days to inform me that my second report was in the wrong format".

41. He then goes on to say this:-

> "Ms Dryhurst was very forceful and intimated that I would be forced to attend court".

42. The 13 June 2014 was a Friday and his statement was sent at 16.27 on that day.

43. On the following Thursday which was 19 June at 13:32 Ms Murray emailed Mr Evans to tell him that she had amended his statement "slightly" and taken out the things that were not relevant to the court proceedings. She asked him to agree the amended version by 4pm on that day. Ms Murray was under pressure to get the statement lodged with the Family Court. The wording that Ms Murray wanted taken out was the wording set out above in paragraphs 40 and 41 above which criticised the legal team.

44. The statement was exactly as Mr Evans had drafted it, save for the omission of those words.

45. Mr Evans did not get back to Ms Murray by 4pm as requested. He was upset that his statement had been altered.

46. The claimant accepted that the statement had not been materially affected and the statement was, in terms of the information he had given to Jan Dryhurst, exactly as he had drafted it.

47. The next communication of any importance between Ms Murray and Mr Evans was an email on 2 July 2014 at 10.12. Ms Murray told Mr Evans that the final hearing for the Family Court proceedings was listed from 7 to 11 July and that, whilst he was not currently required to attend as a witness, the court had asked that he be warned of the possibility that he might need to attend at short notice because of the information he may have relating to AH and SB.

48. The claimant suggested to us that he was unaware of that email. We did not believe him. The claimant knew that he could be asked to go to court in July 2014.

49. On 2 July 2014 the claimant contacted Ms Biswas's Chambers. She was the Barrister for AH in the family court proceedings. Because of that phone call to Chavasse Court Chambers, Hayley Farrells, the Solicitor acting for the child had to

be contacted. She, in turn, contacted the court and it was at this point that the Judge insisted that Mr Evans be brought to the court to give evidence and explain himself.

50. St Helens Borough Council were not involved in that process. The respondent's solicitors were potentially being criticised for improperly amending a statement. Other parties in the proceedings wondered whether the Council's officers had doctored Mr Evans' statement.

51. Hayley Farrells's note of the telephone call with Mr Evans was that he told her that when he rang Chavasse Chambers he was seeking advice as his statement had been changed by Emma Murray.

52. Emma Murray and her manager Nina Element were aware that there had been a change to his statement and were happy to provide the full version to the other parties in the family court proceedings to read. Mr Evans suggested that he had selected Chavasse Chambers from the Yellow Pages completely at random and that he wanted some advice with regard to the changing of his statement. He suggested that the changing of his statement was akin to the Police Officers changing their statements in the Hillsborough tragedy case.

53. We do not believe the claimant's reasons for contacting Chavasse Chambers. There was no evidence that these Barristers Chambers advertised in Yellow Pages. The claimant suggested that this was the whistle blowing moment. He suggested he wanted advice over his statement being changed. The claimant knew that he was going to talk to the Counsel or Solicitor acting for one of the parents in the family court proceedings although he denied it at this hearing. We did not accept his denial.

54. That was inappropriate. He was not whistle blowing. He was seeking advice for his own purposes, or worse, Mr Evans was being mischievous in attempting to contact a representative of a party to the family court proceedings inappropriately.

55. The claimant knew that he could contact either his own manager, Mr McFarlane or Nina Element in order to seek advice. There was no reason to go outside the respondent organisation he worked for. It was not in the public interest to do so.

56. The claimant sent an email to Nina Element. It was sent on 4 July 2014 at 15:03. The full text of that email is as follows:-

> "The issue of my statement being amended has disturbed me greatly. It is not particularly about the changes but the principle of a Solicitor changing the content of a statement. I have worked with many solicitors over the years and I have attended court and represented clients in court. I have never heard of a Solicitor amending a statement for court.
>
> Miss Murray had given me an opportunity to refuse or accept the amended statement but at that point I had lost faith and did not reply. However, the matter continued to disturb me so I spoke to the clerk at Chavasse Chambers I believe his name was Chris and asked if it was normal for Solicitors to amend statements. The gentleman said that he would pass my details on to a Solicitor who would contact me "off the record". The next day I received a

> phone call from a Solicitor who claimed to be from Canter Jackson (sic). She appeared to know all about the issues already, she advised that I could email her and she would inform the other parties, again I needed time to consider the position and action. Then I received a phone call from my senior manager about the situation who advised that I should inform you".

57. Mr Evans's email confirms he is used to going to court. He also says that he was not upset about the changes to his statement in principle.

58. By 7 July, when the family court proceedings commenced, the Judge wanted the claimant to attend to give evidence to clear up the different versions of sightings of AH and MB.

59. A number of emails passed between the offices of the respondents including Samantha Murray who was Mr Evans's manager, Nina Element and Emma Murray. There was now a pressing issue to discover why Mr Evans acted in the way that he did in contacting Chavasse Chambers and why he was having to be called to court. It was not the respondents who were calling him to court but the Judge who demanded Mr Evans' attendance.

60. Mr Evans gave evidence to the family court and was ultimately criticised by the Judge. At this stage the claimant had seen the father of the child again in St Helens town centre and told him that he was being "hounded" by the Council to give a statement.

61. The claimant retracted, before the family court, his original statement to Jan Dryhurst that he had seen the couple in St Helens together. He said he was not 100% sure he had seen AH and SB together.

62. The claimant complained that he had been subjected to lengthy cross examination over two and a half hours at the family court by the council's barrister. He felt that comments made to him in court were discriminatory in terms of his dyslexia.

63. The whole process, he said, made him question whether or not he wanted to work for the respondent.

64. The respondent’s officers were so perturbed about the way in which the claimant had acted during the lead up to the court proceedings and in the way he gave his evidence to the family court that they asked their barrister at the family proceedings (Cerys Williams) for her account with regard to Mr Evans' performance. That account did not reach the Council until 17 September 2014 (page 208 of the bundle). The account by the barrister gave the respondent cause for concern. In particular her comments that the father of the child claimed that when he saw Mr Evans in St Helens, Mr Evans complained to him about the legal department "hounding" him about providing a statement. The barrister's notes record the claimant's evidence as terribly confusing.

65. The barrister explained that towards the end of his cross examination Mr Evans had to admit that he should not have talked about the "court thing" to the father of the child.

66. Ms Williams' confirmed that the Judge's judgment in the family proceedings included a damming indictment of Mr Evan's approach when he gave his evidence.

67. By the end of September the respondent had decided that Mr Evans conduct leading up to and in the family proceedings needed investigating. He was invited to an investigatory interview on 3 October 2014. The investigating officers were Samantha Murray and Andrea Smith the Principal HR Officer.

68. During the course of that interview the claimant confirmed and understood he was the council's representative in court. He was asked why he went outside the Council to an external organisation for advice as opposed to speaking to Samantha Murray or someone in the legal department of the respondent. He said he was stressed and made an error of judgment.

69. Because of the outcome of the investigatory process the claimant was invited to a disciplinary hearing on 7 January 2015.

70. All the information and reports were appended to the letter to the claimant on 15 December 2014. He knew the allegations which were:-

> "That Mr Evans' conduct as a representative of St Helens Council in dealing with a case for the family court was inappropriate, both in respect of his actions prior to the court hearing and also in relation to his conduct in court" "That the actions of Mr Evans had the potential to bring the Council into disrepute".

71. The claimant was informed that, if proven, the allegations may constitute gross misconduct. He was given more time to prepare as the disciplinary hearing was postponed for four weeks in order to allow him to review all the reports and respond to the allegations. This was because the respondent recognised the claimant was dyslexic. He was also off work with stress and the respondents wanted to give the claimant enough time to deal with all the issues. The claimant requested permission to record the hearing.

72. The respondents were in a difficult situation because they were happy to concede that the claimant needed more time to deal with the documentation but equally the occupational health report suggested that the disciplinary investigation and the disciplinary hearing hanging over the claimant's head was exacerbating his condition. The report confirmed the claimant was able to attend the hearing and contribute. In other words he was not so ill that he could not cope with a hearing.

73. The claimant then raised a grievance on 12 January 2015. His grievance raised the same issues as those being dealt with in the ordinary disciplinary hearing and it was decided that the two matters could be dealt with at the same time.

74. The claimant produced almost 200 pages of written response to the management's disciplinary report. The disciplinary and grievance hearing started on 21 January 2015. It was dealt with by Mr Tracy. The claimant was given a number of reasonable adjustments including ten minute breaks every hour. He did not take up the offer all the time. However he did not complain about not having breaks.

75. He had with him Donna Birch who took notes. He was told that it was not the policy of the council to allow a recording of the hearing.

76. The claimant was not put at a disadvantage in that regard by not having the hearing recorded because he had ample time to take in the questions that were being asked of him and to respond. In any event the respondents justified their stance by saying that allowing the claimant to record would mean that in future all such hearings for all employees whether disabled or not would need to be recorded causing more time and expense to the respondents.

77. The disciplinary process was not completed in one day. The claimant was able to question both Samantha Murray and Andrea Smith at length. He had prepared 46 pages of questions for the management. He questioned management for three hours during that first hearing. The claimant was given time to write down the answer to each questions. At one point he said that Samantha Murray was speaking too quickly and she slowed down. The claimant would ask a question, the management witnesses would respond and then everybody would wait until the claimant had written down the answer before the claimant then asked the next question. This was in addition to Donna Birch's attendance to take notes on behalf of the claimant.

78. The disciplinary hearing was reconvened on 3 February with the same parties attending and with Donna Birch again taking notes for the claimant. The same process took place.

79. Mr Tracy heard that the claimant had attended courts previously but not the family court, that he had not needed reasonable adjustments when dealing with his own homelessness cases at court, that the claimant had dealt with the father and mother of the child in relation to homelessness applications, that there were active social work involvement with regard to the child of the couple so the claimant made it known in February 2014 to his own management that he met the parents of the child on a number of occasions and that is why Jan Dryhurst, the Social Worker for the child had contacted him. The claimant did not provide a statement as requested in time for the court. The claimant knew that the mother of the child was a vulnerable adult with personality disorders and anti social traits and knew there had been a court order ordering the claimant to file a statement about his sightings of the parents together.

80. The claimant admitted to Mr Tracy that he purposely chose not to respond to the Council Solicitor's deadline for a statement because he had lost faith in the Council Solicitor. There was some discussion with Mr Tracy as to whether the claimant had said that he "saw red" when he saw the amended statement had gone in to the family court without his agreement. He said that he did not even read the amended statement before he attempted to obtain legal advice. Mr Tracy knew that the claimant chose not to contact the Council Solicitors or his managers in order to seek advice but instead decided to contact Chavasse Court Chambers, Mr Tracy understood that the consequence of the claimant contacting those chambers was that the claimant had to attend court. It was not the respondent who had insisted he attended.

81. Mr Tracy knew that the Judge in the family court proceedings had not required the claimant to attend court until she learned that a statement might have been changed and that the claimant needed to clarify what he had actually seen with regard to the parents.

82. Mr Tracy found that the Judge considered the evidence given by Mr Evans was not satisfactory. The Judge, in her judgment, stated that the claimant "did not want to be involved in the proceedings in any way and had attempted to back track on his sighting by maintaining that he could not now be certain about it".

83. Mr Tracy considered that there were two limbs to the conduct of the claimant which was under question, firstly his conduct prior to the attendance at court and secondly, his conduct at court. Mr Tracy was satisfied that the claimant had been given support and guidance from Legal Services.

84. Mr Tracy did not accept Mr Evans' allegation that the Council Solicitors had been "playing a game" with him.

85. Mr Tracy found that the emails sent to the claimant were courteous and polite and the solicitors had not acted unprofessionally.

86. Mr Tracy concluded that the claimant's actions were not justified with regard to the slight amendments to the claimant's statement, especially as the claimant admitted he did not even read the amended statement. Mr Tracy concluded that instead of raising his concerns with the appropriate council officials, the claimant had gone outside the council and caused difficulty for the council by doing so. Mr Tracy felt that the claimant's action in contacting the barristers at Chavasse Court was not "an appropriate response".

87. Mr Tracy did not accept the claimant's choice of solicitor and/or barrister at Chavasse Court was random.

88. Mr Tracy accepted that, in principle, the claimant could seek independent legal advice.

89. Mr Tracy made no conclusion as to the claimant's motive. The reason Mr Tracy took the issue no further was because the claimant admitted to him that his conduct was unprofessional.

90. The claimant confirmed to Mr Tracy that the council could be sure there would not be a repetition of the way he acted. Because the claimant accepted that his actions had been inappropriate and that he accepted he was not under duress to admit that allegation, the decision was made by the disciplinary officer not to proceed any further with the disciplinary process. The parties were then invited to give their summaries. The claimant said this:-

> "yes don’t' feel under pressure much calmer state now that medication is working, not admitting the allegation under pressure (sic).”

91. Mr Tracy felt that the claimant's actions in seeking external legal advice gave the impression that the Council had, in some way, coerced him into providing a statement which had been amended for the Council's own requirements.

92. Mr Tracy concluded that the dyslexia had no impact on the claimant's decision making. Mr Tracy recognised that the claimant may well "have been stressed" at that point but that the respondent's management had no idea that the claimant was suffering stress because he did not tell anybody at the time. Mr Tracy noted the whistle blowing policy allows Council employees to report any issues or concerns confidentially. He believed that the minor amendments to the claimant's statement for the family court made no material difference to the facts of the case. He decided that it was not the changes which had upset the claimant but the principle that a solicitor changed the content of the statement.

93. The claimant felt that it was the management's responsibility to inform the court of his disability. Mr Tracy, on the other hand, felt it would not be appropriate to inform anybody of the claimant's disability without his permission.

94. Mr Tracy recognised that because of the claimant's actions and his failure to pass on relevant information to management about what he had seen it was that that caused the claimant to be called at short notice to attend the family court. In any event the claimant knew that he may be needed to attend court as early as 23 May 2014.

95. Mr Tracy concluded that because of the claimant's actions it was fair to give the claimant a final written warning.

96. Mr Tracy also noted that the longer the claimant had been cross examined at the family court the more extreme the claimant's responses were.

97. With regard to the second allegation that his actions brought the council into disrepute, Mr Tracy decided that they had. By contacting the barrister for the father of the child it might be perceived that the Council had coerced the claimant into providing a fabricated statement.

98. Mr Tracy ultimately found that the claimant's actions were gross misconduct and he could have fairly dismissed him without notice.

99. However because the claimant admitted the allegations, and confirmed such conduct would never reoccur, the sanction decided upon was a final written warning which would stay on the claimant's file for twelve months. The claimant was told the decision on 11 February 2015. He was written to giving the reasons for the final written warning on 13 February 2015.

100. At the end of the hearing the claimant raised the issue of his grievance and was told by Mr Tracy that if there were any outstanding issues, although Mr Tracy did not think there were, the claimant could raise them in accordance with the Council's grievance procedure. The claimant did not do so.

101. The claimant was not prevented from calling witnesses at the disciplinary hearing.

102. The claimant was given appropriate breaks and would have been given more if he had asked for them because Mr Tracy was open to any such request.

103. Turning now to Mr Wyatt's appeal hearing, Mr Wyatt was provided with all the necessary documents. The appeal was a review of the information before the parties at the disciplinary hearing.

104. The claimant requested, that because of his dyslexia and as a reasonable adjustment, the appeal should be dealt with by way of written submissions. The claimant was asked to send in any questions by 4.30 pm and to make himself available whilst at home on 9 April using email to communicate with the Appeals Officer.

105. Unfortunately on 8 April 2015 it was found that the workplace colleague for the claimant who had previously supported him had either withdrawn her support or could not attend on 9 April. Consequently the claimant was told he could choose alternative representation or have a note taker present.

106. On the morning of the appeal hearing the claimant submitted a lengthy addition to his appeal papers. He complained that it was unfair that he had only just received the management report and that his notes of the disciplinary hearing had not been included in that report. Mr Wyatt decided that he would postpone the hearing giving the claimant an opportunity to consider all the papers.

107. The claimant was upset because whilst the appeal hearing was postponed he was left sitting all day at his computer at home waiting to email responses to any issues that arose at the appeal hearing.

108. Mr Wyatt apologised to the claimant for that poor communication.

109. The appeal hearing was re-arranged to take place on 23 April on the same terms. Further documents were received from the claimant.

110. Mr Wyatt and the HR support, Vicky Yates-McCowan, went through all the documents at the meeting including the forty seven questions sent by the claimant for Mr Tracy and management questions sent to the claimant on 20 April which he had responded to.

111. On the morning of the hearing on 23 April Kate Ford, a workplace colleague of the claimant, attended on his behalf.

112. Mr Wyatt asked Mr Tracy a number of questions about why he had come to the decision he had and Mr Wyatt considered the claimant's responses to the questions raised by the management. The hearing lasted for over three hours and the decision of Mr Wyatt was given to the claimant's note taker with the claimant's permission. Mr Wyatt concluded that Mr Tracy's decision to give a final written warning was within the band of reasonable responses open to him. He confirmed that the claimant's appeal was dismissed and a decision letter was sent out with full reasons on 27 April 2015. Mr Wyatt felt, like Mr Tracy, that the claimant's grievance raised issues which were inextricably linked with the disciplinary process and

decided all the grievance issues had been dealt with. Mr Wyatt felt that there was some potential mitigation in relation to the claimant's performance in court because of his dyslexia but not with regard to the reason why he was in court nor his conduct prior to the court hearing which he felt was the main focus of Mr Tracy's decision. Mr Wyatt thought it was the claimant's fault he had to give evidence in court.

113. Mr Wyatt concluded that the phone call to the barrister's chambers was inappropriate, brought the council into disrepute and was professionally unacceptable.

114. Mr Wyatt's background is as a Social Worker. He concluded that the claimant's actions had not promoted the child's interest in the childcare proceedings and accepted both the Judge and the council's barrister's view that the claimant was evasive and had backtracked from his original position when giving his evidence. He took into account the claimant's dyslexia and his stress levels when coming to his conclusion.

115. Mr Wyatt went further than Mr Tracy and considered that the claimant's behaviour placed a child at risk, was contrary to the professional standards and the expectations of the council and brought the council into disrepute with other agencies. It was the claimant not the respondents who was in breach of the implied term of trust and confidence.

116. Mr Wyatt would have given serious consideration to summary dismissal if he had chaired the disciplinary process. Before us he said that he might have given a final written warning with an extension to the length of time it stayed on Mr Evans' file to 18 months. Mr Tracy had given a final written warning for the claimant which stayed on his file for 12 months.

The Issues

117. The claimant's claims are multi faceted. He makes the following claims:-

(1) Under Section 15 of the Equality Act 2010 he claims that as a disabled person he is being discriminated against because he has been treated unfavourably because of something arising in consequence of his disability.

(2) Contrary to Section 19 of the same act he says that being discriminated against because the respondents have applied a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of disability.

(3) Contrary to Section 21 of the same act that the respondents have failed to make reasonable adjustments.

(4) Contrary to Section 26 of the same act that the claimant has been harassed.

(5) Contrary to the Section 27 of the same act that he has been victimised.

(6) Contrary to Section 47B of the Employment Rights Act 1996 he has suffered a detriment because he has made a protected disclosure.

(7) Contrary to Section 94 of the Employment Rights Act 1996 he has been constructively unfairly dismissed.

(8) Contrary to Section 103A of the Employment Rights Act he has been dismissed for a reason that he has made a protected disclosure.

(9) That there has been both an unauthorised deduction of wages and a breach of contract.

The Law

Burden of Proof

118. Section 136 of the Equality Act 2010 provides that if there are facts from which the court could decide, in the absence of any other explanation, that St Helens Council contravened the provisions concerned that the Court must hold that the contravention occurred unless St Helens Council could show that they did not contravene the provision in which case the claimant will lose his discrimination claims.

119. In view of the principles set out in the case of Ayodele -v- Citylink Limited -v- Another 2017 (EWCA Civ 191) we have reverted to the burden of proof principles set out in Igen -v- Wong 2005 IRLR Court of Appeal. There is a two stage process which we have to go through.

120. The first stage requires the claimant to prove facts from which the Tribunal could, apart from the section, conclude in the absence of an adequate explanation that the respondent has committed or is to be treated as having committed the unlawful act of discrimination against the claimant. The Tribunal is required to make an assumption in the first stage which may be contrary to reality. The purpose being to shift the burden of proof at the second stage so that unless the respondent provides an adequate explanation the complaint will succeed. The second stage will only come into effect if the claimant has proved those facts, requires the respondent to prove that he did not commit or is not to be treated as having committed the unlawful act if the act is not to be upheld. If the second stage is reached and the respondent's explanation is inadequate it will not be simply legitimate but also necessary for the Tribunal to conclude that the complaint should be upheld.

121. We applied that burden of proof to all the discrimination claims made by Mr Evans.

122. With regard to the burden of proof in constructive unfair dismissal claims it is for the employee to establish that there was a fundamental breach of contract on the part of the employer, that he resigned because of that breach, in other words the employers breach caused the employee to resign and the employee did not delay too long before resigning thus affirming the contract and losing the right to claim constructive dismissal.

123. With regard to constructive unfair dismissal there must be a fundamental breach of contract and not merely a breach of contract. That breach must be a repudiatory breach of contract. Lord Denning (in Western Excavating ECC Limited -v -Sharpe 1978 ICR 221 Court of Appeal) said "if the employer is guilty of conduct which is a significant breach going to the root of the contract of employment or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract then the employee is entitled to treat himself as discharged from any further performance".

124. The claimant was very specific with regard to the actions which amounted to a repudiatory breach of the terms of his employment. Those breaches set out in paragraph 89 of the ET1 included a general allegation that the implied term of trust and confidence was breached.

125. With regard to discrimination arising from disability it is for the claimant to establish the detrimental action relied upon such as the dismissal. He says that he had to resign because of the treatment he received which was both in breach of his contract and discriminatory.

126. We considered whether any treatment by the respondent of Mr Evans was because of something arising in consequence of his disability and if so could the council show that the treatment was a proportionate means of achieving a legitimate aim.

127. With regard to indirect discrimination we had to consider what the policy, criteria or practice (PCP) was.

128. The PCP's pleaded were that it was the council policy that no investigatory, disciplinary and appeal hearings should be recorded and the policy of disciplining its employees for poor performance as court witnesses. The next question to ask should be whether the respondents applied those PCP's to persons without dyslexia and/or cognitive mental impairments and if that was the case would those PCP's put persons with dyslexia and/or cognitive mental impairment at a particular disadvantage when compared with persons without dyslexia and/or cognitive mental impairments. Did the implementation of those PCP's put the claimant at that disadvantage. If it did, can the respondent show that it was a proportionate means of achieving a legitimate aim?

129. With regard to Section 20 of the Act regarding failure to make reasonable adjustment the question to be asked is did the respondent apply PCP's which we set out below. Did the respondents fail to comply with the duty to make reasonable adjustments. Section 20 of the Equality Act sets out the duty which comprises three requirements.

130. The first requirement is a requirement where a provision, criterion or practice of St Helens Council puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled and to take such steps as it is reasonable to have to take to avoid the disadvantage.

131. The second requirement is the requirement where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in

comparison with persons who are not disabled to take such steps as it is reasonable to have to take to avoid the disadvantage. The third requirement is a requirement that where a disabled person would but for the provision of an auxiliary aid be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled to take such steps as it is reasonable to have to take to provide the auxiliary aid.

132. The PCP's upon which the claimant wishes to rely with regard to the Section 20 failures are these:-

(i) Calling upon its staff to be witnesses in family care proceedings which requires them to provide statements and give evidence if required;

(ii) Disciplining its employees for poor performance as court witnesses;

(iii) Not permitting employees to record the investigatory disciplinary and appeal hearing;

(iv) Refusing to postpone the initial scheduled disciplinary hearing by at least four weeks.

133. We then had to consider what was the nature and extent of the substantial disadvantage suffered by the claimant. We also had to consider whether the respondent knew or ought to have known that the claimant had a disability at the point at which the respondent applied the respective PCP's.

134. We had to consider any evidence or adjustment which eliminated or mitigated the substantial disadvantage if any.

135. The claimant's allegation is that, as a member of staff called as a witness in family court proceedings, the respondents should have instructed the Council's barrister that the claimant was dyslexic and required reasonable adjustments from the court to be implemented. Those reasonable adjustments are regular breaks, an opportunity to read his statement in advance, explanation of the court process, simpler questions and/or single questions and additional time to process the questions and to formulate replies.

136. The claimant also claims harassment (Section 26 of the Equality Act 2010). Section 26 of the Equality Act 2010. Did the respondent act towards the claimant in the manner alleged namely the disciplinary allegations made against him in relation to his performance at court and the conduct of the disciplinary procedure. With regard to victimisation contrary to Section 27 of the Equality Act 2010 has the claimant proved that he has undertaken a protected act. The claimant relies upon the following protected acts. Emails to various members of staff including Joanne McDonald and Hayley Hilton, Samantha Murray, Andrea Smith, his response to allegations, his grievance letter, his appeal and his updated appeal.

137. We also had to consider whether the claimant was subjected to a detriment by reason of any or all of those protected acts.

138. Having regard to public interest disclosure we considered whether the claimant made a disclosure of information at any time from the moment when he allegedly took legal advice from the barristers at Chavasse Court to disclosures he said he made in the investigatory meeting at his grievance and in his written response to the disciplinary allegations and disclosure at his appeal. Did the claimant have a reasonable belief in the information disclosed showing that there had been a relevant failing with regard to the protected disclosure? Did the claimant reasonably believe that the disclosures were made in the public interest and were the disclosures protected pursuant to Section 43A of the Employment Rights Act 1996?

139. The breach of contract claims relates to nineteen days of sickness absence and the resulting loss of nineteen half days pay to the claimant, when absent because of Shingles. The unlawful deduction of wages claim is based on the same allegations by the claimant. We have to consider with regard to an unlawful deduction of wages claim under Section 13 of the Employment Rights Act 1996 whether the respondent made the deductions from the wages of the claimant and the deduction was not required or authorised by statutory provision or that he had previously signified is agreement or consent to the making of the deduction. Finally that the claimant had not been paid the wage properly payable by the Council to the claimant.

140. Those are the issues we dealt with and the law applicable to the claims.

Conclusions

141. We set out below our conclusions. In doing so and for ease of presentation we have set out further findings of fact.

142. The essence of this case comes down to considering the claimant's actions in contacting Chavasse Court Chambers and a sequence of events, thereafter, which culminated in him having to go to court to give evidence about the relationship between AH and SB.

143. The claimant's reluctance to deal with that simple issue ultimately led to him being disciplined and then resigning. We concluded that the claimant is dyslexic and he has an anxiety disorder with depressive symptoms. Although we were not given much evidence with regard to that second disability we accepted that he was disabled for both those mental impairments over the whole course of the period to which we were referred in February 2014 to April 2015.

144. The real issue with regard to his disability is whether the claimant was put at any disadvantage at all with regard to those issues.

The Disciplinary Process

145. The claimant himself did not consider his stress amounted to a disability and failed to mention it when he commenced employment with these respondents.

146. Dealing with the specific claims we concluded as follows.

147. The first step in coming to our conclusion is our consideration of why the claimant was disciplined in the first place. The allegations against him were that he:

(i) conducted himself as a representative of St Helens Council in dealing with the case for the family court in an inappropriate way, both in respect of his actions prior to the court hearing and also in relation to his conduct in court.

(ii) that his actions had the potential to bring the Council into disrepute.

148. The claimant knew that if proved those allegations could amount to gross misconduct and he could be dismissed. The respondents only decided to discipline the claimant once they found out that the Judge had criticised the claimant in her judgment in the Family Court proceedings and when they had seen their barrister's criticism of the claimant which supported the Judge's criticism. It was right that the claimant should be subjected to an investigation with regard to those concerns.

149. The final written warning given by Mr Tracy was an appropriate response. Indeed Mr Wyatt felt it was a lenient response. Both Mr Tracy and Mr Wyatt noted that the claimant admitted that he had done wrong.

150. Mr Tracy, by giving a less severe sanction showed that he had considered the claimant's disabilities and taken into account his dyslexia and stress and accepted them as mitigating factors.

151. The respondent's management knew (because they had seen it in an occupational health report) that the claimant required no medical assistance with regard to his stress. The stress was caused by him being taken through the disciplinary process.

152. It was the claimant's conduct that meant disciplinary action was inevitable. Indeed, the advice received from Occupational Health was that the sooner the claimant was taken through the internal procedures, and the matter resolved, the better.

153. The respondent did not necessarily want the claimant to go to the family court to give evidence. It was because of the claimant's procrastination and obfuscation that he ended up in court having to be cross examined by all the barristers in the family proceedings. All he had to do was to say what he had had or had not seen with regard to the parents of the child in question.

154. We consider the treatment of the claimant in the circumstances by both Mr Tracy and Mr Wyatt was a proportionate means of achieving a legitimate aim both with regard to the Section 15 and Section 19 of the Equality Act claims for the reasons we set out below.

155. But in any event the criticism of the claimant had nothing to do with either his stress or dyslexia disability and everything to do with his lack of frankness and professionalism.

156. His actions prior to the Family Court hearing were also considered at great length by the respondents and they concluded that his actions in contacting an external solicitor were not:

> "an appropriate response particularly given that you had sought management advice previously when you had been asked to provide a statement regarding the sightings of the child's parents together and when you had received notification of the requirements for you to attend court".

157. The disciplining letter also goes on to say:-

> "a further cause for concern in this issue was that there was no subsequent attempt by you to alert anyone of the actions you had taken in speaking to an external solicitor or your subsequent conversation with the independent solicitor for the child".

158. Mr Tracy's letter sets out exactly what happened towards the end of the disciplinary proceedings which were that:-

> "(the claimant) finally acknowledged that your conduct was inappropriate and could see from the Council's point of view your conduct had the potential to bring the Council into disrepute".

159. The claimant suggests that he was disciplined for poor performance as a court witness. These respondents would not have disciplined the claimant if it was just merely poor performance. It was his disingenuous attitude, both in court and also by contacting one of the parties solicitor in the family proceedings which were the causes of the disciplinary process being instituted.

Indirect discrimination

160. In terms of indirect discrimination there was no necessity to have the investigatory disciplinary or appeals hearings recorded.

161. There was a policy which the Council had in place not to record any such meetings. Potentially, not recording the interviews could have put the claimant at a disadvantage compared to other employees who did not have his protected characteristic. However the claimant was given extra assistance during the course of those proceedings which nullified the need to record. He was given time to write down the questions, to write down the answers. He had a note taker and he also could look at the notes of the respondents note taker. Arguably the process followed by the Council better served the claimant’s needs than a recording would have done because of the immediacy and availability of the notes.

162. At the disciplinary hearing the claimant had written out all his questions in advance. He had Donna Birch to take notes for him and he was able, in the same way as he would if he had recorded the hearing and played it back later in the evening, to look at his notes and go over those at any point in the hearing to assist him in answering any questions.

163. There was no let or hindrance on the claimant in respect of him taking his time in answering the questions.

164. In Tribunal the claimant was able to answer the questions of Mr Kenwood by dint of the reasonable adjustment of having his solicitor write out the questions.

165. There were many occasions during cross examinations when the claimant did not refer to his solicitor in order to answer the questions fully.

166. There was in any event justification for not recording such meetings. The respondents have a policy that prevents all employees from having meetings recorded whether they have a protected characteristic or not. By not allowing recordings, difficult issue of confidentiality and data protection are avoided. The need to have all meetings recorded would be disproportionate and unnecessary.

167. The second pleaded PCP (namely the disciplining of its employees for poor performance as court witnesses) is not a PCP. It is not a practice or policy which the respondents have put in place. Even if it were the Council expect their employees to act truthfully and professionally when giving evidence.

168. Mr Evan's plea that he was not used to going to court is wrong. The claimant boasted to us that he was used to dealing with solicitors and attended court when in his role as a Homelessness Officer.

169. In any event the claimant had a duty to be open and honest about what he knew about AH and SB. In the end the Family Court Judge did not think much of the claimant's evidence. That had nothing to do with any policy of the respondent but was simply a commentary by the trial Judge on the claimant's performance as a witness.

Reasonable Adjustments

170. With regard to the reasonable adjustment claim it was not the respondent who called the claimant to court. It was the solicitor who was acting for the child who alerted the Judge that the claimant had contacted the barrister's chambers. If the claimant had not alleged that his statement had been improperly altered by the respondent's solicitors he would not have found himself giving evidence in the Family Court.. The respondents Council Officers were duty bound to have their employee come before the Family Court if that employee had some information which was of importance to the welfare of the child in question. The proceedings after all were child protection proceedings.

171. There was no breach of the duty to make reasonable adjustments with regard to recording of meetings. As stated above the policy of the Council was that investigatory, disciplinary or appeal hearings should not be recorded unless authorised. With regard to the court proceedings it was for the court and for the trial Judge to implement reasonable adjustments if necessary but the claimant did not ask for reasonable adjustments to be made for him at the court nor did he tell his employers to inform the court that he needed reasonable adjustments put in place before he gave evidence.

172. The claimant complained about the initial disciplinary hearing being postponed only for two weeks as opposed to the four weeks requested. There was no policy or practice of the respondent in that regard. In any event by the time the matter had been dealt with the claimant had over four weeks to prepare for the hearing. There was nothing unfair or discriminatory in the postponement process. The claimant was not put at a substantial disadvantage by reason of his dyslexia or his mental impairment and stress in comparison to any other employee without those disabilities with regard to any of the disciplinary processes put in place or carried through.

173. Postponing the hearing was not a substantial disadvantage. The claimant wanted a four week gap in order for his new medication to take effect. He had been prescribed the new medication on 28 November 2014 and the disciplinary hearing did not commence until eight weeks later, on 21 January 2015. It also had to be noted that Dr King from the Occupational Health Unit on 7 November 2014 said this in his report:-

> "Barry could attend a disciplinary meeting and contribute. Indeed while he is off work waiting on this to happen his condition is gradually deteriorating. He has a number of stress related symptoms such as sleep disturbance, poor appetite, low mood, irritability etc. These will all become worse and frankly tip in to illness if matters do not move forward".

174. It was in the interests of the claimant to have the hearing dealt with as quickly as possible. Mr Tracy recognised that when he was dealing with the disciplinary process.

175. The claimant complains that the Council failed to bring his dyslexia to the attention of the Judge and the legal representatives at the family hearing. The court however knew that the claimant was dyslexic through Jan Dryhurst's notes and if reasonable adjustments needed to be put in place the court could have done so if the claimant had raised it.

176. However that is not the point. The claimant knew for a long time that he could be called to court. Emma Murray emailed the claimant (we find the claimant did receive that email despite his denial). He was told he was "not currently required to attend as a witness at the final hearing. This is to be reconsidered during the course of the final hearing and therefore the Court has asked that you be warned of the possible need to attend Court at short notice". That was sent to the claimant before his telephone call to Chavasse Chambers.

177. The claimant never asked, either Emma Murray or other officers of the Council, to bring his dyslexia to the Court's attention.

178. It was Hayley Farrell who telephoned the claimant to inform him that he was required to give evidence. The claimant did not seek advice from the respondents officers as to what he should do or ask them to inform the court of his disability. The claimant rang his own manager (Samantha Murray) to ask advice with regard to his attendance at court. He did not point out to her that he would need reasonable adjustments or some consideration of his dyslexia whilst at court. The claimant's only query was whether he had to attend or not.

179. During the investigation interview the claimant admitted that he did not ask for any support.

180. The claimant had plenty of opportunity to ask for advice. He could have informed Samantha Murray to tell the legal department to inform the court that he was dyslexic. The written notes of the claimant's evidence do not suggest that the claimant had difficulty answering questions. He gave detailed, but evasive, answers. He had every opportunity to refer to his dyslexia during the court hearing if he had wished.

181. In short the claimant was not placed at a disadvantage during the court proceedings by reason of his dyslexia.

182. Mr Tracy took all the issues that the claimant put to him with regard to his disability into account when making his decision to impose the sanction of a final written warning.

183. The claimant was facing serious allegations of gross misconduct and he was dealt with leniently by Mr Tracy in part because of his disabilities.

Harassment

184. Turning now to the allegation of harassment, the claimant suggests that the disciplinary allegations made against him and the conduct towards him during the disciplinary procedure was harassment. He alleges that the respondents engaged in unwanted conduct relating to the relevant protected characteristic and that that conduct had the purpose or effect of violating his dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

185. One only has to look at Her Honour Judge Coppell's judgment in the family court proceedings to see that any criticism by the respondent of the claimant with regard to his performance in court was supported by the Judge herself. The claimant tried to backtrack in relation to his evidence over the sighting of the parents being seen together. For whatever reason he did not want to tell the court what he had told Jan Dryhurst. He told Jan Dryhurst that he had seen the couple together. If, on reflection, he was not sure he could have said so both to his employers and to the court. The conduct of the investigation, the disciplinary and the appeal hearings were dealt with fairly by the respondents. Having considered the notes of those hearings there is no evidence to suggest that the claimant had been harassed. He had been given every opportunity to put his side of the story and was dealt with by both Mr Tracy and Mr Wyatt with respect and courtesy throughout.

186. We then considered whether there was any connection between the way the claimant was treated in the disciplinary process and the claimant's dyslexia or stress.

187. The simple answer is no. The only purpose of all the respondent’s officers was to give the claimant every opportunity to set out his defence to the misconduct allegations. The claimant’s perception was that their actions did harass him. Looking at all the circumstances surrounding the way he was treated throughout the process it was not reasonable for the conduct to have that effect. Quite the reverse. The

claimant was lucky to have such understanding and, ultimately, benevolent managers dealing with him over these misconduct issues.

Victimisation

188. Turning now to victimisation, the chronology is important because the claimant's complaints about discrimination stems from his realisation that he was going to be criticised as a consequence of his actions in reporting matters to the barristers at Chavasse Court and the criticism of him with regard to the way he gave his evidence in court. The short answer is that no criticism of the claimant had anything to do with his dyslexia.

189. We accepted that the allegations and emails on 5 August 2014 to Joanne McDonald and Hayley Hilton, to Samantha Murray on 25 September 2014, to Andrea Smith on 3 October 2014, his response to allegations on 12 January 2015, his grievance letter on 12 January 2015, his appeal letter of 4 March 2015 and his updated appeal letter of 16 April 2015 all constituted protected acts. The question for us is whether the claimant suffered any detriment because of those protected acts or was there a causal link between making those protected acts and what the claimant perceived as detriments against him.

190. The claimant suggests that he felt that the respondents continued refusal to accept that they discriminated against him, their efforts to blame the claimant with regard to his court appearance, the taking of the claimant through what he says was a pressured disciplinary process, refusing to make any allowance for his disabilities and subjecting the claimant to disciplinary processes, finding the claimant guilty of gross misconduct and giving him a final written warning which was upheld on appeal were all acts of victimisation relating to his disability.

191. All those allegations are to put it bluntly a nonsense. It was the claimant who became angry about having to go through a disciplinary process.

192. It was right that an employer, in these circumstances, should take the employee, who has acted in the way that the claimant has acted, through that process. Moreover that process was dealt with in an open and fair way taking into account the claimant's disability. None of the alleged detriments set out were because the claimant had done protected acts. He had to go through the processes because he had contacted one of the parties lawyers and because of his actions in court.

Public Interest Disclosure

193. In relation to public interest disclosure, even if we accept that the claimant's various alleged disclosures were protected disclosures, the fact is that the claimant was not subject to a detriment by the respondent because of any disclosures he made. The claimant claims that he made disclosures on 23 June 2014 when taking legal advice, on 3 October 2014 when disclosing issues at the investigatory meeting, on 12 January 2015 when he disclosed his grievance, on 12 January 2015 when he disclosed his written response to the disciplinary allegations and on 4 March 2015 when he made his appeal. We find that in all those cases the claimant did not have a reasonable belief that the information disclosed tended to show a relevant failing

and none of those disclosures were made in the public interest. However, we went further than that and analysed each and every consequence for the claimant.

194. We found that he was not subject to aggressive questioning in the investigatory meeting, in the disciplinary or the appeal meeting. It was the respondents who acted reasonably with regard to those proceedings. The respondent did not ignore the claimant's allegations that he was discriminated against. They dealt with those allegations every time the claimant raised those issues.

195. The disciplinary process and procedure was far from oppressive as the claimant alleges. Mr Tracy dealt with him appropriately and fairly during the disciplinary process.

196. The claimant blamed, and continues to blame, others for the position he found himself including those officers of the legal department at St Helens Council.

197. Consequently we found that there was no detriment accorded to the claimant.

198. We have already dealt with some of the specifics of the claimant's allegations in this regard, one of the allegations by the claimant was that his final written warning was to stay on his file for twelve months. Mr Wyatt would have potentially dismissed him and certainly would have put on his record a final written warning for twenty four months if he had been the dismissing officer as opposed to the appeal's officer.

199. We found that Mr Tracy had dealt with the claimant leniently.

200. Each step that the respondents have taken did not subject the claimant to any detrimental treatment on the grounds that he made a public interest disclosure.

201. The claimant suggests that not postponing his disciplinary hearing until his anti depressant medication had stabilised was a detriment relating to his whistle blowing. There is no causal link between the two. In any event there was eight weeks between his medication being changed and the disciplinary hearing starting and that was a longer period than the claimant asked for.

202. The claimant suggests that important evidence was withheld from him. There was no such important evidence withheld from the claimant by the respondents at any stage of the disciplinary process. The claimant also made a vague allegation that the management always had the last say at the disciplinary hearing, and postponed the proceedings to suit its own purpose. It was the claimant who always insisted on having the last say. Furthermore, the claimant was given every opportunity to both attend the hearings and for meetings to end when appropriate. The claimant suggests that his grievance was not investigated. All the issues in the claimant's grievance were considered as part of the disciplinary and appeal process. If the claimant had felt that those matters were not dealt with during the process he was informed that he could raise them separately and he did not.

Constructive Unfair Dismissal

203. Turning now to the constructive unfair dismissal claim. When the claimant resigned he claims that there had been a breach of the implied term of trust and confidence in relation to all the matters set out in paragraph 89 of his particulars of claim to the Tribunal. There was no conduct by the employer calculated or likely to destroy or seriously damage the trust and confidence necessary for the employment relationship. The simple fact is that the respondent's actions were all designed to keep the claimant in work. Mr Tracy decided that the claimant's employment would continue. Mr Tracy was not acting outside the band of reasonable responses in finding that the claimant had been guilty of gross misconduct and it was within Mr Tracy's gift, once he had made that finding, to decide what sanction he should impose.

204. It is not for us to interfere in that decision. In any event, the process was gone through thoroughly so that Mr Tracy could come to a reasoned decision. Ultimately the claimant admitted his wrongdoing so Mr Tracy brought the process to an end. The decision of Mr Wyatt was also designed to retain the claimant's employment. He supported Mr Tracy's decision to give a final written warning despite his own misgivings with regard to that lenient sanction.

205. Nothing was ignored by Mr Tracy or Mr Wyatt. Indeed, the claimant was given more than enough opportunity to put his side of the case.

206. The claimant suggests that the respondents exposed the claimant to a stressful appearance in court. Nothing could be further from the truth. It was the claimant who exposed himself to the appearance in court. The claimant's health and safety was not put at risk by the respondents.

207. When the respondents considered the occupational health advice they accepted that it was not a medical issue that was problematical to the claimant but a work issue which needed to be dealt with. They were informed by the Occupational Health Officer that the resolution of the work issues would solve the problem and get the claimant back into work.

208. The reason for the claimant's resignation was because of the way he perceived the investigation, the disciplinary and the appeal hearing had been dealt with. He resigned the day after he received the appeal outcome.

209. But the appeal decision was a perfectly proper decision for Mr Wyatt to come to and in no way represented a repudiatory breach of the claimant's contract. The claimant's reason for resigning was that all the decisions made by the Disciplinary and Appeals Officer went against him. In short the claimant could not stomach the result of the disciplinary process.

210. With regard to an automatically unfair constructive dismissal we considered whether the reason or principle reason for the claimant resigning was because he made a protective disclosure.

211. The claimant was not disciplined because of a protected disclosure but because he contacted lawyers at Chavasse Court , because of the way in which he gave his evidence during the family proceedings and because he made disparaging remarks to the father of the child about the Council’s officers treatment of him.

Breach of Contract

212. This claim relates to issues which took place as long ago as October 2013. The claimant's suggests that he is owed 19 half days pay. The claimant was absent because of Shingles. The GP notes from that time do not suggest that the claimant's condition was due to stress or pressure of work. We find that it was not the respondent policy that any absence from work as a result of infections and diseases should not count as a sickness absence for the purpose of sick pay entitlement. Consequently the claimant's claim that he was entitled to sick pay for a further 19 half days cannot be right. In any event there is no suggestion that the condition of Shingles was infectious or caused by stress.

213. The unlawful deduction of wages claim is also based on the same premise. .

214. In relation to both those matters we decided that there was nothing to suggest that the claimant had not been paid the wage that was properly payable and the claimant had not proved his case with regard to that issue.

215. In those circumstances we dismiss that claim as well.

216. Consequently all the claims of the claimant fail and are dismissed for the reasons set out above.

217. The Judge apologises for the length of time this judgment has taken to reach the parties.

22-01-18

_____

Employment Judge Robinson

JUDGMENT AND REASONS SENT TO THE PARTIES ON

24 January 2018

FOR THE TRIBUNAL OFFICE

[JE]