EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr Kardamay	**v**	Sterling Press Limited

Heard at: Cambridge Employment Tribunal **On**: 26 – 28 November 2018

Before: Employment Judge King

Members: Mr Williams and Mr Ayre

Appearances
For the Claimant: Mr B Islam (lay representative)
For the Respondent: Miss Jennings (counsel)

JUDGMENT

1. The claimant's claim for unfair dismissal fails and is dismissed.

2. The claimant's claim for harassment under s.26 of the Equality Act 2010 related to disability is not well founded and is dismissed.

3. The claimant's claim for direct discrimination because of disability under s.13 of the Equality Act 2010 is not well founded and is dismissed.

4. The claimant's claim for indirect discrimination in relation to disability under s.19 of the Equality Act 2010 is not well founded and is dismissed.

5. The claimant's claim for discrimination arising from disability under s.15 of the Equality Act 2010 is not well founded and is dismissed.

6. The claimant's claim for failure to make reasonable adjustments under s.20 and s.21 of the Equality Act 2010 is not well founded and is dismissed.

REASONS

1. The claimant brought claims for unfair dismissal and a number of claims for discrimination based on his disability under s.13 (direct discrimination), s.15 (discrimination arising from disability), s.19 (indirect discrimination), s.20 and s.21 (failure to make reasonable adjustments) and s.26 (harassment) of the Equality Act 2010.

2. We heard evidence from the claimant. On behalf of the respondent we heard evidence from Miss Hickman and Mr Clare. Mr Clare was the appeal officer. We did not hear evidence from the investigating officer or dismissal officer, we are told that both are no longer in employment. We had a witness statement from Anuj Mukhtar, but he did not attend the tribunal to give evidence before us, we are told that he is not an employee but a supplier and that he could not attend the Employment Tribunal hearing as he was not given permission to do so. As a result, we have attached little weight to this witness statement and the evidence it contains, upon reflection we did not feel it took the tribunal much further with regard to the particular issues.

The Issues

3. At the outset of the first day it was necessary for us to spend some time clarifying the issues in the case. These were identified originally in the case management order of Employment Judge Ord on 17 April 2018 but these were written without the benefit of the further and better particulars document.

4. The issues fell under a number of headings and there was a number of allegations that the claimant made. These were identified at the outset of this hearing as follows:

5. **Unfair dismissal claim**

   5.1 What was the reason for the dismissal? The respondent asserts that it was a reason related to conduct which is a potentially fair reason for section 98(2) Employment Rights Act 1996. It must prove that it had a genuine belief in the misconduct and that this was the reason for dismissal. The claimant believes it was disability.

   5.2 Did the respondent hold that belief in the claimant's misconduct on reasonable grounds?

   5.3 Was the decision to dismiss a fair sanction, that is, was it within the reasonable range of responses for a reasonable employer?

   5.4 If the dismissal was unfair, did the claimant contribute to the dismissal by culpable conduct? This requires the respondent to prove, on the

balance of probabilities, that the claimant actually committed the misconduct alleged.

5.5 Does the respondent prove that if it had adopted a fair procedure the claimant would have been fairly dismissed in any event? And/or to what extent and when?

6. *Section 26: Harassment on grounds of* disability

5.1. Did the respondent engage in unwanted conduct as follows as set out in his further and better particulars:

5.1.1. At paragraph 1.5 of the further and better particulars dated 13th May 2018 that he felt rushed back to work full time and that no adjustments were made.

5.1.2. At paragraph 1.7 of the further and better particulars dated 13th May 2018, that his dismissal in summary was engineered.

5.1.3. At paragraph 4.4 of the further and better particulars dated 13th May 2018, there was an issue over him moving his car to a different parking space.

5.1.4. At paragraphs 4.5, 5.8 and 6 of the further and better particulars dated 13th May 2018, taken in the round related to the lack of provision and inadequate provision to rest.

5.1.5. At paragraph 4.6 of the further and better particulars dated 13th May 2018 related to the emergency evacuation appointment of the personnel.

5.1.6. At paragraph 5.7 of the further and better particulars dated 13th May 2018 related to the questioning between January 2017 and March 2017 about the programme and whether this was finished; and

5.1.7. At paragraph 6.1 of the further and better particulars dated 13th May 2018 that identified an issue over the temperature.

5.2. Was the conduct related to the claimant's protected characteristic?

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

5.4. If not, did the conduct have the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

5.5. In considering whether the conduct had that effect, the Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

5.6. If so, was the claim presented in time? If not is it just and equitable to extend time?

6. Section 13: Direct discrimination on grounds of disability

6.1. Has the respondent subjected the claimant to the following treatment falling within section 39 Equality Act, namely dismissal.

6.2. Has the respondent treated the claimant as alleged less favourably than it treated or would have treated the comparators? The claimant relies on hypothetical comparators.

6.3. If so, has the claimant proved primary facts from which the Tribunal could properly and fairly conclude that the difference in treatment was because of the protected characteristic?

6.4. If so, what is the respondent's explanation? Does it prove a non-discriminatory reason for any proven treatment?

6.5. If so, was the claim presented in time? If not, is it just and equitable to extend time?

7. Section 19: Indirect discrimination on grounds of disability.

7.1. Did the respondent apply the following provision, criteria and/or practice ('the provision') generally, namely:

7.1.1. At paragraph 4.4 of the further and better particulars dated 13th May 2018, there was an issue over him moving his car to a different parking space.

7.1.2. At paragraph 4.6 of the further and better particulars dated 13th May 2018 related to the emergency evacuation appointment of the personnel.

7.1.3. At paragraph 6.1 of the further and better particulars dated 13th May 2018 that identified an issue over the temperature.

7.2. Does the application of the provision put other disabled persons at a particular disadvantage when compared with persons who do not have this protected characteristic?

7.3. Did the application of the provision put the claimant at that disadvantage? If so how?

7.4. Does the respondent show that the treatment was a proportionate means of achieving a legitimate aim?

7.5. If so, was the claim presented in time? If not, is it just and equitable to extend time?

8. Section 15: Discrimination arising from disability

8.1. The allegation of unfavourable treatment as "something arising in consequence of the claimant's disability" falling within section 39 Equality

Act is dismissal due to frustration with disability related adjustments. No comparator is needed.

8.2. Does the claimant prove that the respondent treated the claimant as set out in paragraph 8.1 above?

8.3. Did the respondent treat the claimant as aforesaid because of the "something arising" in consequence of the disability?

8.4. Does the respondent show that the treatment was a proportionate means of achieving a legitimate aim?

8.5. If not, was the claim presented in time? If not is it just and equitable to extend time?

9. Reasonable adjustments: section 20 and section 21

9.1. Did the duty to make reasonable adjustments under s20 of the Equality Act arise?

9.2. Did the respondent fail to make reasonable adjustments contrary to s21 of the Equality Act 2010 in that it failed in the manner set out in the further and better particulars:

9.2.1. At paragraph 1.5 of the further and better particulars dated 13th May 2018 that he felt rushed back to work full time and that no adjustments were made.

9.2.2. At 4.4 of the further and better particulars dated 13th May 2018, there was an issue over him moving his car to a different parking space.

9.2.3. At paragraphs 4.5, 5.8 and 6 of the further and better particulars dated 13th May 2018, taken in the round related to the lack of provision and inadequate provision to rest.

9.2.4. At paragraph 4.6 of the further and better particulars dated 13th May 2018 related to the appointment of emergency evacuation personnel.

9.2.5. At paragraph 6.1 of the further and better particulars dated 13th May 2018 that identified an issue over the temperature.

9.3. If so, was the claim presented in time? If not is it just and equitable to extend time?

10. There was some difficulty with trying to articulate what both the reasonable adjustments were and the PCPs in each case. The tribunal is mindful that the claimant is not professionally represented in this case. We considered each of the allegations the claimant raised in his further and better particulars as identified at the outset of the hearing even if this was not sufficiently articulated into a PCP as we were conscious that even some legal representatives struggle with this concept and that the claimant is assisted by a lay representative.

11. We made adjustments to the hearing timetable to allow the claimant regular breaks and prayer breaks twice a day.

The Law

12. The law of unfair dismissal is set out in s98 of the Employment Rights Act 1996 as follows:

> (1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—
>
> (a) the reason (or, if more than one, the principal reason) for the dismissal, and
> (b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.
>
> (2) A reason falls within this subsection if it—
>
> (a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,
> (b) relates to the conduct of the employee,
> (c) is that the employee was redundant, or
> (d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.
>
> (3) In subsection (2)(a)—
> (a) *"capability"* , in relation to an employee, means his capability assessed by reference to skill, aptitude, health or any other physical or mental quality, and
> (b) *"qualifications"* , in relation to an employee, means any degree, diploma or other academic, technical or professional qualification relevant to the position which he held.
>
> (4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—
> (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
> (b) shall be determined in accordance with equity and the substantial merits of the case.

13. Section 6 Equality Act 2010 sets out the test for disability but this is not in dispute between the parties in this case.

14. Section 13 Equality Act 2010 (Direct Discrimination) states as follows:

> "**13 Direct discrimination**
>
> (1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

(2) ….

(3) If the protected characteristic is disability, and B is not a disabled person, A does not discriminate against B only because A treats or would treat disabled persons more favourably than A treats B. …"

15. Section 15 Equality Act 2010 (Discrimination arising from disability)

"**15 Discrimination arising from disability**

(1) A person (A) discriminates against a disabled person (B) if—

(a) A treats B unfavourably because of something arising in consequence of B's disability, and
(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability."

16. Section 19 Equality Act 2010 (Indirect discrimination)

"**19 Indirect discrimination**

(1)A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

(2)For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—

(a)A applies, or would apply, it to persons with whom B does not share the characteristic,

(b)it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,

(c)it puts, or would put, B at that disadvantage, and

(d)A cannot show it to be a proportionate means of achieving a legitimate aim.

17. Section 20 Equality Act 2010 (Duty to make adjustments)

"**20 Duty to make adjustments**

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

(2) The duty comprises the following three requirements.

(3) The first requirement is a requirement, where a provision, criterion or practice

of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

(4) …

(5) …

(6) Where the first or third requirement relates to the provision of information, the steps which it is reasonable for A to have to take include steps for ensuring that in the circumstances concerned the information is provided in an accessible format.

(7) A person (A) who is subject to a duty to make reasonable adjustments is not (subject to express provision to the contrary) entitled to require a disabled person, in relation to whom A is required to comply with the duty, to pay to any extent A's costs of complying with the duty.

(8) A reference in section 21 or 22 or an applicable Schedule to the first, second or third requirement is to be construed in accordance with this section.

(9) In relation to the second requirement …

(10) …

(11) …

(12) …

(13) …"

18. Section 21 Equality Act 2010 (Failure to comply with duty):

"21 Failure to comply with duty

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

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

3) A provision of an applicable Schedule which imposes a duty to comply with the first, second or third requirement applies only for the purpose of establishing whether A has contravened this Act by virtue of subsection (2); a failure to comply is, accordingly, not actionable by virtue of another provision of this Act or otherwise."

19. Section 26 Equality Act 2010 (harassment):

"26 Harassment

(1)A person (A) harasses another (B) if—

(a)A engages in unwanted conduct related to a relevant protected characteristic, and

(b)the conduct has the purpose or effect of—

(i)violating B's dignity, or

(ii)creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(2)A also harasses B if—

(a)A engages in unwanted conduct of a sexual nature, and

(b)the conduct has the purpose or effect referred to in subsection (1)(b).

(3)A also harasses B if—

(a)A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,

(b)the conduct has the purpose or effect referred to in subsection (1)(b), and

(c)because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.

(4)In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—

(a)the perception of B;

(b)the other circumstances of the case;

(c)whether it is reasonable for the conduct to have that effect.

20. Section 39 Equality Act 2010:

"**39 Employees and applicants**

(1) An employer (A) must not discriminate against a person (B)—

(a) in the arrangements A makes for deciding to whom to offer employment;
(b) as to the terms on which A offers B employment;
(c) by not offering B employment.

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

(a) as to B's terms of employment;
(b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;
(c) by dismissing B;
(d) by subjecting B to any other detriment.

(3) An employer (A) must not victimise a person (B)—

(a) in the arrangements A makes for deciding to whom to offer

employment;
(b) as to the terms on which A offers B employment;
(c) by not offering B employment.

(4) An employer (A) must not victimise an employee of A's (B)—

(a) as to B's terms of employment;
(b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for any other benefit, facility or service;
(c) by dismissing B;
(d) by subjecting B to any other detriment.

(5) A duty to make reasonable adjustments applies to an employer.

(6) …

(7) In subsections (2)(c) and (4)(c), the reference to dismissing B includes a reference to the termination of B's employment—

(a) by the expiry of a period (including a period expiring by reference to an event or circumstance);
(b) by an act of B's (including giving notice) in circumstances such that B is entitled, because of A's conduct, to terminate the employment without notice.

(8) Subsection (7)(a) does not apply if, immediately after the termination, the employment is renewed on the same terms."

21. Section 123(1) Equality Act 2010 (Time Limits)

"123 Time limits

(1) Subject to section 140(a) and 140(b) proceedings on a complaint within section 120 may not be brought after the end of —

(a) the period of 3 months starting with the date of the act to which the complaint relates, or
(b) such other period as the employment tribunal thinks just and equitable.

(2) …
(3) For the purposes of this section—

(a) conduct extending over a period is to be treated as done at the end of the period;
(b) failure to do something is to be treated as occurring when the person in question decided on it.

(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—

(a) when P does an act inconsistent with doing it, or
(b) if P does no inconsistent act, on the expiry of the period in which P

might reasonably have been expected to do it."

Findings of Fact

25. The claimant was employed by the respondent as a Variable Data Processor from 11 July 2011. The respondent employs approximately 230 staff at two sites in Kettering and Edinburgh. The Kettering location has two buildings, Sterling House and LPH.

26. Approximately 70% of the respondent's staff were based in production within the Sterling House environment. The claimant was more laterally based at the LPH site. The respondent is said to be a full service creative and production agency, including direct mail services.

27. The claimant unfortunately suffered a brain haemorrhage and major stroke in February 2016. It is accepted that the claimant is disabled within the meaning of s.6 of the Equality Act 2010. There is no issue between the parties as to disability or knowledge.

28. The claimant took an extended period of sick leave during this period and the respondent paid the claimant in full pay during his absence beyond his contractual and SSP entitlement.

29. In May 2016, the claimant returned to work on a phased return. By the time of his dismissal he had not returned full time. During this period the claimant was paid in full and not just for the hours he worked. Again, this was outside of the respondent's contractual obligation.

30. The claimant's GP suggested a phased return, initially this was two days a week for three hours, for two weeks. Then three hours for four days a week, for two weeks. Followed by three hours for five days a week for two weeks.

31. In July 2016, this phased return was extended for a further six weeks. The GP recommended 9am to 2pm for two weeks followed by 9am to 3pm for two weeks and finally two weeks at 9am to 4.30pm before returning back to work. The respondent complied with the phased return.

32. In September the phased return of 9am to 3pm was extended for four weeks. The respondent complied with the GP's suggestion. In October 2016 this was again extended for three weeks with an indication that in the fourth week the claimant would be fit to extend the hours from 9am to 4.00pm. Again the respondent complied with the GP's recommendations.

33. In November, the phase return was extended to alternate weeks of 9am to 3pm or 9am to 4pm. In January 2017 the claimant's hours were reduced by the GP to 9 – 3pm as he was feeling exhausted at the end of each day. The claimant was unable to drive throughout this whole period. The respondent again agreed with the GP's recommendations.

34. The phased return of 9am to 3pm was extended at the end of January 2017 for a month. In March 2017 this pattern was changed 9am to 3pm one week and 9am to 4pm the next for alternative weeks. This was set to continue to June 2017. The respondent accommodated these adjustments on each occasion over an extensive period and paid the claimant in full.

35. In January 2017, the claimant complained that the temperature in the open plan office was too high and this was impacting on his health. He felt that when the temperature was at 25°c or above, this made him feel unwell; he wanted the temperature to be a maximum of 21°c / 22°c. This was raised by the claimant on 11 January 2017 and the claimant accepted in his evidence that this was resolved by 8 February 2017.

36. During this period the claimant sent emails raising the issue of temperature which Mr Tahari was monitoring. A thermometer was obtained by the respondent and the temperature was monitored. Staff were communicated with about not adjusting the temperature up on more than one occasion. The claimant himself bought two digital thermometers and he was monitoring the temperature. The claimant was offered to move desks if he felt it was still an issue. Other employees complained they were too cold. By the 8 February 2017 the claimant was happy with the temperature and the issue was not raised again.

37. The claimant also raised temperature as an issue when the respondent carried out a risk assessment for him on 23 January 2017 which is before it was resolved as identified above. The risk assessment identified the temperature and also that desk fans had been provided. The risk assessment identified the claimant should use a stick for mobility and stability to avoid falling when in the office. The risk assessment identified regular breaks mid-morning.

38. An emergency evacuation assessment and a display screen equipment assessment was conducted. The emergency evacuation assessment identified that a designated employee was required. RC had previously carried out this role prior to the office move at the end of 2016. RC was still in employment and worked on the same floor as the claimant. Miss Hickman sent the risk assessment to HR with a request that this be followed up. The respondent did not follow up on this request. The claimant was never notified that RC, or indeed any other individual was his designated employee assistant when the revised risk assessment was conducted. However, the claimant was also not notified that RC had in anyway objected to remaining his designated employee or that there had been any change in this regard. He was still employed by the company and still worked on the same floor as the claimant.

39. The claimant was unable to drive for medical reasons. He parked his car at LPH and it stayed there permanently; the claimant tells us and we accept that it was taxed, MOTd and insured. The claimant was using this

car openly to take his rest breaks; he would take a mid-morning break in his car.

40. In March 2017, the claimant was asked to move his car from the LPH car park where he worked to Sterling House, around hundred metres away. The claimant raised concerns about the impact on his rest breaks and was offered a meeting room as an alternative. The respondent booked the meeting room every day from 10:45 to 11:00 am.

41. We are told that the claimant had an issue with being able to use the room on occasion. There was no evidence that it was ever raised with the respondent. The claimant accepted, as his room was booked, he could have challenged the occupier, but did not do so. The claimant did not use the car to travel to and from work, the only impact the request to move the car had, was with regard to having a facility to have a break in which was immediately substituted for a room. There was a subsequent occasion he was asked to move his car from Sterling House, but this was not an issue before the Employment Tribunal and therefore not relevant to the list of issues.

42. The claimant alleges between January 2017 and March 2017, that he was questioned by his manager as to how much longer it would take before the programme he was developing would be finished. This was not part of the claimant's main role but an ancillary role. We have seen no evidence of such challenges, but there was an underlying theme at this time about the claimant's lack of productivity whilst at work and concerns over his performance. On the balance of probabilities, we find it probable that Mr Taheri did question him given the contextual background at the time. The respondent was paying him in full but was concerned about the productivity of the claimant. The respondent had concerns by 14th March 2017 about the claimant's performance including time spent on the internet. In any event an intervening event occurred in the chronology.

43. On 24 March 2017, a malware virus managed to access the respondent's network, as a result all PCs at the Kettering site were scanned and removed from the network. Once they were cleaned / virus free, they were reintroduced one by one to the network. The in-house IT department called upon their external supplier Petrovia to attend site and assist with the issue. The contractors were on site over the weekend and on Monday 27 March 2017 the claimant's computer was identified as having a virus and required further investigation. The claimant has questioned the validity of the initial virus attack and whether this was engineered to exit him from the respondent. We do not accept that. We do not find it credible that a respondent would introduce a virus to its own system, shut down the system for a period impacting on productivity and bring in an external IT company to verify this. We heard evidence as to the impact the incident had on the business which we accept.

44. The investigation into the claimant's computer identified that since January 2017, the claimant had visited a number of sites, eBay, Facebook, Pre-

loved and personal email addresses as well as Shaanig and Warez-BB which are file hosted sharing sites on a peer to peer basis. A copy of Windows 8.1 was downloaded from Shaanig by the claimant; the respondent contended this was illegal. The Windows download was not from Microsoft and the claimant did not pay for it. The claimant says now that he had an activation code but did not highlight this to the respondent at the disciplinary hearing, appeal hearing or investigation hearing. The claimant's internet browsing history was considered which was extensive in the period of January and February when he was still on a phased return but this is ultimately not what he was dismissed for.

45. On 10 April 2017, the claimant was suspended. On 13 April 2017, the claimant attended an investigatory meeting. The claimant disputed this stating that he had not attended such a meeting and there appeared to be some confusion in his evidence. Notes of the meeting were taken. Unhelpfully there are two versions of the notes. In the meeting, (and present in both versions of the notes), the claimant accepted his internet use and that he had downloaded Windows 8 for use on his computer at home.

46. The claimant was invited to attend a disciplinary hearing by letter sent under cover of an email dated 19 April 2017. This email attached a version of the investigation meeting notes, (albeit we do not know which version), the disciplinary policy, Windows screen shots and the respondent's signed Information and communications system (ICS) document (see below). The claimant did not challenge the fact or indeed the content of these notes at that time. On balance we find the claimant did attend such a meeting and that he accepted he had downloaded Windows 8 during that meeting. Indeed, the claimant has accepted throughout this hearing that he did so download Windows from the Shaanig file sharing site albeit he says it was not illegal. The claimant was mistaken in is evidence as he was certain that no such meeting took place but it is clear from the documents this is not the case.

47. The invitation to attend the disciplinary hearing requested the claimant attend the hearing on 24 April 2017. The allegations were:

*"**Alleged illegal software download.***

- *You allegedly downloaded an illegal version of Windows 8.*
- *You used this illegal download to install on your personal laptop.*

Alleged Misconduct - Breach of Information Security Policy

- *It is alleged that you are in breach of the company's information security policy by knowingly downloading an illegal copy of Windows 8."*

48. The claimant was given the context of the allegations and advised one of the consequences could be dismissal. He was given the right to be accompanied.

49. The respondent had an Information and Communication systems policy in its handbook. The claimant signed in July 2011 to confirm he had read and understood it. This listed some unacceptable use of the computer systems and network resources at section three. There were two bullet points of relevance in this document:

    49.1 *the distributing, disseminating or storing of images, texts or materials that might be considered indecent, pornographic, obscene or illegal;*

    49.2 effecting security breaches or disruptions of network communication. Security breaches include but are not limited to,

    deliberately or carelessly introducing an form of computer virus or malware into the corporate network;

    initiate the download of large data files, (as a guide in excess of 5mb would be considered large), from external locations that are not related to business activities as this uses company bandwidth and slows down commercial activities.

50. The policy also listed some examples under the heading, 'Copyright Designs and Patents Act 1988', as actions which were against the law,

    Running pirated software;
    - it is against the law to run software on a computer that has been unlawfully obtained, (for instance purchased from an unauthorised reseller or downloaded from an illegal peer to peer network);

    Transmitting software
    - it is against the law to upload or download pirate software to or from the internet.

51. The same policy lists the sanctions that failure to comply with this policy constitutes misconduct and may constitute gross misconduct and it could result in sanctions in accordance with the company's disciplinary procedure.

52. The company's disciplinary policy listed examples of gross misconduct as, *"accessing and using unauthorised internet sites including chat and social networking social media sites",* and *"download and / or installing unauthorised software"*. The policy was dated May 2016.

53. The claimant had a previous version in 2014 which it was accepted had the same list of examples of gross misconduct contained within it. The claimant was given training in 2014 on the new policies when the new intranet was introduced. The policies therefore applied to the claimant.

54. The claimant attended the disciplinary hearing on 24 April 2017 and declined representation. Notes were taken of the meeting, again most

unhelpfully there are two versions of these notes which differ in personnel, timings and contents. Both sets of notes refer to the investigation meeting which the claimant now denies having attended but again we do not accept this as this is further evidence that it was not disputed at the time that such a meeting took place. Despite there being two versions of the notes, again, the explanation given by the claimant across both sets of notes is consistent in that he downloaded it to sort out his home PC. He explained he was using DropBox to transfer the files and discussed his internet use and that he was falling behind with work. The respondent does not use Windows 8.1.

55. The claimant was given the opportunity to ask questions. The claimant raised an issue as to why his machine was taken and he was told that all machines had been checked. We accept that the claimant was not singled out in this way but this PC was off the system for longer because issues of concern were found.

56. By letter dated 27 April 2017, the claimant was summarily dismissed. He was said to openly admit illegally downloading Windows 8 and it was said that this also breached the company's information security policy particularly in light of his skills experience and training. When this was explored with the respondent it came to light that the claimant had an IT background over a number of years. The claimant was given the right of appeal.

57. By email of 8 May, the claimant appealed the decision. By letter dated 10 May, the claimant was invited to an appeal hearing with Mr Clare on 18 May. The claimant was given the right to be accompanied and invited to provide evidence before the meeting.

58. The claimant attended the appeal hearing on 18 May 2017 and a major part of his appeal was on the use of the term, *"illegal"*. He made reference to the car parking issue but he made no reference to the suggestion that the virus was manufactured as an exercise to get rid of him as he puts his case now. He did not raise with the appeal officer that he had not had any investigation meeting and did not dispute the contents of the disciplinary hearing notes or the outcome letter other than the use of the word illegal. He did not raise that he had the product key. His case was that because he downloaded it from a legitimate site (despite not being form Windows but a file sharing site) and he thought it would ask for a product key it was not illegal. The claimant did not provide any credible explanation to the tribunal or more importantly the respondent at the relevant time as to why he would download a copy of windows from anywhere other than Microsoft especially with his extensive IT background.

59. The appeal outcome was communicated by letter dated 19 May 2017 which the claimant did not originally received. Upon chasing, this was supplied within 24 hours but the subsequent request for IT reports were ignored. At no point was the claimant furnished with the IT report before us, the disciplinary officer and the appeal officer. It should have been

supplied to the claimant in advance of the disciplinary hearing at the very least.

60. The appeal was dismissed. Mr Clare upheld the original decision to dismiss and found that regardless of whether the copy downloaded was illegal or not in that it did require the claimant said a product key, the claimant knowingly downloaded a copy from a file sharing website in breach of the information security policy.

61. The claimant commenced Acas early conciliation on 1 July and it ended on 1 August 2017. He submitted his claim to the Employment Tribunal on 21 August 2017.

Conclusions

Unfair Dismissal Claim

What was the reason for dismissal?

62. We are satisfied the reason was misconduct. The claimant admits downloading Windows 8.1 and that this was from a file sharing site. In the circumstances we do not accept the claimant's suggestion that this scenarios was manufactured to orchestrate his dismissal.

63. As is set out below, we have some concerns about the respondent's process in this matter but cannot accept the claimant's submission. The claimant committed an act of misconduct and it was that that caused the dismissal. There are some procedural issues such as different versions of the notes which are undesirable and not best practice and indeed as we set out below there was a failure to provide the IT report.

64. We have considered whether the concerns around the claimant's performance and the ongoing nature of the phased return to work influenced the decision to dismiss. We do not believe that the claimant's dismissal would have happened but for the conduct which he admitted. The respondent was very supportive to the claimant during what must have been a very difficult period for him and his family due to the sudden onset of his disability. He was paid in full over and beyond his entitlement and every recommendation by his GP was accommodated without question.

65. The claimant accepted in this tribunal and throughout the course of the disciplinary process that he had downloaded a copy of windows 8 from a file sharing site. This was clearly conduct and the respondent's own policy identified this as gross misconduct.

Did the respondent hold that belief in the claimant's misconduct on reasonable grounds?

66. We find that the respondent did hold such a belief given the claimant's admission outlined above. It brought in IT professionals to carry out the

investigation. At the outset it was not the claimant's computer alone that was investigated due to the virus being introduced into system. However, issues were identified with the claimant's computer and it was therefore subject to further scrutiny. The items found on the computer were set out in an IT report which was not provided to the claimant.

67. In the investigation meeting (we accept the claimant did attend such a meeting) and then onwards, the claimant fully accepted that he had downloaded a copy of windows 8 from a peer to peer file sharing site. During his evidence he accepted that the decision to do so was questionable as one did not know what one was downloading and whether this was from a "good person or a bad person". His actions carried a risk and particularly set against the background of his IT experience. The actions were also contrary to the information security policy and listed as gross misconduct.

68. Had the admission not been made, (which the claimant continued to accept throughout this hearing), we would have been concerned that the respondent did not furnish the claimant with the IT report. Indeed, had the evidence as to his conduct been more questionable, we may have concluded that the claimant's performance was a factor. In a case where the claimant clearly accepts his wrongdoing, it is difficult to see how the respondent cannot hold such reasonable belief. It carried out an investigation and the claimant accepted he had done the act that was being investigated.

Was the decision to dismiss a fair sanction that is was it within the range of reasonable responses of a reasonable employer?

69. Having found the claimant accepted he committed an act of misconduct and that this conduct was reasonably classified as gross misconduct within the respondent's policy, dismissal was within the range of reasonable responses. The claimant's representative submitted that a first written, or final written warning would have been more appropriate. A final written warning was open to the respondent as this was within the range of reasonable responses for gross misconduct. However, we must not substitute our view and ask ourselves whether that decision was harsh or whether we would have given the claimant a final written warning and it is clear the claimant does not understand the legal test within which this tribunal must work.

70. A final written warning or dismissal, are both within the range. We do not find that given the policy states that these are gross misconduct offences which have been admitted, that a first written warning would have been appropriate.

71. The claimant now suggests that he had a product key but this was not information he ever put before the dismissing or appeal officer. Further, we do not accept that this changes the outcome. As an experienced IT professional if he considered that he had such a product key and needed

an authentic copy we do not understand why he would not get this from Microsoft. The respondent's policies are clear that file sharing sites should not be used. To conclude on the balance of probabilities that the copy was illegal given it was obtained from a peer to peer file sharing site was not an unreasonable conclusion for the respondent to take. It is not for us to substitute our view dismissal in the circumstances where an act of gross misconduct is admitted is not outside the range of reasonable responses.

If the dismissal was unfair, did the claimant contribute to the dismissal by reason of culpable conduct?

72. We have not found that the dismissal was unfair, so we do not need to consider culpability or indeed Polkey. However, for completeness, we would say that had we found the dismissal was unfair, given the claimant's extensive IT background and admissions we would have found a high contribution in respect of contributory fault of at least 90% culpable for his own conduct.

73. Contributory conduct requires the respondent to prove on the balance of probabilities that the claimant actually committed the act of gross misconduct alleged. Here the claimant accepted that he did download Windows 8 so admitted his conduct so this test is easily fulfilled.

74. Likewise, in respect of Polkey, given our conclusions as to the IT report, we find that if this had rendered the dismissal unfair, given the admissions in this case it would have been 100% likely the same outcome would have occurred.

Section 26 Harassment

75. Now turning to the allegations upon which the claimant relies. The claimant relied on seven acts here. We look at each in turn and whether as a matter of fact we have found them to have occurred.

Issue 5.1.1 above as set out at paragraph 1.5 of the further and better particulars - that he felt rushed back to work full time and no adjustments were made.

76. We find as a fact that the claimant was not rushed back to work. There was no evidence of this. The claimant returned after a few months to a phased return but was not subject to the usual financial pressures of full pay being removed or threatened to be removed during this period to force him back to work.

77. The phased return to work was prolonged, the claimant was still not back at work full-time when he was suspended. This was 11 months later after he returned to work. The respondent paid the claimant in full when this was not a reasonable adjustment and there was no contractual requirement to do so. The respondent took every GP recommendation at face value and agreed to the numerous extensions and variations never questioning the GP's recommendations. The claimant was not put under

any expressed pressure to return quickly quite the opposite as the respondent was very generous to the claimant. The claimant said he felt such a pressure, we do not accept this came from the respondent directly, or indeed indirectly in the impression it gave the claimant and this allegation lacks credibility.

78. As a finding of fact, we do not accept this allegation. We have looked at this as both the return to work in May 2016 which would give the claimant significant time problems if it was not part of a course of conduct and also on the period between his return and his suspension and find no evidence of anything which could have given the claimant the impression he had.

Issue 5.1.2 set out in paragraph 1.7 of the further and better particulars that in summary he feels his dismissal was engineered.

79. Given our findings of fact above we do not accept this factually. He committed an admitted act of gross misconduct so this cannot of itself be engineered. The suggestion that the respondent would infect its systems with a virus "planted" there to look at his computer and find something is simply not credible. There was a loss of time incurred to the business and IT expense in this incident. If they wanted to look at his PC they could have done so anyway without explanation as it was their property without the need to create such an elaborate plan to do so. We do not accept this and have already dealt with this further above.

Issue 5.1.3 set out in paragraph 4.4 of the further and better particulars that he was asked to move his car to a different car parking space.

80. It is agreed that the respondent requested the claimant move his car to a different space, to another car park. This did however, not impact the claimant's travel arrangements as he did not travel to or from work in the car. This occurred in March 2017 and unless part of a continuing act would cause the claimant issues as to time. The claimant was provided with a room as an alternative immediately. As a finding of fact it is agreed that he was asked to move his car.

Issue 5.1.4 above as set out at paragraphs 4.5, 5.8 and 6 of the further and better particulars in relation to the lack of provision and inadequate provision as to rest.

81. Given our findings of fact, a room was provided in lieu of the car and there was no evidence that there was any issue with its provision. The claimant said that on occasion when he came to use the room it was occupied by different people despite it being booked out for him every day. He did not challenge the occupant although he accepted he could have done so. He could not provide specific dates or times when this occurred. He raised no complaint with the respondent that this had occurred. We have seen emails where he raised the temperature so he was not slow to complain if there was an issue. There was no evidence he did the same with the room.

82. Given our findings of fact we do not accept that there was a lack of provision for him to rest. He was on a phased return and he was provided with a room to have a break. We do not accept the claimant's evidence that the room was inadequate for the reasons set out above.

83. It is not clear when this last occurred to look at the time limits but given that he was suspended 10 April 2017 it must have been before then. The claim if it was in April 2017 would be in time but any acts before that unless part of a series would have time issues. The claimant could not assist with any dates or timescales.

Issue 5.1.5 above at paragraph 4.6 of the further and better particulars concerning the appointment of personnel in the event of an emergency evacuation.

84. This was put that the respondent failed in its statutory duty of care to appoint a person to help the claimant during his emergency evacuation and that he was never advised of this. Given our findings of fact, the respondent failed to re-confirm a person after the move to LPH in late 2016. This was ongoing when the risk assessment took place in January 2017.

85. We do not accept the submission that the status quo was maintained, otherwise Miss Hickman would have said so in Box C on the risk assessment. We felt this was undetermined at the time she completed the risk assessment which is why she left the box blank and did not complete it. However, steps were taken to confirm and clarify as to whom the appointed person was. We do not accept that no person was appointed, however, we do accept that this was not confirmed to the claimant personally definitively either way and the claimant did not chase this.

86. The failing in the matter was not the failure to appointment itself but the confirmation back to the claimant, but the reality was that there was an appointed person, Mr Course had not declined to act at any point. Thankfully the theory of whether Mr Course knew he was the appointed person or not did not have to be tested in an evacuation scenario. If Mr Course has been so appointed and not told otherwise it is likely he would have taken those steps. It is not clear what steps the respondent had put in place should the need arise when Mr Course was on holiday for example. This should have been considered but does not form part of the claim.

Issue 5.1.6 relating to paragraph 5.7 of the further and better particulars: with regard to the questioning regarding the programme and whether it was finished between January and 17 March 2017.

87. We found as a finding of fact this happened in paragraph 42 above but the claimant may have time issues if this is not part of a continuing act.

Issue 5.1.7 at paragraph 6.1 of the further and better particulars concerning an issue over the temperature.

88. The claimant said that the temperature affected him but we have not seen any medical evidence to that effect and temperature is a very subject thing. Never the less when the claimant raised this, the respondent did not resolve this issue for a month. We do not find that the respondent did nothing in this period, communications to staff were made, thermometers was used and the situation monitored. It took steps to accommodate the claimant's wishes in this regard.

89. On the claimant's own case says this was resolved by February 2017 and therefore there may be time issues to be considered with this issue.

Section 26 Harassment on the grounds of disability

Did the respondent engage in unwanted conduct?

90 The only matters we have found factually to have occurred are issue 5.1.3 (car), 5.1.5 (emergency evacuation), 5.1.6 (questioning) and 5.1.7 (temperature).

91 Was this unwanted conduct. The claimant clearly wanted to be able to rest in his car, be evacuated in the case of an emergency, not questioned and have the office at the right temperature.

Was the conduct related to the claimant's protected characteristics?

92 We have considered whether the conduct complained of was related to disability. This is a wide test that covers by reason of disability or because of the form it takes.

93 We do not find that the request to move the car was in anyway related to the claimant's disability. It was an operational decision based on pressure on the car park and concerns about a car that was not being moved over a period of time.

94 The emergency evacuation was more inaction than action but again cannot be said to be related to his disability. The need to have an emergency evacuation personnel was related to his disability but the failure to confirm the personnel was not. The failure was due to a move in the office which was operational and not related to the claimant's disability.

95 The questioning of the claimant as to the programme he was due to be completed could have been because he had not finished it for reasons related to his disability in that it was taking him longer to complete than had he been at work. However, the claimant's internet use was excessive and was evidenced to the tribunal. The fact it was not done could equally be said to be due to time spent on the internet unnecessarily during work time. This certainly had an impact. The questioning of the claimant itself was not related to his disability but rather the need to have the programme

completed. Anyone who had not completed it during that period we believe would have been questioned the same way. The questioning was not related to disability although in part the reason why it had not been completed could have been the phased return related to disability.

96 The issues as to the temperature were said by the claimant to be related to his disability. We have seen no medical evidence to this effect but accept for the purposes of this claim that the temperature issues could be related to disability. The failure to act was not related to the disability but more operational as steps were being taken during this period.

Did the conduct have the purpose of violating the claimant's dignity or creating intimidating, hostile, degrading, humiliating or offensive environment?

97 We considered that the only acts relied on that could possibly relate to disability were the questioning techniques and the temperature.

98 We do not find that they had the purpose of violating the claimant's dignity. The purpose of the questioning was to ascertain whether it had been completed which was not unreasonable for management to know whether it had. He was not told by management why have you not completed it because you are wasting time on the internet or anything of that nature. It was merely an enquiry as to whether it was completed and therefore we do not think it had such a purpose.

99 As to the temperature this was a matter of personal preference contrary to other staff and steps were taken to address it. This issue was resolved within a month and it cannot be said to have such a purpose when it was being controlled to benefit the claimant.

Did the conduct have the effect of violating the claimant's dignity or creating intimidating, hostile, degrading, humiliating or offensive environment?

100 We have considered whether either of these had the effect of violating the claimant's dignity or creating intimidating, hostile, degrading, humiliating or offensive environment. We have considered the claimant's perception but do not accept that these two issues can amount to disability harassment and that he felt the way he suggests now for this claim on these two issues. We have considered the circumstances and the steps taken to resolve the issue by the claimant and whether it is reasonable for the conduct to have had that effect. We do not consider that it was.

101 Turning finally to the issue of time for completeness. The temperature was resolved by February 2017 and the questioning ceased on 17 March 2017. The claimant did not commence ACAS Early conciliation until 1st July 2017 by which time both claims were out of time. The claim was presented on 21 August 2017. We have heard no evidence on why it was just and equitable to extend time as none was led by the claimant. Even if we had found these acts to be harassment, we would have found that it was not

just and equitable to extend time as they were discrete acts and not part of a continuing act to put them in time.

Direct Discrimination s.13

102 The claimant advanced this case on head of claim on the grounds of dismissal only as less favourable treatment.

Has the respondent subjected the claimant to the following treatment falling within section 39 Equality Act, namely dismissal.

103 It was agreed between the parties that the claimant was dismissed.

Has the respondent treated the claimant as alleged less favourably than it treated or would have treated the comparators? The claimant relies on hypothetical comparators.

104 The claimant relies on the hypothetical comparator and the respondent submits that it would have dismissed anyone for such conduct as this is gross misconduct within its policy. We accept that.

If so, has the claimant proved primary facts from which the Tribunal could properly and fairly conclude that the difference in treatment was because of the protected characteristic?

105 Given our findings of fact we do not find that there are any primary facts which could draw this conclusion. The claimant admits that he committed an act of gross misconduct and this is why he was dismissed not because of his disability.

106 As set out above in our conclusions we considered whether the decision to dismiss was in any way related to his disability. As set out above we do not accept this.

If so, what is the respondent's explanation? Does it prove a non-discriminatory reason for any proven treatment?

107 For the reasons set out above the respondent's explanation is that it dismissed the claimant for his admitted gross misconduct. We therefore would conclude that it has proven a non-discriminatory reason for the dismissal as the claimant admitted gross misconduct.

Indirect Discrimination s.19

Did the respondent apply the following provision, criteria and/or practice ('the provision') generally, namely:

Issue 7.1.1 which is set out at paragraph 4.4 of the further and better particulars, there was an issue over him moving his car to a different parking space.

108 We have had some difficulty trying to identify the provision, criterion or practice and whether these could be applied as discussed with the claimant at the outset. However the claimant felt that this issue was him being singled out or treated differently and not something that was applied to all but impacted him more or in a different way. It is therefore not in our view a s19 complaint. We therefore struggled to identify a PCP under this heading.

Issue 7.1.2 as set out at paragraph 4.6 of the further and better particulars dated 13th May 2018 related to the emergency evacuation appointment of the personnel.

109 We have had some difficulty trying to identify the provision, criterion or practice and whether these could be applied as discussed with the claimant at the outset. However the claimant felt that this issue was him being singled out or treated differently and not something that was applied to all but impacted him more or in a different way. It is therefore not in our view a s19 complaint. We therefore struggled to identify a PCP under this heading.

Issue 7.1.3 as set out at paragraph 6.1 of the further and better particulars dated 13th May 2018 that identified an issue over the temperature.

110 This was not articulated into a PCP by the claimant the Tribunal attempted to do so in that the only one identified would be that there was a requirement that a certain temperature be maintained.

Does the application of the provision put disabled persons at a particular disadvantage when compared with persons who do not have this protected characteristic?

111 Even if one could identify the PCP as a requirement that a certain temperature be maintained for all, we know that other people complained about the temperature so disabled people were not at a particular disadvantage and there was no medical evidence to show that the PCP put any disabled people at a disadvantage.

112 The claimant's claims for indirect disability discrimination must therefore fail but for completeness we have considered the other legal issues under this heading.

Did the application of the provision put the claimant at that disadvantage? If so how?

113 There is no medical evidence that the claimant was particularly disadvantaged. We know from the evidence before the tribunal that several people complained and that they complained it was too cold as a result of the adjustments made for the claimant.

Does the respondent show that the treatment was a proportionate means of achieving a legitimate aim?

114 We accept that the respondent did what it could in this regard, so even if we had found that the temperature issue was indirect discrimination, we would have found that the respondent had a proportionate means of achieving a legitimate aim given that there are a number of other people within the open plan office whom the respondent had to please. By dealing with the matter in the way it did monitoring, asking employees not to adjust and using thermometers this was all a proportionate means of achieving the aim of making the entire workforce comfortable.

If so, was the claim presented in time? If not, is it just and equitable to extend time?

115 Even if this head of claim had succeeded there would have been an issue as to time. The claim was out of time as it was resolved by February 2017 and the claim was presented out of time. The claimant did not commence ACAS Early conciliation until 1st July 2017. The claim was presented on 21 August 2017. We have heard no evidence on why it was just and equitable to extend time as none was led by the claimant. Even if we had found this to be indirect discrimination, we would have found that it was not just and equitable to extend time as we are not persuaded otherwise.

Discrimination arising from Disability s.15

116 It was difficult to identify the something arising in consequence of the claimant's disability on the claimant's case. The case was put on the basis that the reasonable adjustments arose as a consequence of the claimant's disability namely the phased return to work and that the something arising was dismissal as a consequence of frustration with the delays in the time this was taking.

Does the claimant prove that the respondent treated the claimant as set out in paragraph 8.1 above?

117 It is agreed between the parties that the claimant was dismissed.

Did the respondent treat the claimant as aforesaid because of the "something arising" in consequence of the disability?

118 As set out in our findings of fact we do not accept that this was the case. The respondent took all of the GP's recommendations at face value and did not seek to challenge them with a referral to its own occupational health provider. It continued to pay the claimant in full when there was no obligation to do so. It made more reasonable adjustments than it had to in this regard as pay is not a reasonable adjustment.

119 Recovery was slow certainly but the frustrations from the respondent were not with the time the claimant was there but if there were any such

frustrations then this was with his level of productivity. We do not accept this was as a consequence of his disability either for the avoidance of doubt given the other issues the respondent had with the level of internet use.

120 We therefore do not find that the claimant was discriminated against under s15 of the Equality Act 2010 for something arising in consequence of his disability.

Reasonable Adjustments s.20 and s.21

Did the duty to make reasonable adjustments under s20 of the Equality Act arise?

121 This was difficult as the claimant was not able to articulate what the PCP was in this case. It was not a physical feature or auxiliary aid but rather a PCP case. Here the claimant relied on 5 matters more than the s19 claim which faced the same difficulties.

At issue 9.2.1 the claimant referred to paragraph 1.5 of the further and better particulars that he felt rushed back to work full time and that no adjustments were made.

122 As per the our findings of fact above we do not accept that the claimant was rushed back to work. We find there was no PCP to swiftly return to work from sickness leave or anything of the sort. The claimant was supported. A number of adjustments were made to his working hours and he was paid in full so again we do not accept that no adjustments were made. Indeed the respondent went further than legally it had to in this regard by making full payments to the claimant during this period. Had it wanted to rush the claimant back reducing his pay to his contractual entitlement would have been an incentive – one it simply did not take.

At issue 9.2.2 as set out at 4.4 of the further and better particulars there was an issue over him moving his car to a different parking space.

123 It was agreed that the respondent asked the claimant to move his car from the car parking space but the respondent immediately provided an alternative room for the claimant to use for his rest breaks. This was more convenient to the claimant and prevented him from having to walk to his car. If there was a reasonable adjustment to allow him to take breaks in his car the respondent instead provided an alternative. We therefore do not consider that the respondent failed to make a reasonable adjustment in this regard.

At issue 9.2.3 as set out in paragraphs 4.5, 5.8 and 6 of the further and better particulars, taken in the round related to the lack of provision and inadequate provision to rest.

124 This applied in respect of no space to rest and the complaint that there was a lack of provision for him to rest which we have found as a fact did not exist. We have considered whether the provision was inadequate but there is no evidence that this was the case. The claimant wad vague about various people using the room when it was booked for him but he did not point this out to the occupant. We therefore do not consider that the respondent failed to make a reasonable adjustment in this regard.

At issue 9.2.4 as set out at paragraph 4.6 of the further and better particulars related to the appointment of emergency evacuation personnel.

125 We have found that somebody was appointed but that it was not confirmed to the claimant. Whilst this is undesirable, we do not feel that the respondent failed to make a reasonable adjustment as although the building had changed Mr Course still worked alongside the claimant in the building.

At issue 9.2.5 as set out in paragraph 6.1 of the further and better particulars that identified an issue over the temperature.

126 We have found that the respondent took reasonable steps to address this when it was identified. Adjustments were made to the temperature immediately and then this was monitored over a period and thermometers located to track the temperature. Staff were communicated with not to adjust the temperature and the issue was resolved within a month.

If so was the claim presented in time? If not is it just and equitable to extend time?

127 Whilst we have not found that the respondent failed to make reasonable adjustments contrary to s21 of the Equality Act 2010, we have considered whether if we had done whether any of the acts are in time.

128 All of the alleged reasonable adjustments were out of time. We have considered whether it would be just and equitable to extend time on any of the above points. Given our findings of fact, and that the claimant did not lead any evidence in explaining the delay in bringing the proceedings, we have seen no evidence to explain why the proceedings were not brought promptly. We do not consider it just and equitable to extend time, even if we had found in the claimant's favour as to the failure to make reasonable adjustments.

129 It is for the above reasons that we do not find for the claimant, his claims fail and are dismissed.

28 February 2019

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Employment Judge King

Date: 28th February 2019

Sent to the parties on: 1 March 2019

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For the Tribunal Office