Neutral Citation Number: [2022] EAT 59

Case No: EA-2020-000506-VP

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 10 December 2021

Before :

HIS HONOUR JUDGE JAMES TAYLER
MISS S M WILSON
MS V BRANNEY

- -

Between :

MR SEAN THOMAS LEACY	**Appellant**
- and -	
BUILDING CRAFT COLLEGE	**Respondent**

- -
- -

Mr R Beaton (Advocate) for the **Appellant**
Mr R Kohanzad (instructed by Peninsula Business Services Ltd) for the **Respondent**

Hearing date: 9 & 10 December 2021

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JUDGMENT

SUMMARY

PRACTICE AND PROCEDURE

There was nothing in the employment tribunal's management of the hearing that rendered it unfair. The employment tribunal reached conclusions that were open to it on the facts. The Judgement was **Meek** compliant. The appeal was dismissed.

HIS HONOUR JUDGE JAMES TAYLER:

1. This is an appeal against the decision of the employment tribunal, Employment Judge C Lewis sitting with members, after a hearing held between 10 to 13 and on 17 September 2019, with 3, 4 and 8 October 2019 in chambers. Judgment was signed by the employment judge on 19 February 2020, and sent to the parties on 27 February 2020.

2. The outline of the claim is relatively straightforward. The claimant is a craftsman and further education lecturer. The claimant was employed as Lead of Furniture Apprentices by the respondent from 4 September 2017 to a date in April 2019. There was a dispute as to the precise date of the termination of the claimant's employment, the claimant having commenced a period of medical absence from 22 June 2018, thereafter not returning to work. The precise dates of the claimant's employment are not relevant to this appeal.

3. The claimant has described the claim as being of very great complexity. That reflects the complexity of the list of issues, rather than the underlying nature of the claim itself. The claimant contended that at an early stage of his employment he had made it apparent to the respondent that he had a mental health disability, that they subjected him to various detriments, then placed him on medical suspension, and eventually the way in which the respondent dealt with his grievances, and his treatment overall, resulted in his resignation, so that there was a discriminatory constructive dismissal.

4. The claimant submitted two claim forms. There was lengthy case management that resulted in a list of issues in two parts. A considerable element of the complexity of the list of issues arose from the fact that a number of the detriments alleged by the claimant were asserted to be various different forms of discrimination. In respect of his first claim, the claimant brought claims of disability discrimination, including direct discrimination, discrimination because of something arising in consequence of disability and failure to make reasonable adjustments, with claims of harassment and victimisation. The flavour of the factual allegations can be seen from those

asserted to be direct disability discrimination detriments at paragraph 7 of the list of issues:

> "7. The Claimant relies on the following allegations of less favourable treatment:
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> (a) Mr Mayes insinuating that the Claimant was lazy;
> (b) Mr Mayes barking orders at the Claimant;
> (c) Failing to provide the Claimant with his own desk;
> (d) Moving the Claimant's apprentice to a different workstation;
> (e) Questioning the Claimant's understanding of his subject in front of students;
> (f) Mr Mayes calling the Claimant "sensitive";
> (g) Leaving the Claimant on his own to handle a whole class of students;
> (h) Asking Claimant to cover classes known to be troublesome;
> (i) Making the announcements on 15 of May 2018 to the Claimant's class;
> (j) Sharing confidential remarks from the grievance meeting with other colleagues;
> (k) Refusing to allow the Claimant any trade union representation in meetings;
> (l) Bringing Mr Clifton into a private meeting without the Claimant's permission being sought;
> (m) Making accusations relating to the Claimant's depression;
> (n) Failing to follow advice from the Claimant's GP;
> (o) Failing or refusing to refer the Claimant to OH until June 2016;
> (p) Failing or refusing to consider adjustments to the Claimant's existing role;
> (q) Adding to Claimant's marking workload whilst he was on a period of sick leave;
> (r) Failing to allow the Claimant to take his preparation/development day;
> (s) Giving the Claimant a salary less than advertised salary;
> (t) Sharing confidential medical information with colleagues without the Claimant's consent;
> (u) Ignoring the Claimant's concerns regarding his workload and treatment;
> (v) Calling meetings at short notice or with no notice at all;
> (w) Placing the Claimant on medical leave despite his assurances he could fulfil his duties;
> (x) Failing to carry out a workload assessment; and/or
> (y) Failing to make available/promote relevant policies and procedures."

5. The first claim essentially covered the period leading up to the claimant's medical absence (we will use this neutral term rather than the term, medical suspension, preferred by the claimant). In the second complaint the claimant contended that he had been badly treated in respect of his medical absence and the way in which his grievance was dealt with. That was said to give rise to complaints of direct disability discrimination, discrimination because of something arising

in consequence of disability and failure to make reasonable adjustments. It was also said that an individual had been involved in instructing, causing or inducing the contravention of the **Equality Act 2011** contrary to section 111. The essential nature of the claim was relatively straightforward and was of the type that the employment tribunal deals with regularly.

6. While lists of issues can be very helpful, and it is often necessary to set out with some clarity the specific allegations of discrimination, they can result in a degree of salami slicing, with the consequence that the claim appears to be far more complicated than it is, particularly if a number of the asserted detriments are closely related or are, by themselves, quite minor. The list can become particularly complex if each detriment is asserted to give rise to all the forms of disability discrimination that are prohibited by the statute.

7. The judgment of the employment tribunal was lengthy. The tribunal did not entirely separate findings of fact from the determination of complaints. Having considered various procedural matters the employment tribunal set out the law and then set out together its findings of fact and determinations of the various issues. This was to avoid what was necessarily a long judgment becoming excessive in length. As it was, the judgment ran to some 73 pages with 425 paragraphs, taking into account the fact that there was a paragraph numbering error that meant that the paragraph numbers returned to paragraph 29 after paragraph 127.

8. The claimant also made an application for reconsideration of voluminous length. It had two appendices, the first running to 86 pages, setting out the claimant's disputes as to the findings of the tribunal paragraph by paragraph, and then a further 28-page document asserting various errors of law. The application for reconsideration was refused in relatively brief terms. The judge concluded that it was an inadmissible attempt to reargue the claim.

9. The appeal, by contrast, is relatively concise. It is split into a number of elements, the first under the heading "Procedural unfairness" from grounds 1 to 9. Grounds 10 and 11 assert perversity, it being asserted that certain determinations were made without there being any evidence to support them. Paragraphs 12 through to 24 are under a heading "Misdirection", whereas in

reality they perhaps might better be described as complaints of lack of *Meek* compliance and/or perversity, although with some misdirection as to the law asserted.

10. The claimant was represented when he submitted his original claim form. He acted in person when the second claim form was presented, and thereafter in the employment tribunal proceedings. The claimant drafted the notice of appeal himself. The appeal was permitted to proceed to a full hearing on grounds set out by Griffiths J:

> "1. Paragraphs 1-8 of the Grounds of Appeal are consistent with paragraphs 2-15 of the Reasons attached to the Reserved Judgment.
>
> 2. They raise important questions about case management and (taken at face value) present arguable grounds for an appeal. These questions arise both from the apparently last-minute shortening of the time estimate and the pressures on the reduced time left for the hearing caused by various procedural developments and from the suggestion that the brunt of the curtailment fell on the Claimant and not the Respondent
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> 3. If the appeal is allowed on the basis of paragraphs 1-8 of the Grounds of Appeal, it might follow that the hearing was not fair, and the decision cannot stand. The appeal will have to be case managed when the issues are clearer and it is possible, for example, that the issues raised by paragraphs 1-8 of the Grounds of Appeal can be decided first, before considering how the other elements of the appeal should be heard and determined."

11. The claimant has had the good fortune to obtain representation through the auspices of Advocate. Mr Beaton has sought to bring a little more structure to the grounds of appeal. The primary appeal is in relation to the fairness of hearing. Fundamental to that is the contention that the hearing length was decreased and that the management of the time that was available thereafter was such that it was unfair to the claimant which prevented him presenting his claim properly. Mr Beaton only referred to limited aspects of the remaining Notice of Appeal. Mr Beaton contended that there were errors in the way in which the employment tribunal dealt with without prejudice material. He asserted that there was inadequate reasoning in respect of the claimant's asserted exclusion from the respondent's website, inadequate reasoning in respect of the consideration of medical absence and there was perversity in determining whether a protected act had been done during a grievance process. The skeleton argument states that the

remaining grounds of appeal are maintained. They were not, however, subject of any specific submissions in addition to what is stated in the Notice of Appeal.

12. We will deal firstly with the grounds of appeal that relate to the asserted unfairness in the hearing. These split into three components: firstly, that there was an unfair allocation of time and, in a general sense, curtailment of the claimant's opportunity to cross-examine because the lack of time prevented him from building his case. Secondly, it is asserted that the judge intervened in cross-examination in an unfair manner, tending to devalue the claimant's lines of questioning and so prevented the claimant building his case. Thirdly, it is asserted that the claimant was required to do no more than put his claims of discrimination.

13. The tribunal considered the issues and case management from paragraph 1 to paragraph 16 of the judgment. The tribunal noted that the hearing had originally been listed for six days. However, it is important to note that the listing, while dealing with liability only, was to include deliberation and time for the tribunal to give judgment. That listing had, as unfortunately is a common occurrence in the tribunal, been shortened because of matters outside the tribunal's control, so that only five days were available. However, those days were used to hear the evidence and the parties' submissions. There were then three further days for deliberation in chambers. Accordingly, there was an increase in the time available for evidence compared to the original listing. Some time was taken up in respect of the claimant's contention that certain documentation that dealt with negotiations that had occurred between himself and the respondent about his possible exit should be put before the tribunal. The claimant asserted that documents detailing the negotiations should be admitted into evidence. The tribunal made an arrangement for a different employment judge to deal with that application so that it would not have seen the documents that were asserted to be without prejudice.

14. The tribunal noted that it would be necessary to have additional breaks because of the claimant's health. The tribunal noted that there had been two preliminary hearings in an attempt to identify the issues and that the application for specific disclosure of the documents asserted to be without

prejudice had occurred after both of those case management hearings. It was not possible because of the late delivery of documentation to the tribunal for the application to be considered before the full hearing. The tribunal noted that they had been provided with sets of bundles by both parties. That must have made the employment tribunal's job much more difficult than it should have been. It is always of vital importance that parties comply with directions to provide a single agreed bundle. The tribunal noted that there was a late witness for the respondent, whose statement had been provided after the date for exchange of witness statements. The tribunal concluded that it was fair that the statement be introduced, the claimant having had it at least two weeks prior to the hearing.

The law on substantive fairness

15. The employment tribunal should determine cases fairly and justly. Although it is of such ubiquitous relevance, perhaps because of excessive familiarity, there is a tendency not to consider the detail of rule 2 of the **Employment Tribunal Rules 2013**, the overriding objective:

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

16. Key to the overriding objective are the twin pillars of focus and balance. It is vital that the

employment tribunal keeps its focus on the core of the dispute and does not allow the proceedings to constantly expand so that it has to contest with large amounts of irrelevant material that will not assist in determining the issues. While in discrimination claims it may be necessary to consider a substantial amount of factual information the tribunal has to focus on the information that might legitimately lead to an inference of discrimination, possibly by way of shifting the burden of proof. Tribunals are not assisted by being presented with vast amounts of material in the hope that something will turn up. The tribunal must always keep a focus on what is at the core of the dispute.

17. The specific provisions of the overriding objective also make it clear that its application is always a matter of balance. The employment tribunal must balance the rights of the claimant with those of the respondent. It must have regard to the needs of a litigant in person, but that must not be at the cost of being unfair to the respondent. The employment tribunal must deal with the claim proportionately, be flexible and avoid unnecessary formality. The employment tribunal must avoid delay and save expense. In carrying out the balancing exercise, the tribunal must not only consider the interests of the parties to the claim it is considering, but also other parties who have disputes that the tribunal needs to resolve. Dealing proportionately with each case is necessary so that the limited resources of the employment tribunal are fairly distributed amongst all litigants. A party should not generally be able to bring ever more detailed and subdivided allegations that result in them having more than their fair share of the employment tribunal's resources. The maintenance of focus, the conduct of the balancing exercise between the parties to ensure a fair and just hearing, and balancing of the needs of other litigants, are key roles of the employment judge. It is a role they generally carry out with great skill, and it is one that an appellate tribunal should be cautious about second-guessing at a remove. It is often difficult when merely reading the decision, and a limited number of documents that were before the employment tribunal, to fully understand the competing interests that the employment tribunal had to weigh up.

18. As this was a discrimination claim it was heard by a full tribunal. The employment judge had the benefit of lay members who brought their experience in hearing cases and their sense of what is fair and proper to bear in carrying out the balancing exercise. It is the experience of employment judges that members can be forthright in expressing their concerns if they think the hearing is not being properly managed.

19. The employment tribunal should always have in mind the **Equal Treatment Bench Book** when dealing with litigants in person. The regularity with which the employment tribunals deal with litigants in person may result in an assumption that all the principles are familiar. It is always good to go back to the **Equal Treatment Bench Book** and to consider the wise words that the writers have to say about the difficulties that face litigants in person. The importance of the issue is reflected by the fact that it is dealt with at Chapter 1. Chapter 1 considers the court's duties to litigants in person and notes the specific difficulties they face and suggests ways in which they may be assisted. The writer notes the difficulties that may be faced by litigants in person because of misunderstanding about pleading and case management.

20. The employment tribunal is very familiar with dealing with litigants in person. Employment judges and tribunals generally take great care to ensure that they can participate properly, but that should not be by allowing them to raise any issue that they wish, whether it has been pleaded or not, and must involve constantly focusing back on the relevant issues in the dispute. It does not assist a litigant in person to permit lengthy cross-examination on irrelevant matters without focusing on the actual issues in dispute. The fact that a litigant acts in person may require the judge to be rather more interventionalist than would be the case with represented parties.

21. It is asserted that the approach of the employment tribunal to time allocation resulted in an unfair hearing. What constitutes an unfair hearing was recently considered by the Supreme Court in **Serafin v Malkiewicz** [2020] 1 WLR 245. I considered that authority, and some historic authorities, together with the specific features of the employment tribunal in **Werner v**

University of Southampton EA-2019-000973-LA. I provided a copy to the parties. I set out what I considered to be the correct approach to the fairness of hearings at paragraphs 36 to 41:

> "Unfair hearing
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> 36. In Serafin Lord Wilson analysed the authorities considering what constitutes an unfair hearing:
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> > '40. The leading authority on inquiry into the unfairness of a trial remains the judgment of the Court of Appeal, delivered on its behalf by Denning LJ, in *Jones v National Coal Board* [1957] 2 QB 55. There, unusually, both sides complained that the extent of the judge's interventions had prevented them from properly putting their cases. The court upheld their complaints. At p 65 it stressed in particular that 'interventions should be as infrequent as possible when the witness is under cross-examination' because 'the very gist of cross-examination lies in the unbroken sequence of question and answer' and because the cross-examiner is 'at a grave disadvantage if he is prevented from following a preconceived line of inquiry'.
> >
> > 41. In *Southwark London Borough Council v Kofi-Adu* [2006] HLR 33, Jonathan Parker LJ, giving the judgment of the Court of Appeal, suggested at paras 145 and 146 that trial judges nowadays tended to be much more proactive and interventionist than when the Jones case was decided and that the observations of Denning LJ should be read in that context; but that their interventions during oral evidence (as opposed to during final submissions) continued to generate a risk of their descent into the arena, which should be
> > assessed not by whether it gave rise to an appearance of bias in the eyes of the fair-minded observer but by whether it rendered the trial unfair.
> >
> > 42 In *Michel v The Queen* [2010] 1 WLR 879, it was a criminal conviction which had to be set aside because, by his numerous interventions, a commissioner in Jersey had himself cross-examined the witnesses and made obvious his profound disbelief in the validity of the defence case. Lord Brown of Eaton-under-Heywood JSC, delivering the judgment of the Privy Council, observed at para 31: 'The core principle, that under the adversarial system the judge remains aloof from the fray and neutral during the elicitation of the evidence, applies no less to civil litigation than to criminal trials.'
> >
> > 43 The distinction, drawn expressly or impliedly in all three of the cases last cited, between interventions during the evidence and those during final submissions was stressed by Hildyard J in para 223 of his judgment in the *M & P Enterprises (London) Ltd* case [2018] EWHC 2665 (Ch), cited in para 38 above. He suggested at para 225 that, upon entry into final submissions, the trial had in effect entered the adjudication stage. ...'
> >
> > All that need here be said is that, where a transcript exists, it is not the present practice of appellate courts to invite the judge to comment; but

> that the absence of his ability to comment places upon them a requirement to analyse the evidence punctiliously. Training and experience will generally have equipped the professional advocate to withstand a degree of judicial pressure and, undaunted, to continue within reason to put the case. The judge must not forget that the litigant in person is likely to have no such equipment and that, if the trial is to be fair, he must temper his conduct accordingly. ...'

37. In *Abdul Hadi Jemaldeen v A-Z Law Solicitors* [2012] EWCA 1431 Lord Justice Munby considered the extent to which intervention in cross examination may be appropriate:

> '21. In support of his case in relation to interruption Mr Chowdhary relies upon the classic judgment of Denning LJ giving the judgment of the court (Denning, Romer and Parker LJJ) in Jones v National Coal Board [1957] 2 QB 55.
>
> 22. Ordinary civil proceedings in this country – it is well recognised that family proceedings are very different – are adversarial not inquisitorial. The duty of the judge is to hear and determine the issues raised by the parties as set out in the pleadings. But, as Denning LJ observed (page 63), the judge 'is not a mere umpire to answer the question "How's that?" His object, above all, is to find out the truth, and to do justice according to law'.
>
> 23. In pursuit of that fundamental objective the judge is not required to sit silent as the sphinx. Appropriate intervention while a witness is giving evidence, even while the witness is being cross-examined, is not merely permissible but may be vital. As Denning LJ put it (page 63):
>
> > 'No one can doubt that the judge, in intervening as he did, was actuated by the best motives. He was anxious to understand the details of this complicated case, and asked questions to get them clear in his mind. He was anxious that the witnesses should not be harassed unduly in cross-examination, and intervened to protect them when he thought necessary. He was anxious to investigate all the various criticisms that had been made against the board, and to see whether they were well founded or not. Hence, he took them up himself with the witnesses from time to time. He was anxious that the case should not be dragged on too long, and intimated clearly when he thought that a point had been sufficiently explored. All those are worthy motives on which judges daily intervene in the conduct of cases, and have done for centuries.'
>
> He continued (page 64):
>
> > 'The judge's part in all this is to hearken to the evidence, only himself asking questions of witnesses when it is necessary to clear up any point that has been overlooked or left obscure; to see that the advocates behave themselves seemly and keep to the rules laid down by law; to exclude irrelevancies and discourage repetition;

> to make sure by wise intervention that he follows the points that the advocates are making and can assess their worth; and at the end to make up his mind where the truth lies. If he goes beyond this, he drops the mantle of a judge and assumes the robe of an advocate'.

24. So there is nothing objectionable, for example, in a judge intervening from time to time to make sure that he has understood what the witness is saying, to clear up points that have been left obscure, to make sure that he has correctly understood the technical detail, to see that the advocates behave themselves, to protect a witness from misleading or harassing questions, or to move the trial along at an appropriate pace by excluding irrelevancies and discouraging repetition. Indeed, it is, as Denning LJ recognised (page 65) his duty to do so.

25. But there is, of course, a difficult and delicate balance to be held. The judge must not, as it is often put, descend into the arena. Denning LJ referred (page 63) to Lord Greene MR, who in *Yuill v Yuill* [1945] P 15, 20, had: 'explained that justice is best done by a judge who holds the balance between the contending parties without himself taking part in their disputations? If a judge, said Lord Greene, should himself conduct the examination of witnesses, 'he, so to speak, descends into the arena and is liable to have his vision clouded by the dust of conflict'.

Denning LJ continued (page 64) that it is for the advocate to make his case; 'as fairly and strongly as he can, without undue interruption, lest the sequence of his argument be lost.'

'26. The dangers of inappropriate intervention are particularly acute during cross-examination. As Denning LJ explained (page 65):

> 'Now, it cannot, of course, be doubted that a judge is not only entitled but is, indeed, bound to intervene at any stage of a witness's evidence if he feels that, by reason of the technical nature of the evidence or otherwise, it is only by putting questions of his own that he can properly follow and appreciate what the witness is saying. *Nevertheless, it is obvious for more than one reason that such interventions should be as infrequent as possible when the witness is under cross-examination.* It is only by cross-examination that a witness's evidence can be properly tested, and it loses much of its effectiveness in counsel's hands if the witness is given time to think out the answer to awkward questions; the very gist of cross-examination lies in the unbroken sequence of question and answer. Further than this, cross-examining counsel is at a grave disadvantage if he is prevented from following a preconceived line of inquiry which is, in his view, most likely to elicit admissions from the witness or qualifications of the evidence which he has given in chief. Excessive judicial interruption inevitably weakens the effectiveness of cross-examination in relation to both the aspects which we have mentioned, for atone and the same time it gives a witness valuable

> time for thought before answering a difficult question, and diverts cross-examining counsel from the course which he had intended to pursue, and to which it is by no means easy sometimes to return (emphasis added).'
> …

> 28. At the end of the day, the question for us comes down to this. Adopting what Denning LJ said in Jones (page 61): Was justice done between these parties? Were the facts properly found by the judge on a fair trial between the parties? As he added (page 67):
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> > 'There is one thing to which everyone in this country is entitled, and that is a fair trial at which he can put his case properly before the judge.'

38. The authorities that consider the extent to which intervention in cross-examination is compatible with a fair trial are generally taken from court proceedings in which parties are represented. I accept that they are applicable to proceedings in the employment tribunal as a matter of general principle. In particular, an employment judge should not intervene in cross-examination to an extent that constitutes entering into the arena. The exhortation to keep interruptions in cross examination to the minimum is tempered to some extent by the tendency of judges these days to be a little more interventionalist to ensure cross-examination is limited to that necessary to properly determine the case in compliance with the overriding objective, and in the employment tribunal by the fact that proceedings are subject to rule 41 of the ET Rules:

> "41. General
>
> The Tribunal may regulate its own procedure and shall conduct the hearing in the manner it considers fair, having regard to the principles contained in the overriding objective. The following rules do not restrict that general power. The Tribunal shall seek to avoid undue formality and may itself question the parties or any witnesses so far as appropriate in order to clarify the issues or elicit the evidence. The Tribunal is not bound by any rule of law relating to the admissibility of evidence in proceedings before the courts. [emphasis added]'

39. That rule may provide context to the statement by Kirkwood J in *Zurich Insurance Co v Gulson* [1998] IRLR 118:

> 'A party does not have an absolute right to cross-examine come what may. The tribunal has a discretion as to the conduct of the proceedings before it in this regard.'

40. While an employment judge should take careful heed of the advice given in the Equal Treatment Bench Book concerning litigants in person, the tribunal is entitled to ensure that there is not undue repetition in cross-examination, that questions are focussed on the issues and that witnesses are not harassed by cross-examination of undue length and unnecessary hostility. Litigants in person are not trained in cross-examination. This may result in greater intervention than would be necessary in the case of a professional

> advocate, to ensure that questions are clear, focussed on the issues in dispute and not unduly repetitious. The judge must also ensure that a witness has a fair opportunity to answer the allegation made against them and are themselves treated in a respectful manner. Fairness applied to witnesses as well as to litigants in person.
>
> 41. Robust case management may be necessary to ensure a fair hearing, rather than be indicative of an unfair hearing. Seeking to ensure that the parties stick to the issues and do not put unnecessary and/or excessive material before the tribunal is not unfair: *Davies v Sandwell Metropolitan Borough Council* [2013] IRLR 374, Lewison LJ at para 33.
>
> > 'The ET itself commented in this case that much of the evidence that it heard was irrelevant to the issues it had to decide. But irrelevant evidence should be identified at the case management stage and excised. It should not be allowed to clutter up a hearing and distract from the real issues. The ET has power to do this and should not hesitate to use it. The ET also has power to prevent irrelevant cross-examination and, again, should not hesitate to exercise that power. If the parties have failed in their duty to assist the tribunal to further the overriding objective, the ET must itself take a firm grip on the case. To do otherwise wastes public money; prevents other cases from being heard in a timely fashion, and is unfair to the parties in subjecting them to increased costs and, at least in the case of the employer, detracting from his primary concern, namely to run his business. An appellate court or tribunal (whether the EAT or this court) should, wherever legally possible, uphold robust but fair case management decision ..." (emphasis added)"

22. The parties did not disagree with my analysis in **Werner**. I hope I may be forgiven for referring to one of my decisions, but as I took some time to consider the relevant authorities, I consider it is of assistance.

23. In addition, specific provision is made by rule 45 of the **Employment Tribunal Rules 2013**:

> "Timetabling
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> 45. A Tribunal may impose limits on the time that a party may take in presenting evidence, questioning witnesses or making submissions, and may prevent the party from proceeding beyond any time so allotted."

24. This not only allows the tribunal to timetable but specifically permits guillotining of evidence. That being said, as the overriding objective expressly states, it must be taken into account in interpreting all rules to ensure a fair and just hearing. Accordingly, even when using the power

provided by Rule 41, the employment tribunal must always have regard to fairness in the round.

25. Allegations about the conduct of employment tribunal hearings can be difficult to deal with on appeal. The **Employment Appeal Tribunal Practice Direction** makes provision for such appeals. Paragraph 12 relates to complaints about the conduct of a hearing or of bias. At paragraph 10 of Mr Beaton's skeleton argument, he states that for the avoidance of doubt the claimant does not make any allegation of bias or of improper conduct. However, it is clear that in asserting that there was an unfair hearing the claimant was making a complaint about the conduct of the employment tribunal hearing. Paragraph 12.1 of the practice direction requires that where such complaints are made, full particularity is set out in the notice of appeal. Paragraph 12.2 allows a judge on the sift to require the appellant to set out supporting evidence in an affidavit or witness statement. Paragraph 12.3 allows provision for statements to be sought from those who were in attendance at the employment tribunal and for a request for comments from the employment judge and any lay members. The starting point is that full particularity must be set out in the Notice of Appeal. As Griffiths J did not make any further directions, and having regard to paragraph 2 of his reasons for permitting the matter to proceed, it is apparent that this appeal was permitted to proceed on the basis that the key allegation was about the overall fairness of the management of the time available at the hearing on the basis of what was understood at the time the appeal was permitted to proceed to be a shortening of the hearing, although it is now apparent that the hearing time was lengthened.

26. Paragraph 12.6.1 of the **EAT Practice Direction** makes it clear that if there is a failure to comply with its provisions, complaints will not be permitted to be raised or developed at the hearing. Paragraph 12.6.2 specifically states that the employment tribunal is given wide powers and duties in respect of case management.

27. The **Employment Appeal Tribunal Practice Direction** is a relatively short document. It is available easily from the Employment Appeal Tribunal website. Even litigants in person should take the time to familiarise themselves with its provisions. While it is clear that the focus of

the appeal that was permitted to proceed was in respect of overall timing, the specific complaint that the claimant was shut off from cross-examining and/or only allowed to put his case has not been further particularised. No application was made prior to the hearing to provide such particularity.

28. In allowing the appeal to proceed, Griffiths J considered that grounds 1 to 8 of the notice of appeal were arguable. He suggested that at the hearing there would have to be some case management to decide whether those issues should be determined first, before moving on to the other issues. The order did not explicitly state that the other grounds were permitted to proceed. We consider that is the natural inference, and accordingly all grounds of appeal were before us.

29. We discussed case management of the appeal and, in particular, how we would be able to deal with paragraphs 7 and 8 which raised complaints about the way the employment tribunal conducted the hearing and allegedly interrupted cross-examination. We gave the claimant time to consider the position in a brief adjournment, after which an application was made to postpone the appeal hearing in order for the steps set out in the EAT Practice Direction to be carried out. For reasons given at the time, we refused that application. (I directed that those reasons also be transcribed and inserted into this section of the judgment but that has not been done – having regard to the many months of delay awaiting the provision of the transcript I have not considered it appropriate to require that those further reasons now be transcribed – if either party considers they are necessary they should contact the EAT and request them.)

30. There was a degree of dispute as to the precise amount of time both parties had to question witnesses having regard to breaks and the application for specific disclosure. The claimant's assessment is that the respondent had seven and a half hours to cross-examine the claimant whereas he had eight and a half hours to cross-examine the respondent's five witnesses. It is asserted that overall this was an unfair split of the time available. At paragraph 18 of his skeleton argument, Mr Beaton suggests that a five-minute-per-point approach as a rough rule of thumb, is not infrequently adopted by experienced employment tribunal judges when considering case

management. He suggest that would have required the claimant to have approximately seven hours to cross-examine each of the respondent's witnesses. I do not recall ever having heard of such a rule of thump at the Bar or in my time as an employment judge. The members had never heard of this rule of thumb. Of course, there may be any number of rules of thumb that are applied when trying to properly estimate hearing length, but there can be no suggestion a party has a right to be given a particular number of minutes for each point that they wish to raise. Often the first witnesses take longer than those giving evidence later because the tribunal may have to read documents as it hears the evidence. Later on in the hearing, many documents will already have been read which can increase the speed of the hearing. It is always a question of ensuring that there is a fair opportunity for the case to be put and for the witnesses to answer the allegations made against them. The focus must be kept on the core of the dispute. Repetitious or irrelevant cross-examination should be prevented. That necessarily involves a degree of intervention by the tribunal. We do not consider that by looking merely at the amount of time available and the number of witnesses, we can say that there is a proper basis for contending that there was any substantive unfairness in the hearing. Indeed, the very lengthy and very closely considered judgment demonstrates that great care was taken by the tribunal to ensure that it had the evidence that was necessary for it to reach its determination. The fundamental allegation in respect of timing was based on a misconception, namely that the tribunal in the end had less time than had originally been set aside to hear witnesses and submissions, whereas because there were three chambers days for deliberation, there was more time. Despite the proliferation of issues in the list of issues this was not an unusually complex case and we are not persuaded that the claimant did not have sufficient time to cross-examine.

31. While it is asserted that the employment judge interrupted cross-examination regularly in a manner that prevented the claimant from properly putting his case and building his arguments, we were given no specific examples of questions that the claimant was prevented from putting, nor were we given any detail of the contention that the claimant was required only to put his

claims of discrimination. Even on his calculation, he took eight and a half hours in cross-examination. That must have involved considerably more than merely putting his allegations. It should have been possible for the claimant to put forward his best examples of the questions he asserted he was prevented from putting properly. A relatively limited number of examples of the matters the claimant was prevented from putting to witnesses could easily have been set out in the notice of appeal. When asked specifically, Mr Beaton stated that a specific guillotine was not brought down after a predetermined period of cross-examination of each witness. It was a more general assertion that the judge cut short cross-examination. However, there is no material before us that shows that this was anything more than the employment judge keeping cross-examination to the relevant issues and ensuring that it was of proportionate length. We do not accept that the claimant was prevented from putting his case.

32. Indeed, when the claimant sought a postponement we asked whether there were any specific examples to give us a flavour of the type of points the claimant contended he was prevented from putting in cross examination.. The claimant stated that there was an email which suggested that the respondent may have hoped that he would leave their employment that he was not permitted to put to Mr Conway. Mr Conway was not one of the parties to that email. The allegation in the appeal is not fundamentally about not being able to take the tribunal to documents but was more generally that the claimant's cross-examination was broken up. In any event, it is clear from the judgment taken as a whole that it was appreciated by the employment tribunal that there was some discussion between the parties, elements of which were found to be without prejudice, about the possibility of the claimant leaving the respondent's employment. We consider when one takes a fair view of the judgment overall, it cannot be said that there was any substantive unfairness.

33. Mr Beaton referred in his skeleton argument to two matters that he states demonstrate the unfairness of the approach adopted by the tribunal. The first is that the tribunal informed the claimant that they would not be going through each document in the bundle but would consider

those documents to which they were taken in the evidence. That could involve the employment tribunal reading documents that were referred to in witness statements or because they were referred to in cross-examination. There is nothing unusual about an employment tribunal adopting that approach. Indeed, there could be potential criticism of a tribunal for reading and having regard to documents to which it has not been referred by the parties, particularly if they do not raise the documents with the parties to ensure that they have had an opportunity to make any comment, or ask any questions of relevant witnesses, about them.

34. Mr Beaton contends that the devaluing of the claimant's lines of cross-examination is demonstrated by what the tribunal said at paragraph 324, which dealt with the claimant's complaints about his treatment and against his colleagues:

> "324. The Claimant set out in considerable detail in his witness statement and in his lengthy submissions numerous complaints about his treatment which went beyond those set out in the list of issues, which itself ran to the 14 pages. The Claimant appeared only to be prepared to look at events from his own point of view without acknowledging any other interpretation was possible, taking offence where none was intended. Whilst we acknowledge that the Claimant was unwell we have not found that his perception of events or comments was objectively reasonable. Nor did he acknowledge that his colleagues might have their own life challenges to deal with and might be facing stresses or strains about which he was unaware. At the same time as insisting that his colleagues ought to have been alive to possible indications that he might be suffering from mental health problems he appeared blind to the fact that they may themselves have suffered from any history of mental health problems in the past or have any experience in their own lives or families. During the course of the evidence the Claimant took exception to hearing Mr Conway describe the strain he had been under in responding to the Claimant's detailed requests for information, including comparative salary figures, at a time when he was without a Bursar, the Claimant rose to his feet to insist that he had suffered much more than Mr Conway. Whilst this may be the case, and Mr Conway was not suggesting otherwise, it was illustrative that the Claimant appeared to not want to listen to Mr Conway's evidence or acknowledge that his actions had had some personal impact on Mr Conway.
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> 325. The Claimant maintained that the solution to getting him back to work would be to remove Mr Mayes, to avoid the Claimant having to carry on working with him, and if that meant dismissing Mr Mayes and replacing him with someone else then that was what the Claimant suggested to Mr Conway should have happened. This was even though his complaints against Mr Mayes had not been upheld by the Respondent and it had not found that he

had discriminated against the Claimant in any way."

35. The employment tribunal has to see both the trees and the wood. Where specific allegations are made the tribunal will generally have to determine them, but it must always step back and take an overview.

36. It is generally necessary for the employment tribunal to write a judgment that determines each allegation, one by one. That does not mean that they have not looked at the matter in the round in considering whether there was any discrimination. That is precisely what the tribunal did at paragraph 324 and 325. As in so many employment disputes, much is a matter of perception. The employment tribunal concluded that the claimant had a misconception about the manner in which he was treated and showed an inability to understand the difficulties that those who were involved in managing him faced. It is not surprising that at an educational establishment the main focus is on ensuring that students obtain the education that they require. We dismiss the primary appeal in respect of asserted substantive unfairness.

37. We will next deal with the specific further grounds that were advanced by Mr Beaton. First, he dealt with the allegation at paragraph 9 of the Notice of Appeal, in which it was asserted that the judge admitted into evidence, and relied upon, without prejudice material. One should bear in mind that the claimant himself had made an application that documents asserted to be without prejudice by the respondent be admitted into evidence. Where there are discussions between the parties in the background on a without prejudice basis it is very difficult for a tribunal to completely avoid any reference to them. The fact that discussions are going on may often be referred to in the documents before the employment tribunal and the occurrence of such discussions may be relevant to matters such as the time in which grievances are dealt with. The specific paragraph of the judgment that the claimant relies upon is paragraph 128, in which there is reference to the claimant considering that he could return to work if unmolested but referring to an email from his trade union representative, which the tribunal noted was without prejudice and that they had not seen, confirming that he would like to have union representation

at any further meeting including a 'return to work' meeting. The tribunal was referring to an email that was not without prejudice, it could hardly avoid mentioning the fact that it referred to the without prejudice email that they had not seen, and we can see no error of law in the tribunal so doing.

38. Mr Beaton contended that in paragraphs 310 to 311 there was reference to settlement discussions when discussing whether Mr Conway had influenced Mr Matthews in dealing with a grievance appeal. The settlement discussions necessarily were referred to because they formed part of the subject matter of the communication between Mr Conway and Mr Matthews. The tribunal went on to conclude permissibly that Mr Matthews had not been influenced by Mr Conway. We can see no error of law in the tribunal referring to the settlement discussions.

39. Mr Beaton asserted that there was, effectively, a lack of **Meek** compliance in respect of the allegation that the claimant had been excluded from the respondent's 'meet the team' section of its website. That issue was dealt with at paragraph 248 of the judgment. It is a matter of relatively minor significance amongst a myriad of relatively minor allegations. The tribunal noted the assertion that the claimant had been excluded from the website from the beginning of his employment and despite there being several updates during his employment. We infer that the suggestion was that the updates would have given an opportunity for the respondent to appreciate that the claimant did not appear on the website. The tribunal heard evidence from Ms Datta, who joined as bursar in 2019. It is asserted that because the claimant started work in 2017 her evidence could not cover the full period for which he was excluded from the website. Reading paragraphs 248 and 249, while it is right that the tribunal only refers to Ms Datta's evidence, the tribunal notes that the claimant did not raise with anyone the fact that he had been excluded from the website. The tribunal clearly concluded it was a matter that the claimant himself thought was of little significance. Paragraph 249 was not as clearly expressed as it might have been, but we consider that on a fair reading the tribunal accepted Ms Datta's evidence in respect of the period after she started to work with the respondent, but went on to

conclude that there was nothing to suggest that the claimant was omitted from the website at any stage because of his disability.

40. Mr Beaton raised paragraphs 17 and 18 of the Notice of Appeal at paragraph 41 of his skeleton argument, in respect of what he describes as demotion and suspension, which the respondent described as a period of medical absence. This is said to be dealt with at paragraphs 130 to 141 of the judgment, in which the tribunal sets out the fact that after a return to work from a period of ill-health absence a decision was taken to grant him medical leave of absence while his grievance was considered. The core of the tribunal's reasoning is at paragraphs 161 to 164. The tribunal notes that the claimant who would otherwise have been on reduced sick pay was absent on full pay. Following his return he had been absent on a number of occasions and had stated that he was suffering from stress as a result of the grievance process. The tribunal noted, in particular, that the claimant did not object to being placed on medical leave against the backdrop, no doubt, of the discussions ongoing at that time. At paragraph 163 the tribunal held that this was not unfavourable treatment. The employment tribunal found that there was no detriment, which was of significance because the complaint was put as direct discrimination, section 15 disability discrimination and victimisation. At paragraph 162 the tribunal also held that it was not harassment, because it was not unwanted conduct. Adopting a belt and braces approach at paragraphs 181 to 182, the tribunal also concluded that insofar as any such treatment arose because of something arising in consequence of the claimant's disability, it was a proportionate means of achieving a legitimate aim. We fail to see that there was any lack of **Meek** compliance as asserted by Mr Beaton. The reasoning and conclusions ot the employment tribunal are apparent.

41. Mr Beaton suggested that the tribunal adopted a staccato approach to dealing with the evidence. The tribunal had to deal with the myriad of allegations raised by the claimant. Necessarily, in producing a judgment that was of a length that would allow it to be readable, each allegation had to be determined with reasonable brevity. The tribunal also formed an overall assessment,

concluding that the claimant was not subject to any of the forms of disability discrimination he asserted in his claims.

42. At paragraph 47 of his skeleton, Mr Beaton considered allegations raised at paragraphs 15 and 23 of the Notice of Appeal that relate to paragraph 209 of the judgment. Paragraph 209 deals with what the claimant asserted was a second protected act. Looking at that paragraph, it is clear that the tribunal considered it potentially was a protected act. In contrast to the preceding paragraphs in which certain matters were specifically stated not to be protected acts, the tribunal did not in paragraph 209 state that the letter the claimant referred to did not constitute a protected act. The employment tribunal also then went on to consider the asserted victimisation that was said to have flowed from the protected act and dismissed the claimant's allegations on the merits. Again, we can see no failure in **Meek** compliance or any other error of law in the way in which the tribunal dealt with that matter.

43. The remaining parts of the grounds of appeal that Mr Beaton did not address are, in places, difficult to follow, and have not been supplemented by any argument. At paragraphs 10 and 11 an assertion of perversity is made. Allegations of perversity relating to factual determinations, fall into two broad categories, one in which it is said that on an overview of the evidence, no tribunal could have come to the factual conclusion that it did. Such an assertion of perversity is raised where there is some evidence pointing in both directions. Such allegations are extremely difficult to make out, as has been made clear repeatedly by the appellate courts, in particular in the oft-cited **Yeboah v Crofton** [2002] IRLR 634.

44. There can also be allegations of perversity in which it is asserted that a finding of fact was supported by no evidence. This too is challenging, but if it is really the case that there was absolutely no evidence before the tribunal to support a particular finding perversity can be made out.

45. When we considered the allegations asserted in the table at paragraph 11 of the Notice of Appeal, it does not involve assertions that determinations were made in the absence of any

evidence, as is pleaded, but involves a suggestion that there was some additional evidence that could have supported an alternative finding of fact. The table deals with a series of paragraphs of the judgment. The first is paragraph 59. The table then has a series of documentary references, which unfortunately are to the original employment tribunal bundle. Some of the relevant documents were in a supplementary bundle and we were given some of the page numbers when we requested them at the hearing, although a number were missing. Paragraph 59 deals with an assertion that the claimant was offered a lower salary because of his disability. That was a matter upon which the tribunal heard Mr Conway's evidence, He denied the allegation. The employment tribunal accepted his evidence. It cannot possibly be said that there was no evidence to support the determination of the tribunal. The claimant referred us to a number of documents that suggested there may have been some discussion with the recruitment agency in respect of his salary and that there was a possibility that there had been a recruitment of another member of staff at a higher rate of salary, that Mr Conway stated he was unaware of. That does not come close to establishing that the factual determination of the employment tribunal was perverse.

46. The claimant refers to paragraphs 155 to 157 of the judgment and states it was perverse to conclude that there had been a release of the claimant's medical information, but it was acceptable. The tribunal made findings of fact that the respondent had concluded that those against whom the claimant brought his grievance needed to be aware, at least in broad terms, about his ill health. There clearly was evidence on the issue and the allegation that the tribunal's determination was perverse does not come close to being made out.

47. The claimant asserted that the tribunal had no evidence to conclude that a letter of 1 January 2018, referred to at paragraph 209 of the judgment, was not a protected act. As we have already explained, we consider that the tribunal did not make such a finding, but accepted that the letter was a protected act but concluded that the claimant had not been subject to any detriment as a result.

48. With reference to paragraph 241 of the judgment the claimant asserts that there was no evidence that attempts had been made to enable him to return to work. That seems to be taking a rather literalist approach to paragraph 244 which is not perhaps as clear as it might have been because of the double negative:

> **''We do not find that the Respondent failed to take any steps to return the Claimant to work, it was unable to take any steps until the Claimant was ready or well enough to engage with them."**

49. The claimant appears to have taken the first part of that sentence and read it as meaning that by not finding that the respondent had failed to take steps to help him to return to work, the tribunal was finding that the respondent had taken steps to help him to return to work. It is clear from reading the sentence overall that the tribunal accepted that steps were not taken to allow the claimant to return to work but that this was because the respondent was unable to take such steps until the claimant was ready and well enough to return to work.

50. With reference to paragraph 299 of the judgment the claimant asserts that the employment tribunal wrongly concluded that his medical absence came to an end at the end of June 2018. While we find it hard to see the relevance of this point, there may have been a misunderstanding on the claimant's part in that the tribunal was referring to the fact that the period for which the claimant was on medical leave on full pay pending the resolution of his grievance came to an end at the conclusion of the grievance process at the end of June 2019, whereas it appears to be accepted that thereafter there was a further period of ill-health absence. We can see no determination made here that was without evidence or any proper ground for asserting that a decision was reached that was not open to a reasonable employment tribunal.

51. The claimant asserts that at paragraph 214 a wrong "Cast member" was discussed. The claimant appears to be suggesting that there is an error in respect of one of those parties named in that paragraph, but he has not explained the relevance. We can see no error of law that arises from this.

52. The claimant asserts in respect of paragraphs 165 and 214 that there was no evidence to

establish that he was not demoted. The respondent took steps to deal with the fact that the claimant was struggling with marking and to ensure that his apprentice received proper training. These were not matters about which it could be said that there was no evidence. The tribunal clearly heard evidence and determined the issue and decided that this treatment did not amount to a demotion. There is no error of law in its approach.

53. The claimant asserts that at paragraph 196 that there was a contradiction in respect of whether the claimant did or did not conduct marking outside of his normal working hours. At paragraph 196 the tribunal concluded that protected time was made available and a location was provided at which marking could be carried out, but subsequently an external individual undertook the claimant's marking. It cannot be said that there was no evidence to support that determination. The tribunal relied on the evidence set out at paragraph 196.

54. Finally, the claimant asserts with reference to paragraph 57 of the judgment that there was no evidence to establish that the claimant's probation was not extended. There was evidence. The tribunal concluded that despite documentation that considered the possibility of the claimant's probation being extended, it was not. We can see nothing that suggests perversity in the tribunal's determination.

55. Paragraphs 12 and 13 of the Notice of Appeal assert a failure to consider the Acas code and the chronology of events. It is hard to understand what assertion is made in respect of the chronology of events. The tribunal carefully considered the chronology of events. Hard though it is to understand the allegation, it appears to be to the effect that if one considers the chronology of the claimant asserting discrimination and then being placed on medical absence, the two must be linked, having regard to Acas guidance. However, what is clear is that the tribunal concluded that the respondent granted medical absence in circumstances where the claimant's attendance was erratic, he stated that he was stressed pending the determination of his grievance, and he did not object to being placed on medical absence that enabled him to continue to receive pay. That factual determination was open to the tribunal.

56. At paragraph 14 of the Notice of Appeal the claimant asserts that the tribunal focused on contractual entitlement to sick pay, rather than asking why sick pay was reduced or removed. The respondent had considered its contractual powers in respect of sick pay and decided to exercise a discretion in favour of the claimant and allowed him medical absence to ensure that he was kept on full pay. The employment tribunal found that this was not discriminatory. We can see no error of law in the tribunal's determination.

57. At paragraph 15 of the Notice of Appeal the claimant asserts that because the Principal accepted some of his comments could be seen as an attempt to influence the grievance the employment tribunal failed to follow statutory guidance in finding that there had been no discrimination. The tribunal considered whether there had been any improper influence in the decision-making in the grievance appeal, but concluded there was nothing that suggested any discriminatory conduct. The determinations of the tribunal fell well within the proper scope of determining the factual disputes. We can see no error of law in the employment tribunal's determination.

58. At paragraph 16 of the Notice of Appeal, the claimant suggests that the employment tribunal inappropriately took into consideration "claimed" characteristics of the claimant's discriminator. This appears to be a reference to paragraph 324, in which the tribunal, in considering the claimant's overall approach, and his lack of understanding of the difficulties that those about whom he complained might be facing, referred to the possibility that they might be facing stress or strain and might themselves have a history of mental health problems. That was just an overall point that the tribunal was making about the claimant's inability to see things from other peoples perspectives rather than taking impermissibly into account the protected characteristics of others than the claimant.

59. The claimant contends that the employment tribunal failed to take account of the evidence in the round. That is precisely what the tribunal did at paragraphs 324 and 325.

60. At paragraph 19 of the Notice of Appeal the claimant asserts that the tribunal was not entitled to conclude that the earlier informal and the first formal grievance were not protected acts. The

tribunal found as fact that they involved no allegation of discrimination. Accordingly, they permissibly found that they did not constitute protected acts.

61. At paragraph 20 of the Notice of Appeal the claimant asserts that the tribunal was not entitled to conclude that providing alternative supervision for the claimant's apprentice was not a demotion. That was a factual matter for the tribunal, and they were fully entitled to conclude in the context of the lengthy absence of the claimant that the respondent necessarily had to find some alternative supervision to ensure that the apprentices' needs were provided for.

62. At paragraph 21 of the Notice of Appeal the claimant refers to his contention that medical information had been divulged. As we have already set out, the tribunal concluded that in dealing with the claimant's grievance, it was necessary for the respondent to explain in broad outlines the fact that the claimant had been unwell to those from whom they were seeking information to respond to the grievance. That was a factual determination that was open to the tribunal.

63. At paragraph 22 of the Notice of Appeal the claimant asserts that the employment tribunal improperly contended that it was for the claimant to state when he could return to work. There was nothing impermissible in the tribunal noting that the claimant could inform the respondent when he felt able to return from his medical absence. The reality was that there was a lengthy grievance process being undertaken in circumstances in which the claimant had made it clear that he was looking to leave the respondent, so there were limited opportunities to progress any return to work.

64. At paragraph 23 of the Notice of Appeal the claimant deals with the second protected act, which, for reasons we have already set out, we conclude was accepted by the tribunal to be a protected act, or at least to be capable of being one.

65. Accordingly, in respect of the additional grounds of appeal, both those that were advanced by Mr Beaton and the remaining ones in the Notice of Appeal, which we have dealt with as best

we can understand them in the absence of any expansion upon them, we consider that there was no error of law. The consequence is that the appeal is dismissed.

66. I apologise for the very considerable delay in providing this judgment. This has almost entirely been due to delay in provision of the transcript. I did not receive the judgment back until 3 May 2022 and have sent it today, 4 May 2022, for urgent promulgation.