EMPLOYMENT TRIBUNALS

Claimant: Mr S Howard

Respondent: Parkdean Resorts UK Limited

Heard at: Midlands East Tribunal via Cloud Video Platform

On: 2, 3 and 4 December 2024

Before: Employment Judge Brewer
Ms C Hatcliff
Mr M Alibhai

Representation
Claimant: In person
Respondent: Ms H Hogben, Counsel

JUDGMENT

The unanimous judgment of the Tribunal is:

1. The claimant's claims of direct sex discrimination fail and are dismissed.

2. The claimant's claims of direct disability discrimination fail and are dismissed.

3. The claimant's claims of disability related discrimination fail and are dismissed.

4. The claimant's claims of harassment related to disability fail and are dismissed.

REASONS

Introduction

1. In this case the claimant is a disabled person for the purposes of section 6 of the Equality Act 2010 by reason of learning disability. The claimant represented himself but has had support from solicitors amongst others. The respondent was represented by Ms Hogben, Counsel.

2. We had an agreed bundle of documents running to 277 pages, two video clips and a written skeleton argument from the claimant.

3. We had witness statements from, and heard oral evidence from the claimant, Joanne Green, the General Manager at the site at which the claimant worked, Sherene Harris, the admin manager and David Jones, another General Manager who, however, worked at a different site from the one at which the claimant worked.

4. We heard the evidence and submissions over two days, we deliberated and gave a short oral judgment on day three. Given the complexity of the law and the detail in our findings, and given that it is critical that parties understand why they have won or lost, we felt that it would be a reasonable adjustment to deliver the oral judgment today, so that the claimant did not have an anxious wait but also to ensure he had full written reasons so he could take time to understand how we have reached our judgment, rather than simply require the claimant to ask for detailed written reasons.

5. In reaching our judgment we have considered all of the evidence we heard as well as the submissions of the parties.

Issues

6. The parties agreed a list of issues which is attached as an appendix to this judgment.

Law

7. We set out below a brief description of the relevant law.

Burden of proof

8. The burden of proof is set out at s.136 of the Equality Act 2010 and the relevant part of that is as follows:

> *"**136 Burden of proof***
>
> *(1) This section applies to any proceedings relating to a contravention of this Act.*

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision…"

Direct discrimination

9. In relation to **direct discrimination**, for present purposes the following are the key principles.

10. Under section 13 Equality Act 2010 (EqA), there are two issues: (a) less favourable treatment and (b) the reason for that less favourable treatment. These questions need not be answered strictly sequentially (**Shamoon v Chief Constable of the Royal Ulster Constabulary** 2003 ICR 337).

11. Given the treatment must be "less favourable" a comparison is required, and a comparator must "be in the same position in all material respects as the victim save only that he, or she, is not a member of the protected class" (**Shamoon** above).

12. The burden of proof is set out above. The leading cases on the burden of proof pre-date the Equality Act (**Igen Ltd v Wong** 2005 EWCA Civ 142 and **Madarassy v Nomura international Plc** 2007 EWCA Civ 33, [2007] IRLR 246) but in **Hewage v Grampian Health Board** 2012 the Supreme Court approved the guidance given in **Igen** and **Madarassy**.

13. In **Madarassy** the Court of Appeal held that the burden of proof does not shift to the employer simply on the claimant establishing a difference in status (e.g. sex) and a difference in treatment. This merely gives rise to the possibility of discrimination. Something more is needed. Any inference about subconscious motivation has to be based on solid evidence (**South Wales Police Authority v Johnson** 2014 EWCA Civ 73).

14. A complaint of direct discrimination will only succeed where the tribunal finds that the protected characteristic was the reason for the claimant's less favourable treatment. In **Gould v St John's Downshire Hill** 2021 ICR 1, EAT, Mr Justice Linden, after summarising the established case law discussed in detail below, helpfully explained: 'The question whether an alleged discriminator acted "because of" a protected characteristic is a question as to their reasons for acting as they did. It has therefore been coined the "reason why" question and the test is subjective… For the tort of direct discrimination to have been committed, it is sufficient that the protected characteristic had a "significant influence" on the decision to act in the manner complained of. It need not be the sole ground for the decision… [and] the influence of the protected characteristic may be conscious or subconscious.'

15. An employer may be able to successfully fend off a direct discrimination claim if it can show that it was genuinely unaware of the claimant's protected characteristic (see for example **Crouch v Mills Group Ltd and anor** ET Case No.1804817/06 and **McClintock v Department for Constitutional Affairs** 2008 IRLR 29, EAT).

Discrimination arising from disability

16. Section 15 EqA, which is headed 'Discrimination arising from disability', provides that a person (A) discriminates against a disabled person (B) if:

    16.1. A treats B unfavourably because of something arising in consequence of B's disability, and

    16.2. A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

17. Section 15(2) goes on to state that '[S.15(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.' In other words, if the employer can establish that it was unaware — and could not reasonably have been expected to know — that the claimant was disabled, it cannot be held liable for discrimination arising from disability.

18. In **Secretary of State for Justice and anor v Dunn** EAT 0234/16 the EAT (presided over by Mrs Justice Simler, President) identified the following four elements that must be made out in order for the claimant to succeed in a S.15 claim:

    18.1. there must be unfavourable treatment

    18.2. there must be something that arises in consequence of the claimant's disability

    18.3. the unfavourable treatment must be because of (i.e. caused by) the something that arises in consequence of the disability, and

    18.4. the alleged discriminator cannot show that the unfavourable treatment is a proportionate means of achieving a legitimate aim.

19. The EHRC Employment Code indicates that unfavourable treatment should be construed synonymously with 'disadvantage'. It states: 'Often, the disadvantage will be obvious and it will be clear that the treatment has been unfavourable; for example, a person may have been refused a job, denied a work opportunity or dismissed from their employment. But sometimes unfavourable treatment may be less obvious. Even if an employer thinks that they are acting in the best interests of a disabled person, they may still treat that person unfavourably' — para 5.7.

20. In **Pnaiser v NHS England and anor** 2016 IRLR 170, EAT, Mrs Justice Simler considered the authorities, and summarised the proper approach to establishing causation under S.15. First, the tribunal has to identify whether the claimant was treated unfavourably and by whom. It then has to determine what caused that treatment — focusing on the reason in the mind of the alleged discriminator, possibly requiring examination of the conscious or unconscious thought processes of that person, but keeping in mind that the actual motive of the alleged discriminator in acting as he or she did is irrelevant. The tribunal must then determine whether the reason was 'something arising in consequence of the

claimant's disability', which could describe a range of causal links. This stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator.

21. The distinction between conscious/unconscious thought processes (which are relevant to a tribunal's enquiry on a S.15 claim) and the employer's motives for subjecting the claimant to unfavourable treatment (which are not) was described by Simler J in **Secretary of State for Justice and anor v Dunn** EAT 0234/16 in the following terms: '[Counsel for the claimant asserts] that motive is irrelevant. Moreover, he submits that the claimant did not have to prove the reason for the unfavourable treatment but simply that disability was a significant influence in the minds of the decision-makers. We agree with him that motive is irrelevant. Nonetheless, the statutory test requires a tribunal to address the question whether the unfavourable treatment is because of something arising in consequence of disability… [I]t need not be the sole reason, but it must be a significant or at least more than trivial reason. Just as with direct discrimination, save in the most obvious case, an examination of the conscious and/or unconscious thought processes of the putative discriminator is likely to be necessary'. The enquiry into such thought processes is required to ascertain whether the 'something' that is identified as having arisen as a consequence of that claimant's disability formed any part of the reason why the unfavourable treatment was meted out.

22. In **Hall v Chief Constable of West Yorkshire Police** 2015 IRLR 893, EAT, the EAT clarified that a claimant needs only to establish some kind of connection between the claimant's disability and the unfavourable treatment.

Harassment

23. The general definition of harassment set out in S.26(1) EqA states that a person (A) harasses another (B) if:

    23.1. A engages in unwanted conduct related to a relevant protected characteristic — S.26(1)(a); and

    23.2. 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 — S.26(1)(b).

24. There are three essential elements of a harassment claim under S.26(1):

    24.1. unwanted conduct;

    24.2. that has the proscribed purpose or effect; and

    24.3. which relates to a relevant protected characteristic.

25. Mr Justice Underhill, then President of the EAT, expressed the view that it would be a 'healthy discipline' for a tribunal in any claim alleging unlawful harassment specifically to address in its reasons each of these three elements — **Richmond Pharmacology v Dhaliwal** 2009 ICR 724, EAT (a case relating to a claim for racial harassment brought under the Race Relations Act 1976 (RRA)). Nevertheless, he

acknowledged that in some cases there will be considerable overlap between the components of the definition — for example, the question whether the conduct complained of was unwanted may overlap with the question whether it created an adverse environment for the employee. An employment tribunal that does not deal with each element separately will not make an error of law for that reason alone — **Ukeh v Ministry of Defence** EAT 0225/14.

26. The Equality and Human Rights Commission's Code of Practice on Employment ('the EHRC Employment Code') notes that unwanted conduct can include 'a wide range of behaviour, including spoken or written words or abuse, imagery, graffiti, physical gestures, facial expressions, mimicry, jokes, pranks, acts affecting a person's surroundings or other physical behaviour' — para 7.7. The conduct may be blatant — (for example, overt bullying) — or more subtle (for example, ignoring or marginalising an employee). An omission or failure to act can constitute unwanted conduct as well as positive actions (see, for example, **Marcella and anor v Herbert T Forrest Ltd and anor** ET Case No.2408664/09 below and Owens v Euro Quality Coatings Ltd and ors ET Case No.1600238/15, in which an employer's failure to remove a picture of a swastika for some weeks amounted to unwanted conduct).

27. Perhaps surprisingly, there are few cases examining precisely what is meant by violating a claimant's dignity. In **Richmond Pharmacology v Dhaliwal** 2009 ICR 724, EAT, Mr Justice Underhill, then President of the EAT, said: 'Not every racially slanted adverse comment or conduct may constitute the violation of a person's dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended'. Mr Justice Langstaff, then President of the EAT, affirmed this view in **Betsi Cadwaladr University Health Board v Hughes and ors** EAT 0179/13. In that case a senior nurse suffered from Parkinson's to the extent that she could no longer do clinical work. Her grade and pay were maintained by creating a non-clinical post for her, which initially was a meaningful job but which after about three years had become menial. Her responsibility for training was taken over by someone else without reference to her; she wrote detailed policies but these were not progressed and she was given no clear explanation as to why this was; she had initially been proactive in respect of stock control but was subsequently expected to order what other people asked her to; she was given to think that her system of recording stock was changed; and ultimately her sole role was to manage the stocking of cardboard boxes and on one occasion to clear out a room and move furniture. She was signed off sick with stress and ultimately dismissed.

28. The EAT observed that 'the word "violating" is a strong word. Offending against dignity, hurting it, is insufficient. "Violating" may be a word the strength of which is sometimes overlooked. The same might be said of the words "intimidating" etc. All look for effects which are serious and marked, and not those which are, though real, truly of lesser consequence'. However, the EAT upheld the tribunal's conclusion that the Board's conduct in permitting or causing the deterioration in H's position, albeit unwitting, clearly violated her dignity. It observed: 'One only has to think of a grade 6 nursing sister now being asked to look after cardboard boxes to understand how that is justified'.

29. Some of the factors that a tribunal might take into account in deciding whether an adverse environment had been created were noted in **Weeks v Newham College of Further Education** EAT 0630/11. Mr Justice Langstaff, then President of the EAT, held that a tribunal did not err in finding no harassment, having taken into account the fact that the relevant conduct was not directed at the claimant, that the claimant made no immediate complaint and that the words objected to were used only occasionally. (However, he noted that tribunals should be cautious of placing too much weight on the timing of an objection, given that it may not always be easy for an employee to make an immediate complaint.) Langstaff P also pointed out that the relevant word here is 'environment', which means a state of affairs. Such an environment may be created by a one-off incident, but its effects must be of longer duration to come within what is now S.26(1)(b)(ii) EqA.

30. The meaning of the term '**environment'** was considered in **Pemberton v Inwood** 2017 ICR 929, EAT, where P, a Church of England priest, was refused a licence that would allow him to take up a position as a hospital chaplain because he had entered into a same-sex marriage against the Church's doctrines. The EAT upheld the tribunal's decision that this was not unlawful discrimination or harassment, because a religious occupational requirement exception applied. But the EAT also noted that the tribunal had apparently failed to engage with the question whether the decision not to grant the licence and its communication created an 'environment'. P argued that this could be inferred from the tribunal's findings that the refusal obviously caused him stress, would have been humiliating and degrading for someone in his position, and was a stunning blow. However, the EAT found it hard to see that the tribunal had shown how it found that the requisite environment was thereby created.

31. The adverse purpose or effect can be brought about by a single act or a combination of events. The EAT in **Reed and anor v Stedman** 1999 IRLR 299, EAT, made some useful comments about how the effect should be assessed when dealing with a combination of events, suggesting that tribunals should adopt a cumulative approach rather than measure the effect of each individual incident.

32. A claim brought on the basis that the unwanted conduct had the purpose of violating the employee's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment obviously involves an examination of the perpetrator's intentions. As the perpetrator is unlikely to admit to having had the necessary purpose, the tribunal hearing the claim is likely to need to draw inferences from the surrounding circumstances.

33. In deciding whether the conduct has the effect referred to in S.26(1)(b) (i.e. of violating a person's (B) dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for B), each of the following must be taken into account:

    33.1. the perception of B;

    33.2. the other circumstances of the case; and

    33.3. whether it is reasonable for the conduct to have that effect — S.26(4).(Note that S.26(4) is not applicable to 'purpose' cases.)

34. The test therefore has both subjective and objective elements to it. The subjective part involves the tribunal looking at the effect that the conduct of the alleged harasser (A) has on the complainant (B). The objective part requires the tribunal to ask itself whether it was reasonable for B to claim that A's conduct had that effect.

35. In order to constitute unlawful harassment under S.26(1) EqA, the unwanted and offensive conduct must be 'related to a relevant protected characteristic'. However offensive the conduct, it will not constitute harassment unless it is so related, and a tribunal that fails to engage with this point will err — **London Borough of Haringey v O'Brien** EAT 0004/16.

36. Whether or not the conduct is related to the characteristic in question is a matter for the appreciation of the tribunal, making a finding of fact drawing on all the evidence before it – **Tees Esk and Wear Valleys NHS Foundation Trust v Aslam and anor EAT** 0039/19.

37. The words 'related to' in S.26(1)(a) have a broad meaning and holding that conduct that cannot be said to be 'because of' a particular protected characteristic may nonetheless be 'related to' it — **Hartley v Foreign and Commonwealth Office Services 2016** ICR D17, EAT.

38. In disability cases, the mere fact that unwanted conduct occurs at a time when a claimant satisfies the definition of a disabled person will not necessarily mean that it is related to the disability. In **Private Medicine Intermediaries Ltd v Hodkinson** EAT 0134/15 H, who was disabled in that she suffered from thyroid dysfunction and cardiac arrhythmia, was absent with work-related depression and anxiety. During her absence, PMI Ltd sent her a letter outlining six areas of concern that it wanted to discuss, none of which was serious. Upset by the letter, H resigned and a tribunal subsequently found that the letter was an act of disability-related harassment. However, the EAT overturned the tribunal's finding in this respect. The tribunal had found that the unwanted conduct had been 'in the circumstances of' H's stress-related illness. However, it had made no finding that that illness related to her underlying disability.

39. Where direct reference is made to an employee's protected characteristic or he or she has been subjected to overtly racist/sexist/homophobic, etc, conduct, the necessary link will usually be clearly established.

40. Where the link between the conduct and the protected characteristic is less obvious, tribunals may need to analyse the precise words used, together with the context, in order to establish whether there is any (negative) association between the two.

Time limits

41. The three-month time limit for bringing a discrimination claim is not absolute: employment tribunals have discretion to extend the time limit for presenting a complaint where they think it 'just and equitable' to do so — S.123(1)(b) EqA.

42. In **Robertson v Bexley Community Centre t/a Leisure Link** 2003 IRLR 434, CA, the Court of Appeal stated that when employment tribunals consider exercising the

discretion under what is now S.123(1)(b) EqA, **'there is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse. A tribunal cannot hear a claim unless the claimant convinces it that it is just and equitable to extend time. So, the exercise of discretion is the exception rather than the rule.'**

43. However, this does not mean that exceptional circumstances are required before the time limit can be extended on just and equitable grounds. The law does not require this but simply requires that an extension of time should be just and equitable — **Pathan v South London Islamic Centre** EAT 0312/13 (discussed below).

44. The Court of Appeal in the **Robertson** case also stressed that the EAT should be very reluctant to overturn the exercise of an employment tribunal's discretion in deciding what is 'just and equitable'. In order to succeed, it would have to be shown that the tribunal took into account facts that it ought not to have done or took an approach to the issue that was very obviously wrong, or that the decision was so unreasonable that no tribunal properly directing itself could have reached it.

45. This approach was confirmed by the Court of Appeal in **Chief Constable of Lincolnshire Police v Caston** 2010 IRLR 327, CA. There, a police officer presented a claim of disability discrimination outside the three-month time limit. The employment tribunal decided it was just and equitable to extend the time limit, taking into consideration the claimant's mental ill health, which had led her to mislead her solicitors as to the date of the 'trigger point' for the purpose of calculating the time limit. However, in the course of his judgment, the employment judge quoted with approval a comment from a textbook that tribunals and appellate courts had adopted 'a liberal approach' to extension of time. The employer challenged the decision to extend time on the basis that this comment showed that the tribunal had committed an error of law and taken the wrong approach. Both the EAT and the Court of Appeal refused to overturn the tribunal's decision. Looked at objectively, there was ample material on which the tribunal could exercise the discretion, and whether the chairman thought he was being 'liberal' or not in his interpretation was irrelevant.

46. In exercising their discretion to allow out-of-time claims to proceed, tribunals may also have regard to the checklist contained in **S.33 of the Limitation Act 1980** (as modified by the EAT in **British Coal Corporation v Keeble and ors** 1997 IRLR 336, EAT). S.33 deals with the exercise of discretion in civil courts in personal injury cases and requires the court to consider the prejudice that each party would suffer as a result of the decision reached and to have regard to all the circumstances of the case — in particular,

    46.1. the length of, and reasons for, the delay;

    46.2. the extent to which the cogency of the evidence is likely to be affected by the delay;

    46.3. the extent to which the party sued has cooperated with any requests for information;

46.4. the promptness with which the plaintiff acted once he or she knew of the facts giving rise to the cause of action; and the steps taken by the claimant to obtain appropriate advice once he or she knew of the possibility of taking action.

47. In **Department of Constitutional Affairs v Jones** 2008 IRLR 128, CA, the Court of Appeal emphasised that these factors are a 'valuable reminder' of what may be taken into account, but their relevance depends on the facts of the individual cases, and tribunals do not need to consider all the factors in each and every case. However, while a tribunal is not required to go through every factor in the list referred to in Keeble, a tribunal will err if a significant factor is left out of account — **London Borough of Southwark v Afolabi** 2003 ICR 800, CA.

48. A tribunal considering whether it is just and equitable to extend time is liable to err if it focuses solely on whether the claimant ought to have submitted his or her claim in time. Tribunals must weigh up the relative prejudice that extending time would cause to the respondent on the one hand and to the claimant on the other.

49. In **Pathan v South London Islamic Centre** EAT 0312/13 an employment tribunal refused to extend time on the basis that the claimant had no good reason for submitting her sex discrimination claim five months out of time: as an intelligent woman who had taken advice, she ought to have known about the time limit. The EAT overturned the tribunal's decision. In holding that exceptional circumstances were required in order to extend time and in failing to consider the relative prejudice that would be caused by doing so, the tribunal had failed to approach the limitation question in the correct way. On a proper consideration, the result may well have been different.

50. In **Szmidt v AC Produce Imports Ltd** EAT 0291/14 the Appeal Tribunal held that an employment tribunal had erred in refusing to extend time in respect of a claim for a single act of race discrimination by failing to balance the prejudice to S of the loss of a valid claim with the prejudice to ACPI Ltd. Despite the fact that the tribunal had directed itself to the guidance in **British Coal Corporation v Keeble and ors** (above), it had failed to carry out the requisite balance of prejudice exercise. But for the limitation bar, the tribunal had accepted that S's race discrimination claim would have succeeded. What appeared to have caused the tribunal to terminate its examination of the extension of time issue prematurely was S's failure to put forward any explanation for the delay in bringing her race discrimination claim. However, while the tribunal was entitled to take this into account, it did not obviate the need to consider the balance of prejudice as explained in **Pathan v South London Islamic Centre** (above).

Findings of fact

51. We make the following findings of fact (references are to pages in the bundle).

52. The respondent runs a number of holiday parks. The season is from March to November. The claimant was engaged as a seasonal worker and had worked for the respondent previously, in the 2021 season.

53. From 28 March 2022 the claimant was employed to work as a food and beverage assistant at Sunnydale Holiday Park.

54. Given that the respondent attracts families including children, they take the issue of safeguarding seriously. Some staff, those who effectively work with children are required to have DBS checks. Other staff, including the claimant, were not required to be DBS checked, but all staff were required to undertake safeguarding training.

55. The claimant had undertaken safeguarding training both with the respondent and when he worked at other similar companies, such as Butlins, and was at all times well aware of the importance of safeguarding.

56. The respondent's safeguarding policy highlights the need to ensure the safety of children, it explains what safeguarding is and what the obligations are of those working for the respondent. The policy also includes information about reporting concerns or allegations and there is a requirement for staff to share concerns with the General Manager at the relevant holiday park.

57. The safeguarding training modules include the following statement,

> *"All those who come into contact with children or adults at risk and their families in their everyday work, including people who do not have a specific role in relation to child protection, have a duty to safeguard and promote the welfare of children and adults at risk"*

58. In the 2021 season, the claimant completed a health questionnaire form in which he indicated that he had a learning disability. The claimant accepted, and we find that at no point was Ms Green, or the claimant's line manager, Mr Germain, made aware that the claimant had completed this form.

59. Like many staff, during the 2022 season the claimant lived in a caravan on the site as he had done in 2021. In the 2021 season the claimant had also completed an accommodation agreement as well as an employment contract. It would appear that he was not required to complete the same documentation for the 2022 season, but he did not suggest that he was not bound by the previous agreements.

60. Clause 2.2(b) of the accommodation agreement [166] states as follows,

> *"The Employee acknowledges that… the Employer is the occupier of the Accommodation for all purposes and may enter the accommodation at any time…"*

61. The claimant's contract of employment [114] includes the following,

> *"SPOT CHECKS*
>
> *You agree that we may make spot checks and searches of your clothing, personal belongings, lockers, vehicles or our accommodation. Such checks will be conducted by a security personnel or a manager and will be conducted in accordance with your legal rights"*

62. On 19 August 2022 staff members raised concerns with Joanne Green about the claimant's conduct on site with children. The concerns were as follows,

    62.1. the claimant was seen holding hands with a child on site,

    62.2. the claimant was observed interacting with children on site by crouching down and speaking to them in close proximity, and

    62.3. the claimant was observed sitting in the play park area on site while children were playing there.

63. 19 August 2022 was a Friday. Joanne Green felt that these concerns were serious and before she left work, she spoke to the claimant's line manager, Sam Germain. At the time Ms Green thought that she would deal with the concerns when she returned to work on the following Monday, but on Saturday morning she was so concerned that she took advice from the respondent's out of hours HR team. She was advised that given what she had been told, she would be within her rights to suspend the claimant pending an investigation and she determined that this was something she would do. Rather than delay, she went back to the site on Saturday 20 August 2022, had a suspension letter prepared and then delivered it to the claimant. Given that 20 August was a day when the claimant was not working, Ms Green saw the claimant in his caravan and gave him the letter of suspension [172].

64. We accept the evidence of Ms Green that the claimant understood the content of the letter and said something to the effect that this had happened to him before whilst he had been employed at the supermarket chain Morrisons, a complaint which he said was later dropped. At Tribunal the claimant denied under cross-examination that he had said this, but we find that it would be extraordinary if Ms Green had made this up but just happened to guess correctly that the claimant had previously worked at Morrisons, the claimant having confirmed to us that he did. We think it more likely that this was in fact part of the conversation he had with Ms Green during the suspension meeting.

65. Ms Green then proceeded to investigate the concerns and in doing so she obtained statements from the two employees who raised the concerns, Matthew Hale [174] and Indianna Walker [174], as well as the Complex Manager, and claimant's line manager, Sam Germain [173].

66. Mr Hale confirmed that he had seen the claimant sitting in the play park around children, and that he had seen the claimant talking to children whilst on his knees. Ms Walker said that she had seen the claimant walking whilst holding *"an owners little girls hand*".

67. Mr Germain confirmed that at the beginning of the season he had spoken to the claimant about the way he interacted with guests and children, and in relation to interacting with children, reminding him not to crouch down to their level but to speak to them standing up.

68. Ms Green took Monday 22 August as a days' annual leave returning to work on Tuesday 23 August 2022. She decided to undertake an inspection of the claimant's

caravan as part of her investigation. She asked the administration manager, Sherene Harris to attend the inspection with her.

69. Having entered the main bedroom, they saw two images which appeared to have been cut out from newspapers. The images showed young boys in swimwear at a beach. This prompted a further search, and, in a drawer, a large number of similar images were discovered. These were mostly images of children either in clothing or in swimwear although there were one or two images of adult men and women. It was noted that there were the remnants of blue tack on the back of some of the images suggesting that they had been displayed at some point. The images were replaced in the drawer and Ms Green decided that she should arrange what the respondent calls an Employment Review Meeting with the claimant to put the concerns to him. An Employment Review Meeting is in effect a disciplinary hearing. A letter inviting the claimant to the meeting was emailed to him on 23 August 2022 [175 and 260].

70. The claimant asked for the meeting to be held online using Teams which Ms Green agreed to. The meeting took place on 24 August 2022. The claimant attended with his parents and Ms Green attended with Sherene Harris present as note taker.

71. The notes of the meeting are at [177 – 179].

72. After listening to what the claimant said, the meeting was adjourned and Ms Green determined that the claimant should be dismissed. The meeting reconvened and the claimant was advised verbally that he was being dismissed with payment in lieu of notice.

73. A formal letter of dismissal was sent to the claimant on 26 August 2022 [199 – 200].

74. Given that the claimant had denied all knowledge of the images discovered during the inspection, Ms Green considered that she should obtain evidence that the images were in the caravan. She therefore went back to the caravan on 24 August 2022 and took video evidence of the images, examples of which can be seen at [180 and 181].

75. The respondent did report the concerns to the Local Authority Designated Officer (LADO). The LADO's primary function is to oversee and co-ordinate any investigation into an incident where an allegation of abuse or harm has been made against a professional or volunteer who has contact with children in any setting or activities. In this case the LADO decided that this was not a matter which needed to be dealt with at his level and left it as an employment matter. In the Tribunal’s view nothing turns on this. We also mention that there was some discussion at the hearing about whether the police had been informed but as far as we can tell from the evidence we heard, there has never been a suggestion that the claimant committed any criminal act, and we cannot see why the police would have been informed in this case and again nothing turns on the fact that they were not.

76. The claimant appealed against his dismissal that appeal was dealt with by David Jones. There are no complaints about the appeal process and therefore we need say very little about it save that there has been no criticism of the notes of the appeal process (which involved three separate meetings). The claimant's grounds

of appeal are at [204] and they are relevant to our consideration because they set out what the claimant's concerns were about his dismissal. His concerns were as follows,

76.1. that his dismissal was unfair because of a lack of evidence,

76.2. that Joanne Green had discriminated against him because of his disability, and the following matters were the specific acts of discrimination,

76.2.1. being told about his suspension in his caravan,

76.2.2. not having received three warnings before being dismissed,

76.2.3. having his caravan inspected without his permission, without receiving notice and without him being present,

76.2.4. changing the locks on his caravan,

76.3. that he had permission to hold the child's hand on 19 August 2022 and the parent of the child had not been spoken to by Joanne Green and

76.4. that whilst he crouched down to speak to and hear children, other team members also did this.

77. Having heard the appeal Mr. Jones dismissed it.

78. The claimant commenced early conciliation on 21 November 2022.

79. The early conciliation certificate was issued on 23 November 2022.

80. The claim form was presented on 5 December 2022.

Discussion and conclusions

81. We turn now to our conclusions on the allegations set out in the list of issues.

Time limits

82. We shall deal first and briefly with the time limit issue.

83. Given the above dates, the last date on which a claim could be issued which related to dismissal or any matter which occurred on the same date, was 23 December 2022.

84. We remind ourselves that in **Galilee v Commissioner of Police of the Metropolis** [2017] 11 WLUK 521, it was held that amendments to pleadings in the employment tribunal which introduced new claims or causes of action took effect for the purposes of limitation at the time permission was given to amend. There was no doctrine of "relation back".

85. The amendment to include direct sex discrimination was allowed on 4 May 2023 and was therefore over 4 months out of time.

86. When the claimant was asked about the timing of his application to amend to include the claim for sex discrimination in cross examination, and we stress entirely unprompted, he said that his solicitor had made the application, and we are of the view that at no point did the claimant seriously or genuinely consider that he had been the subject of sex discrimination. We are bolstered in this view by the fact that when he was asked the basis upon which he asserted that he had been treated differently because of sex, he said simply that a woman would not have been treated the same way yet could offer no evidence or examples to support why he says a woman would have been treated differently.

87. Having said that, Employment Judge Butler allowed the amendment, and we see no reason to interfere with her decision. We have therefore dealt with the claim on its merits.

Direct sex discrimination

88. As agreed in the list of issues the following are the complaints of direct sex discrimination,

    88.1. the making of a complaint that he had been holding hands with a child,

    88.2. the making of a complaint that had bent down to talk to a small child,

    88.3. the highlighting of a concern that he was sat in the play park reading,

    88.4. searching the claimant's caravan,

    88.5. not conducting a fair investigation, and

    88.6. the dismissal.

89. As we set out above, in **Madarassy** the Court of Appeal held that the burden of proof does not shift to the employer simply on the claimant establishing a difference in status (e.g. sex) and a difference in treatment. This merely gives rise to the possibility of discrimination. Something more is needed. Any inference about subconscious motivation has to be based on solid evidence (**South Wales Police Authority v Johnson** 2014 EWCA Civ 73).

90. The claimant said several times that a woman who had been seen holding a child's hand would not have been reported, but he also agreed that there was a duty to report anything which might give rise to a safeguarding concern, and we do not understand how the claimant differentiates between males and females in this context, or why he says other people differentiate.

91. We accept the evidence of Ms Green that she knows of at least one case where a female has been dismissed for safeguarding concerns, and we can see no evidence for finding or from which we could infer that the respondent has a different approach to the treatment of men and women where safeguarding issues are raised.

92. That deals with the first three allegations of direct sex discrimination. The claimant has presented no facts from which we could decide that he has been the subject of sex discrimination, and he has failed to shift the burden of proof to the respondent.

93. In relation to the search, or what the respondent calls the inspection of the caravan, we again accept the respondent's evidence that all the accommodation occupied by staff is routinely inspected and there is no suggestion that men and women are treated differently in this respect. Given the concerns raised about the claimant's behaviour and the requirement to undertake a reasonable investigation, it is unsurprising that the caravan was searched. The respondent has the contractual right to do so, and it exercised that right in a manner which we consider to be reasonable in all the circumstances. There is simply no evidence from which we could conclude or from which we could infer that had the claimant been a female there would not have been a search of the accommodation and the claimant has failed to shift the burden of proof in respect of this allegation.

94. The penultimate allegation is that the respondent failed to carry out a fair investigation with the implication that they would have carried out a fair investigation had the claimant been female.

95. The difficulty with this allegation is that in the Tribunal's view, whilst the overall procedure followed by the respondent might be the subject of some criticism in say the context of an unfair dismissal claim, in particular the rather curious treatment of the images which were left in the caravan rather than for example being taken and retained by Ms Green, it is difficult to see what other investigation could have been undertaken to make it fair in the eyes of the claimant. The only thing that the claimant referred to was the apparent failure by the respondent to take a witness statement from the owner whose child the claimant was alleged to have been walking along hand in hand with on 19 August 2022.

96. The problem with that criticism is highlighted when one considers the notes of the disciplinary hearing which start at [177].

97. At this hearing the claimant is told that he was seen holding the hand of a young girl on the showground on 19 August 2022 and he was asked whether he remembers that. The claimant's response was "*no I cannot remember the 19th".*

98. Given that the claimant could not remember the specific incident, and therefore whose child it was, it is difficult to see how the respondent could have investigated the matter further. Even if it is argued that at some point the claimant remembered who the child was, given the Tribunal's judgment this could have made no difference. The respondent's case is that staff should not have such close contact with children even where there is permission from the parents, and the fact that the claimant did not understand that, or when told it said he would continue to do so, only gave rise to deeper concerns about his understanding of safeguarding or, if he understood, his obvious refusal to comply with the respondent's requirements. These concerns are highlighted by how the conversation continued at the disciplinary hearing and for the sake of completeness we set it out in full here,

> *"JG - Do you hold hands with children?*
> *SH - Yes only owners, if they know me and I know them, if I do not know them then no.*

JG - Do you think this is appropriate behaviour?
SH - if the kids ask me Stuart to hold my hand and I know them, then I will.
JG - Do you remember the 19th August?
SH - No.
JG - Do you understand how it could have looked?
SH - Like I said if the parents and the kid asks me to hold their hands then I will."

99. Given that the respondent does not have any exception for circumstances in which a parent has given permission for the claimant to hold hands with a child, speaking to the parent concerned, even if they had been correctly identified, could not have made any difference in this case.

100. It is unclear how the parent in this case has subsequently been identified but under cross examination the claimant confirmed that that the child's mother, who had apparently given him permission to hold her child's hand, a Mrs Bothamly, was in fact a close friend of the claimant's mother and no doubt any evidence which she gave would have had to have been viewed in light of that close relationship in any event.

101. Therefore, and in conclusion on this allegation, we consider that there was a fair investigation, but even if there had not been, there is no evidence from which we could decide or from which we could infer that the reason for any unfairness relates to the claimant's sex. Again, we find that the claimant has failed to shift the burden of proof in respect of this allegation.

102. The final allegation of direct sex discrimination is the fact of the dismissal.

103. There were three allegations which were dealt with at the dismissal meeting. We have dealt with the hand holding above in some detail and we need not repeat that here.

104. The second allegation related to the claimant being seen interacting with children when crouching down in front of them and in close proximity. This was again covered at the dismissal meeting and the relevant exchange was as follows [178],

"JG - Another concern that has been raised was how you were seen interacting with children in the complex, crouched down in front of them and in close proximity, can you explain this to me?
SH - So I can hear what they are saying.
JG - Do you usually interact this way?
SH – Yes.
JG - Do you feel that is an appropriate way to speak with a child?
SH - Yes so I can hear what they are saying.
JG - Could you do this in a different way?
SH – No
JG - Has anyone spoken with you specifically regarding the way you interact with children before?
SH – No.

> *JG - So no one has talked to you about how to interact with children in a different way?*
> *SH – No."*

105. The respondent's evidence was that the claimant's line manager had spoken to him at the start of the season specifically about how he was around children, and in a written statement of 22 August 2022 the claimant's line manager says specifically,

> *"I spoke to him about the way he was around children going down to their level and the way he spoke to them, after this convo he would stand upright and talk to the children in a correct polite manner"*

106. Under cross-examination the claimant confirmed that his line manager "*was good, no reason to make things up…"* and therefore we conclude that it was more likely than not that this conversation did take place.

107. From the above it is apparent that either the claimant had forgotten about this conversation with his line manager or, given what he said in answer to Ms Green's questions, more likely he chose to ignore it. Either way, from the respondent's point of view they were faced with an employee who despite being told he should not be in such close proximity with children, was quite clearly going to carry on interacting with them in a way which the respondent was clear was unacceptable.

108. There is no evidence from which we could decide or from which we could infer that the reason for the respondent relying on this matter relates to the claimant's sex. Again, we find that the claimant has failed to shift the burden of proof in respect of this allegation.

109. The third allegation concerned the claimant going to the play park and being around children when he was not working.

110. At the dismissal meeting the claimant simply denied that this in fact was the case saying expressly, when asked, "*no I do not go in the play park*" [178].

111. In her dismissal letter Ms Green in effect made no finding about this stating simply that there was no evidence to support or as she put it deny this allegation. The Tribunal notes however that under cross-examination the claimant confirmed, in terms, that "*I did go to the play park in my free time, but I did not think it inappropriate, it's a public place*". The claimant was asked to clarify the suggestion that the play park was a public place, and he confirmed that what he meant was it was on the respondent's site, but it was used by all of the guests.

112. In our judgment, when the claimant denied going to the play park at the meeting with Ms Green, he was not being truthful.

113. Of course, the matter which Ms Green confirmed tipped the claimant's behaviour into dismissal rather than something short of dismissal, was the finding of the images of children in the caravan.

114. The evidence we heard about this is as follows,

114.1. the caravans are cleaned out at the end of the season before they are needed again when the season starts in the following March,

114.2. the claimant took up occupancy when he started work in March 2022,

114.3. the claimant was due to share the caravan but, in the end, he lived there alone and there was no suggestion that anybody had been there before him in the 2022 season,

114.4. other than those who can access the caravans for inspection purposes, there is no evidence that anyone else had a key to the premises,

114.5. Ms Green's evidence, supported by that of Ms Harris, is that on inspection there were two images in the open and a large number in a drawer, and importantly that they showed signs of having been displayed because of the blue tack residue.

115. In his written submissions to the Tribunal, which the claimant confirmed he had read before sending them in, it states as follows,

> *"The pictures found arose from claimant's disability of collecting and were all deemed to be suitable for mainstream publication"*

116. This suggestion chimes with something in the s.15 claim, which we shall deal with below, to the effect that one thing which arises from the claimant's disability is his need to collect memorabilia of places he has been to and the suggestion here is simply that the images were part of this need to collect. However instead of relying upon this the claimant said that notwithstanding what he said in his own written submissions, the images were not his.

117. Under cross examination, when asked about this, the claimant said that Ms Green must have cut them out and planted them in the caravan or it might have been other employees who were jealous of him because he had previously been employee of the year. He agreed with the suggestion put to him that if this was the case then the reason for his dismissal was not related either to his disability or to his sex but rather to other employees being jealous of him.

118. In summary,

118.1. the respondent's business is a family orientated series of holiday parks where safeguarding is of vital importance, and it is clearly a matter they take very seriously,

118.2. they were faced with an employee who by his own admission readily held the hands of any child who asked him and whose parents gave him permission and could not see that this was problematic in any way,

118.3. there was at least a concern that he did go to a children's play area to sit when he was not working,

118.4. he did crouch down and speak to children in close proximity and confirmed that he would continue to do so notwithstanding that this had been raised with him as a concern, and

118.5. it was reasonable for the respondent to conclude that the images discovered in the caravan belonged to the claimant.

119. In those circumstances there is no evidence from which we could conclude or infer that the real reason for the claimant's dismissal was related to his sex rather than the respondent's genuine concern about safeguarding.

120. We find that in relation to this allegation the claimant has not shifted the burden to proof to the respondent, but even if he had, we would still have concluded that the reason for dismissal was the safeguarding concern and not in any sense, sex.

Direct disability discrimination

121. There are two allegations of direct disability discrimination as follows,

121.1. not conducting a fair investigation, and

121.2. the dismissal.

122. We have dealt in detail with both allegations above and we repeat our findings here as they are equally applicable.

123. A finding of direct discrimination turns on the 'reason why' question. In that context, knowledge of, in this case, disability, is crucial.

124. Both allegations concern the actions of Ms Green. She started her employment with the respondent at the same time as the claimant.

125. Ms Green Is employed as the General Manager at Sunnydale Holiday Park where the claimant worked. The claimant reported to the complex manager.

126. Ms Green Is responsible for overseeing the running of the entire park and manages it through managing the various Heads of Department. She did not recruit the claimant, nor did she work with him.

127. Ms Green's clear and consistent evidence was that she did not know that the claimant had a learning disability. She was not cross examined on this point and the claimant's only evidence to suggest that Ms Green could have known about his disability is the fact that he had stated it in a health questionnaire he completed in 2021, but we accept that Ms Green did not see this and therefore that she did not know that the claimant had a disability.

128. That being the case, and in answering the 'reason why' question the answer is the investigation and dismissal were not undertaken or undertaken in the way they were for any reason related to or because of the claimant's disability.

129. These claims therefore fail.

130. We would add that even had we found that Ms Green did have knowledge of the claimant's disability, our judgment would have been the same. It is quite clear from the discussion above that the reason why the investigation was undertaken, and undertaken in the way it was, and the reason why the claimant was dismissed, were because of what had been discovered and the understandable and reasonable concerns of the respondent about safeguarding in those circumstances.

Disability related discrimination

131. Turning to the s.15 claim, the claimant says that there are two things which arise from his disability as follows,

131.1. collecting memorabilia of places he has visited as a result of his learning disability. He does this in a "*childlike innocent way*" and is *"unaware as to how any collections may be perceived by others*", and

131.2. struggling to grasp and to understand and grasp what is being said, seeing things in an innocent way and behaving innocently without being aware how his behaviour is perceived.

132. The unfavourable treatment relied on is as follows,

132.1. failing to provide the claimant with evidence of the cut-out photos of children,

132.2. subjecting him to an unfair and/or inadequate investigation,

132.3. dismissing him on 24 August 2022.

133. It is unclear which 'something arising' relates to which of the allegations of unfavourable treatment.

134. The collection of memorabilia would appear to us to relate to the first and third allegation.

135. In relation to the collection of memorabilia we can find no evidence this has ever been raised as something which arises from the claimant's disability.

136. Further, the images of children we have seen as part of this hearing are clearly cut out pictures of young people and not places, and even if the collection of memorabilia of places the claimant has visited is something which arises from his disability, the cut out pictures in this case do not fall within what any reasonable person might conclude to be pictures of 'places visited'.

137. In relation to the use of the pictures as part of the reason for dismissal we have dealt with that in detail above when considering direct sex discrimination. We find that it was reasonable for the respondent to conclude that the pictures were collected by the claimant, that some or all of them had been displayed and along with the other safeguarding issues raised with the claimant, a picture was established of someone who was a safeguarding risk. We do stress at this point,

largely because it was raised by the claimant in submissions, that it has not been and is not being suggested that he is a paedophile, a peeping Tom, or that he committed any criminal act.

138. In relation to the second something arising, which is the claimant struggling to understand and grasp what is being said, this appears to relate to the second and third allegations of unfavourable treatment.

139. We have looked carefully at the notes of the dismissal meeting and the three appeal meetings held with the claimant, and we have of course had the experience of the claimant at the Tribunal hearing, and there is no suggestion from any of that that he struggles with understanding or grasping what is being said. The claimant conducted himself very well during the hearing and he was invited at any point to say whether he did not understand anything which was being discussed or put to him and at no point did he do so.

140. We accept of course that the claimant has learning difficulties, but it is unclear how this is said to have manifested itself at work. All we can consider is the evidence we have before us and we stress that there is no evidence that any point during the claimant's work, during his suspension, during the investigation, during the disciplinary and appeal processes he said that he was struggling to understand what was being said.

141. In relation to safeguarding, we reiterate that during the hearing the claimant made it perfectly plain that having worked not simply for the respondent previously but for similar employers, he had received safeguarding training which was the same or similar each time and at no point did he suggests that he did not understand it.

142. We can accept that the claimant perceived the hand holding innocently but the respondent has to consider more than the claimant's subjective perception and in our judgment the claimant clearly understands sufficient to know when he is being told that something is wrong and he should not do it, despite which, both in relation to hand holding and his proximity when speaking to children, he either said or implied he would continue to do both of those things notwithstanding the respondent's obvious concerns about such behaviour.

143. We remind ourselves of the matters we must consider in this claim are that,

143.1. there must be unfavourable treatment,

143.2. there must be something that arises in consequence of the claimant's disability,

143.3. the unfavourable treatment must be because of (i.e. caused by) the something that arises in consequence of the disability, and

143.4. the alleged discriminator cannot show that the unfavourable treatment is a proportionate means of achieving a legitimate aim.

144. Given the above, our judgment is as follows.

145. First, in relation to the allegation that the respondent failed to provide the claimant with evidence of the cut-out photos of children, we do not find that this was unfavourable treatment. The claimant was told what was found and simply denied that he had cut out any pictures. He said that he had some posters but that is quite a different matter. Therefore, in that context not being shown something he denied having could have made no difference and, in the circumstances, it is difficult to see how therefore the failure amounted to unfavourable treatment.

146. Furthermore, we cannot see any evidence that the purported 'something arising', being the collection of memorabilia of places visited by the claimant is something which arises from his learning disability, but even if it was, and even if the failure to show the claimant the pictures was unfavourable treatment, there is no evidence from which we could conclude or infer that the reason for the failure to show the claim at the pictures was because of that something arising.

147. If the unfavourable treatment is the dismissal, and accepting that it was the finding of the pictures which was the operative cause of the dismissal, and that dismissal is clearly unfavourable treatment, that unfavourable treatment could only be caused by something arising from disability is if the reason the respondent concluded that, the pictures were collected by the claimant was because of that something arising (that is the collection of memorabilia of places visited by the claimant).

148. But of course, the claimant denies that the pictures were collected by him and in any event on any viewing of those pictures they are not of places visited. It follows therefore that there is no relationship between the respondent's belief that the pictures belonged to the claimant and the purported something arising and for all of these reasons this allegation fails.

149. In relation to subjecting the claimant to an unfair and/or inadequate investigation, in our judgment there was not an unfair or inadequate investigation, and this allegation must also fail.

150. Finally, in relation to the dismissal on 24 August 2022, for the reasons set out above, this was not because of (that is caused by) something that arises in consequence of the claimant's disability and this allegation also fails.

151. For the sake of completeness we add that even if we had been satisfied that the second and third allegations made under section 15 had been made out (accepting that the first allegation could not be made out given the claimant's consistent denial that he had collected the pictures), the respondent would have satisfied the requirements of section 15(1)(b) EqA, that is they have satisfied us that the investigation and dismissal were a proportionate means of achieving a legitimate aim being the safeguarding of children particularly in the context of the claimant's responses to the allegations that were put to him.

152. All of the allegations of disability related discrimination fail.

Harassment related to disability

153. We turn finally to harassment related to disability.

154. The claimant says that the following actions amounted to disability related harassment,

154.1. searching his accommodation/caravan without his consent or any notice and invading the claimant's privacy by actively searching his personal belongings,

154.2. subjecting him to an unfair investigation in terms of the search of his accommodation and in changing his locks; and

154.3. deliberately withholding evidence from him.

155. The claimant does not say whether he relies upon his dignity having been violated or an intimidating, hostile, degrading, humiliating or offensive environment having been created for the claimant and we have therefore addressed both possibilities,

156. As we have said above, a claim brought on the basis that the unwanted conduct had the purpose of violating the employee's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment obviously involves an examination of the perpetrator's intentions.

157. It was not put to Ms Green that she intended to violate the claimant's dignity or create an intimidating, hostile, degrading, humiliating or offensive environment and we presume the claimant relies on 'effect' only.

158. In relation to the search, the claimant was not required to give his consent, and it is clear from his contract of employment and his accommodation agreement that the respondent had the right to do what they did. The search was not made public and only Ms Green and Ms Harris knew about it. At the time of the search the claimant was not at work nor living in the caravan, having returned to live with his parents.

159. In our judgment it goes too far to say that an unwanted search in the circumstances of this employer and these allegations could or did have the effect of violating the claimant's dignity. The unchallenged evidence of the respondent is that regular inspections are carried out and given the respondent's contract of employment, accommodation agreement and safeguarding policy, employees should expect that such inspections (or in effect searches) would include their personal belongings not least because the accommodation agreement and contract of employment together say so.

160. In relation to the investigation, in this context that allegation appears to be limited to the search of the accommodation, which is the same as the first allegation, and changing of the locks on the caravan.

161. We have dealt with the question of the search, and for the reasons set out above we do not consider that this could possibly have had the effect of violating the claimant's dignity.

162. In relation to changing the locks again we think it goes too far to say that this had the effect of violating the claimant's dignity. He may have been unhappy that the locks had been changed but they were changed to protect the evidence which had been left in the caravan (albeit this could have been avoided by Ms Green removing the pictures). But importantly, given that the claimant denies that the pictures were his, it is difficult to see why the mere changing of locks could adversely impact an individual's dignity and we find that it did not.

163. The last allegation is withholding evidence by which we assume the claimant means the pictures, which we have dealt with in detail above. Given that he denies ever cutting out images of children, not being shown those images could have had no impact on the claimant other than he may have felt that he had been treated unfairly, but that is a long way from his dignity having been violated. We find that the claimant's dignity was not violated by him not being shown pictures which he denied having any knowledge of.

164. We further find that even considering all of the allegations cumulatively there is still insufficient evidence to conclude that the claimant's dignity was violated.

165. In relation to the respondent's actions having the effect of creating an intimidating, hostile, degrading, humiliating or offensive environment, our judgment is that it is not possible for the claimant to make out such an allegation because, prior to the investigation, search, the withholding of the pictures, and the changing of the locks, the claimant had been suspended and had left the site, and in that context the environment in which he was living at the relevant time, that is during the dismissal process, was his home, and there is no suggestion that that was an adverse environment.

166. There is also no evidence from which we could conclude or infer that the environment at the Holiday Park was intimidating, hostile, degrading, humiliating or offensive.

167. For those reasons this allegation fails.

168. For the avoidance of doubt all of the claimant's claims fail and are dismissed.

_____

Employment Judge Brewer

Date: 4 November 2024

JUDGMENT SENT TO THE PARTIES ON

.....04 December 2024.....

.....

FOR THE TRIBUNAL OFFICE

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APPENDIX

AGREED LIST OF ISSUES

1. Section 13 Equality Act - Direct Discrimination because of sex

   1.1 Did the Respondent subject the Claimant to less favourable treatment?

   The Claimant argues the following was less favourable treatment:

   - The making of a complaint that he had been holding hands with a child;
   - The making of a complaint that had bent down to talk to a small child;
   - The highlighting of a concern that he was sat in a playpark reading;
   - Searching the Claimant's caravan;
   - Not conducting a fair investigation; and
   - His dismissal.

   1.2 Has the Respondent treated the Claimant less favourably than it treated or would have treated a man?

   1.3 The Claimant relies on a hypothetical male comparator whose circumstances were not materially different to his own. The Claimant argues that someone of the opposite sex would not have been subjected to the less favourable treatment outlined at para 1.1 above.

   1.4 Can the Claimant prove primary facts which the tribunal could, absent any other explanation, properly and fairly conclude that the difference in treatment was because of the Claimant's sex?

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

2. Section 13 Equality Act – Direct Discrimination because of disability

   2.1 Did the Respondent subject the Claimant to the following treatment?

   - - Not conducting a fair investigation
   - - His dismissal.

   2.2 Has the Respondent treated the Claimant as alleged less favourably than it treated or would have treated a non-disabled person?

   2.3 The Claimant appears to rely on a hypothetical non-disabled comparator whose circumstances are not materially different to his own. The Claimant argues that someone who was not disabled would not have been subjected to the less favourable treatment set out at paragraph 2.1 above.

   2.4 Can the Claimant prove primary facts from which the tribunal could, absent any other explanation, properly and fairly conclude that the difference in

treatment was because of the Claimant's disability?

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

3. Section 15 Equality Act – Discrimination arising from disability

3.2 Are any or all of the following 'something' which arise in consequence of the Claimant's disability (namely his learning difficulties) :-

3.2.1 Collecting memorabilia of places he has visited as a result of his learning disability. He does this in a "childlike innocent way" and is "unaware as to how any collections may be perceived by others".

3.2.2 Struggling to grasp and to understand and grasp what is being said Seeing things in an innocent way and behaving innocently without being aware how his behaviour is perceived.

3.3 Did the Respondent treat the Claimant unfavourably in the following respects:

3.3.1 By failing to provide the Claimant with evidence of the cut-out photos of children

3.3.2 By subjecting him to an unfair and/or inadequate investigation

3.3.3 By dismissing him on 24 August 2022

3.4 Was the unfavourable treatment because of the something or somethings arising in consequence of the Claimant's disability as outlined at paragraph 3.2 above?

3.5 Can the Respondent show that the treatment was a proportionate means of achieving a legitimate aim, namely the safeguarding of children?

3.6 Can the Respondent show that they did not know or could not reasonably have been expected to know that the Claimant had a disability?

4. Section 26 Equality Act: Harassment related to disability

4.2 Did the Respondent engage in the following conduct?

- - Searching his accommodation/caravan without the Claimant's consent or any notice and invading the Claimant's privacy by actively searching his personal belongings;
- - Subjecting him to an unfair investigation in terms of the search of his accommodation and in changing his locks; and
- - Deliberately withholding evidence from the Claimant.

4.3 Was the conduct unwanted?

4.4 Was the conduct related to the Claimant's disability?

4.5 Did the conduct have the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

4.6 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. Time Limits/Jurisdiction

5.2 Day A is 21 November 2023 and Day B is 23 November 2023. The ET1 was presented on 5 December 2023. However, the allegations of direct sex discrimination and/or disability-related harassment were not presented until 6 April 2023.

5.3 Have the claims of direct sex discrimination and/or harassment been presented in time?

5.4 If not, would it be just and equitable to extend time?