



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr L Fogarty

v

College of North West London

Heard at: Watford

On: 13 – 15 March 2017,
11-13 July 2017 and
2, 3 & 4 October 2017

Before: Employment Judge Henry

Members: Mrs S Low
Mrs I Sood

Appearances

For the Claimant: Mr I Sen, Lay Representative

For the Respondent: Mr E Kemp, Counsel.

JUDGMENT

The unanimous decision of the tribunal is that:

1. The claimant has not been unfairly dismissed pursuant to section 98 of the Employment Act 1996.
2. The claimant has not been automatically unfairly dismissed pursuant to section 152 of the Trade Union and Labour Relations (Consolidation) Act 1992.
3. The claimant has not been wrongfully dismissed on being dismissed without notice.
4. The claimant has not suffered discrimination on the protected characteristic of disability by a failure of the respondent to make reasonable adjustments.

The claimant's claims are accordingly dismissed

REASONS

1. The claimant by a claim form presented to the tribunal on 16 May 2016, presents complaints for unfair dismissal pursuant to s.98 of the Employment Rights Act 1996, automatic unfair dismissal pursuant to s.132 of the Trade Union and Labour Relations (Consolidation) Act 1992, wrongful dismissal in respect of notice pay and a failure to make reasonable adjustments pursuant to s20 and s21 of the Equality Act 2010.
2. The claimant commenced employment with the respondent on 3 September 2003. The effective date of termination was 6 January 2016; The claimant then having been employed for 12 complete years.

The Issues

3. The issues for the tribunal's determination were set out in a preliminary hearing and sent to the parties on 23 August 2016 as follows:

Unfair dismissal

- 3.1. The claimant argues that the reason or principal reason for his dismissal was the fact that he had been engaged in Trade Union activities, namely striking and picketing, and as such the dismissal is automatically unfair.
- 3.2. Alternatively, if misconduct was the reason for dismissal, under the Burchell principles, the claimant alleges there was no reasonable basis for the respondent's finding that he was the person who had defaced the notices.
- 3.3. The respondent's case on belief in misconduct rests solely on expert opinion from handwriting experts. The respondent claims that two, or possibly three, handwriting experts say there was a very strong probability indeed, not far off 100%, that the handwriting in question was the claimant's.

Disability Discrimination

- 3.4. The claimant alleges he was a disabled person by reason of epilepsy and/or stress and anxiety.
- 3.5. The respondent failed to make reasonable adjustments for those disabilities; the claimant contends, by failing to adjourn the disciplinary hearing that took place on 17 December 2015.
- 3.6. The claimant is not arguing that there was a failure to take into account his disabilities by way of mitigation for the misconduct because his case is that there was no reasonable basis for concluding that he was guilty of the

misconduct, an argument put as unfair dismissal not involving disability discrimination.

Limitation

3.7. The respondent asserts that the alleged failure to adjourn the disciplinary hearing was more than three months prior to the presentation of the claim form and as such is out of time. If this is right, the tribunal will look at whether it is just and equitable to extend time.

4. The tribunal has further clarified the issues as follows:

4.1. Unfair dismissal

4.1.1. What was the reason (or if more than one) the principal reason for the dismissal?

4.1.2. The respondent contends that the reason for dismissal was conduct.

4.1.3. The claimant contends that the reason or if more than one, the principal reason was for a reason, within s.152(1) of the Trade Union and Labour Relations (Consolidation) Act 1992, and automatically unfair, in that he had:

4.1.3.1. Taken part, or proposed to take part, in the activities of an independent Trade Union at an appropriate time.

4.1.4. If the dismissal was for reasons of conduct:

4.1.4.1. Has a fair procedure been followed?

4.1.4.2. Did the respondent have a genuine belief in the misconduct of the claimant?

4.1.4.3. Has there been a reasonable investigation?

4.1.4.4. Following that investigation, did the respondent hold a reasonable belief that the claimant committed the acts complained?

4.1.4.5. Was dismissal within the reasonable bands of sanctions open to the respondent?

4.1.4.6. Was dismissal reasonable in all the circumstances of the case?

4.1.4.7. Has the claimant contributed to his dismissal?

- 4.1.4.8. If the dismissal was procedurally unfair, was there a percentage change that dismissal would have ensued in any event?

4.2 Wrongful dismissal

- 4.1.5. Has the claimant committed an act of gross misconduct?
- 4.1.6. Was the claimant entitled to notice on termination of employment?
- 4.1.7. In breach of contract, has the respondent failed to pay the claimant notice to which he was entitled?

4.2. Disability discrimination and failure to make reasonable adjustments

- 4.2.1. Did the respondent apply the following provision, criteria or practice, namely:
- 4.2.1.1. failing to adjourn the disciplinary hearing that took place on 17 December 2015?
- 4.2.2. Did the application of any such provision, criteria or practice, put the claimant at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, in that the claimant was not able to fully participate in the proceedings?
- 4.2.3. Did the respondent take such steps as were reasonable to avoid a disadvantage? The claimant submits that the respondent should have postponed the hearing.
- 4.2.4. Did the respondent not know, or could the respondent not reasonably be expected to know, that the claimant had a disability or was likely to be placed at the disadvantage set out above?

Evidence

5. The tribunal heard evidence from the claimant and Mr Indro Sen on his behalf, and from the following witnesses on behalf of the respondent:

Jo Taylor – Head of HR

Ben Humpage – Director of Learn Experience

Mike Welsh – Deputy Principal

Andy Cole – Principal

6. The witnesses' evidence in chief were given by written statements upon which they were then asked questions. The tribunal also received written statements from Dr Sarah Morgan on behalf of the claimant, and

Miss Joselin Porter on behalf of the respondent, which witnesses did not attend the tribunal to give oral evidence.

7. For completeness, it is here noted that Mr Patrick Levy, who had been the subject of a witness order has not attended the hearing, and on a statement submitted on his behalf not having been signed, it was not adduced into evidence.
8. It is here recorded that, the claimant exhibiting signs of weariness during the hearing, the tribunal on numerous occasions made enquiries as to the claimant's ability to partake in the proceedings. The tribunal was assured that the claimant was fully able to participate. The tribunal nevertheless, offered the claimant the opportunity to avail himself of breaks, as and when needed, which the claimant availed himself of.
9. The tribunal had a bundle of documents exhibit R1, (being 4 lever arch files), and a bundle C1 containing the claimant's medical records.
10. From the documents seen and the evidence heard, the tribunal finds the following material facts.

The Facts

11. The respondent is a further education college with two campuses located in North West London.
12. The claimant was employed as a stores co-ordinator/senior technician, in the respondent's engineering department, at its campus in Duddon Hill, North West London.
13. It was the claimant's role to oversee the central stores in the respondent's Telford building, and responsible for ordering and managing the storage and use of materials, tools and equipment throughout the faculty, and to ensure that lessons across the construction and engineering curriculum were appropriately supported with appropriate equipment.
14. The claimant suffers from chronic temporal lobe epilepsy, and further suffers from anxiety and stress. It is not in dispute that the claimant was a disabled person pursuant to s.6 of the Equality Act 2010. It is also here noted that the claimant has a dependency on alcohol and has been in receipt of detox intervention. A copy of the claimant's medical history is at R1 page 498g to 498j.
15. It is not in dispute, and indeed the claimant has accepted in evidence before the tribunal, that the college being responsible for students of 14 years and above, catered for both students and adults, and that within the college they catered for children having child protection issues and students identified as vulnerable people. It was also accepted that, the college was responsible for setting high standards of behaviour for its students and that graffiti, the subject of the allegations against the

claimant, were such that, in the particular environment of the college, the graffiti was offensive and some were threatening, further challenging the respondent's safeguarding responsibilities. The claimant further accepts that the acts were serious acts, and in his opinion, were sufficient to warrant dismissal.

16. On or around 10 February 2015, Mr Welsh, deputy principal of the college, noted graffiti on a safeguarding poster, for which he had the college estate manager remove; Mr Welsh taking a photograph thereof.
17. Mr Welsh subsequently reported the graffiti to Ms Openshaw-Lawrence, vice principal, people and planning, who advised that she too had seen offensive graffiti, for which it was decided that the matter should be referred to HR for them to investigate.
18. On or around 17 February, Miss Taylor, head of HR, was shown the graffiti by Ms Openshaw-Lawrence, whereon it was discussed as to who the perpetrator could have been, determining that it was unlikely to have been a student on account that, whilst the graffiti referred to construction and engineering staff, it also named support staff i.e. non-teaching and outside of the curriculum area, whom students would have generally not have known by name. Equally, as the graffiti was found in the vicinity of the construction and engineering directorate, it was felt more likely that it had been written by someone in the construction and engineering team, as that was where the individual's reference was predominantly based.
19. It is also noted that, with reference to an individual named within the graffiti (Lakis) this was a reference used by staff, which name was not used by students.
20. On Miss Taylor beginning her enquiries, she took the images of the graffiti to the HR office for further investigations to be carried out. Miss Taylor's evidence to the tribunal was that, "I was simply trying to find out whether there was anything to suggest that an employee had written the graffiti," in which case she would need to ensure that appropriate steps were taken in accordance with the college's disciplinary procedure and in so doing showed the posters to her colleagues in HR; Miss Porter and Miss Patel.
21. On viewing the posters, Miss Patel thought that the handwriting looked familiar, which after further examination recognised the handwriting as that of the claimant; Miss Patel having recently had dealings with correspondence relating to the claimant in respect of absence in the previous few months.
22. On comparing the claimant's handwriting from an occupational health consent form received from the claimant, there were identified such similarities that they deemed the graffiti to have been written by the claimant.

23. Despite this, Miss Taylor further had enquiries made of further files to see if there were any other persons who had similar handwriting. Miss Taylor looked through all of the established teachers and support staff employee files for the construction and engineering team, with Miss Porter carrying out a similar exercise of the college's technicians. From these searches, there were observed no handwriting which were remotely similar to that of the graffiti; Miss Taylor's evidence being that, "nothing even vaguely stood out", and that it was impossible to get away from the striking resemblance between the graffiti and the claimant's handwriting.
24. The tribunal pauses here, as it is Miss Taylor's further evidence that, she found it hard to believe that the claimant could have been responsible for writing such offensive material, as too was the claimant's manager Mr Levy, of this view, who advised Miss Openshaw-Lawrence thereof on 17 February, and by which correspondence the tribunal observed the following:

"I have noticed that he (the claimant) has been a bit subdued lately but cannot imagine that he would post abusive/insulting material around the college – I wonder if there is an underlying mental health problem that may be a side effect of his head injury/accident from way back? (I am just finding it hard to believe that he could be malicious towards the people you mentioned – but equally I know mental health can be very unpredictable.)"
25. Whilst issues as to the claimant's mental health had been raised in this fashion, it had not been presented to the respondent during the internal disciplinary process, or otherwise before this tribunal, that the claimant was at the material times suffering from any mental health condition that may have accounted for the claimant doing the acts, indeed, it is the claimant's case that the acts were not done by him, which would not then call into question any mental health issues.
26. On Miss Taylor raising her findings with Miss Openshaw-Lawrence, it was decided that an expert opinion should be obtained before any formal steps were taken, in light of the potential for the matter being one of gross misconduct. It was Miss Taylor's evidence that, she felt the step of gaining an initial opinion from an expert would be appropriate in light of the need to suspend the claimant pending formal investigation.
27. Through the service of the local authorities Anti-Fraud Team, a handwriting expert was recommended from whom Miss Taylor then sought a report on the claimant's handwriting as against the graffiti.
28. On 19 February, the handwriting expert, Miss Webb, responded "I have spent some time comparing samples and from the better qualities I have arrived at the opinion that the handwriting on the poster samples is a good match when compared to the handwriting samples of your main suspect", advising that should a report be required she would require clearer samples for examination preferably the originals. On Miss Taylor receiving

correspondence from Miss Webb at 3.22pm, she informed Mr Cole, college principal, of the matter, recommending that the claimant be suspended pending formal investigation, and furnished a draft letter of suspension, which Miss Taylor states before the tribunal, was a standard letter for Mr Cole's signature. Mr Cole duly considered the matter, approved suspension and signed the letter accordingly.

29. At 3.42pm Ms Openshaw-Lawrence, in receipt of the suspension letter, wrote to the claimant's manager Mr Levy, informing him to go ahead and suspend the claimant that day, and that were he unable to do so, that it was to be done first thing the following day.
30. In the event, the claimant was not notified of his suspension until 2 March 2015.
31. In respect of the delay, between 19 February and 2 March, the tribunal has not been able to determine exactly what transpired on the 19 February after Ms Openshaw-Lawrence emailed Mr Levy to suspend the claimant that day. The claimant's evidence is that, he was at work for the full day and worked late that evening. Whether or not Mr Levy opened his email on that day the tribunal does not know.
32. On 19 February, the claimant requested leave for the following day, Friday 20 February.
33. On Monday 23 February, the claimant participated in a strike at the college, and on 24 February, the claimant requested special leave due to his brother being critically ill in hospital.
34. With regards the strike on 23 February, the claimant attended the picket line outside the college where, along with other colleagues on strike, instructed students as to the college being closed and that only the library was open, for which Mr Welsh, being informed by students that staff on the picket line had been informing them that the college was closed, Mr Welsh attended the picket line and addressed the staff thereon.
35. The tribunal pauses here, as it is the claimant's contention that Mr Welsh thereon had an altercation with him, and for which action was taken against him leading to his dismissal and the subject of his claim under s.152 of the Trade Union Labour Relations (Consolidation) Act.
36. The tribunal heard much evidence as to exactly what was said and to whom. The claimant states that what Mr Welsh said at the picket line was directed to him. Mr Walsh's evidence is that he addressed staff generally on the picket line. Exactly what was said and to whom is not however material to the issues in this case, it being the claimant's case that action against him was taken premised on these events. The factual matrix does not however allow for the claimant's contention, as the issues giving rise to disciplinary action being taken against him had arisen before the strike, namely the discovery of the graffiti on the 10 February, for which the

suspension of the claimant had been put in train on the 19 February, being prior to the events on the picket line. Accordingly, the strike could not have been the initiating factor as alleged.

37. Following the 19 February, the claimant was next at work on 2 March, and at which time he was served with the letter of suspension and suspended.

38. The suspension letter provides:

“I write to inform you that you are suspended from duty with immediate effect, on full pay, under section 2.3 of the college’s disciplinary procedure (a copy of which is attached for your information). Pending an investigation into the allegation that you have defaced college notices, using offensive, defamatory and threatening language.

I should point out that suspension is not disciplinary action.

If the investigation indicates that there is a case to answer against the allegation made then this offense would most probably be considered to be one of gross misconduct and could lead to an outcome of dismissal from the employment of the college.”

39. The claimant was thereon informed that he was not to enter the college property without permission of Ms Openshaw-Lawrence, vice principal people and planning, or the principal, Mr Cole, and that he was not to discuss the matter with any colleague, student or member of college staff other than his representative.

40. The claimant was further advised that, he would be informed of the outcome of the investigation once the investigation was complete, and if there were a case to answer, the matter would be referred to a disciplinary hearing, further being advised of the college’s counselling service.

41. Subsequent to the claimant being suspended, he then advised the respondent that he preferred to be contacted via email as opposed to telephone, and that his Trade Union representative, Mr Sen, was to be copied into all correspondence.

42. Mr Sen also on the 2 March, wrote to the respondent following the claimant’s suspension, advising:

“Hi Jo

Thank you for sending me paperwork relating to Lughlan’s suspension. I understand it to be the case that the reason why Lughlan has been suspended is because the writing on the poster apparently matches Lughlan’s handwriting. You are of course aware that Lughlan thoroughly refutes this allegation and considers that suspension is premature and unwarranted.

However, Laghan wishes to fully co-operate with the union and would like a copy(ies) of the graffiti(s), there location(s), that it is alleged Laghan is suspected of doing and a copy of his handwriting it is alleged has been used to come to the conclusion, that this match forms evidence of a prima facie nature that he is the author.

The reason for this is that the union would like to seek expert opinion about the match and place that evidence before the investigating officer. It follows therefore that he would need the information above well in advance of the investigatory meeting.”

43. After a delay, Mr Sen chased up his request advancing that, it was custom and practice for evidence to be provided prior to any formal investigation stage. Miss Taylor responded on 11 March, advising that evidence was not normally presented until the investigating officer had had a chance to review and analyse the evidences significance. Miss Taylor nevertheless sent copies of the graffiti to Mr Sen on 11 March; Mr Sen questioning whether the claimant had been identified from an individual’s knowledge of the claimant’s handwriting or whether an actual comparison with the claimant’s handwriting had been made. Mr Sen was advised that an actual comparison had been made.
44. On or about 19 February, the precise date has not been established, Mr Humpage, head of student development services, was furnished with copies of the graffiti and the correspondence from Miss Webb, the handwriting expert.
45. On 20 March, Miss Taylor arranged for a more detailed and formal report to be produced by Miss Webb for Mr Humpage’s reference. Miss Webb advised over the telephone that, in order to provide a comprehensive report more samples of the claimant’s handwriting would be useful as well as clearer copies of the graffiti, together with further handwriting samples from a cross section of other employees so that they could be ruled out. Miss Webb was accordingly furnished with five employees handwriting as samples to include the claimant’s later that day. Miss Webb provided her report dated 13 April which is at R1 page 137 to 146
46. Mr Humpage was subsequently on leave, for which he did not effectively pursue his investigation until around 23 March, when he met with Ms Openshaw-Lawrence and Mr Welsh, receiving their account as to how they had found the graffiti they presented. Notes of their interviews are at R1 pages 561 and 563 respectively.
47. On 24 March, Mr Humpage met with Miss Patel and received her account of her identifying the claimant’s handwriting, (notes of which are at page R1 page 565) and further met with Mr Lakis Katsaras the colleges estate manager, who advised of further graffiti he had found; once previously, and of his having been made aware of more recent graffiti by Mr Welsh and Miss Openshaw-Lawrence, notes of which are at R1 page 568.

48. Mr Humpage also sought clarification from Miss Taylor of how she came to be involved in the matter, the correspondence in respect thereof is at R1 page 587.
49. It is worthy here to note that, of the interviews had by Mr Humpage, the evidence was somewhat brief, in that the witnesses were only able to attest to how they found the graffiti and to comment on who they thought might be responsible. They were unable to give any other cogent evidence.
50. As above stated, Miss Webb furnished her report on the handwriting, on 13 April. Based on the general methodology for examining handwriting, that of applying accepted forensic document examination principals and techniques, to include elements of; style, letter construction, lateral variations and lateral expansion, design, dimensions, slant/slope and spacing, Miss Webb's findings on the five employees' handwriting supplied and compared with the handwriting on the four posters, were that:
- "a The handwriting on poster 1 is slightly clearer and easier to read than on poster 2, 3 and 4 but it is still possible to ascertain that they are all similar and more likely than not to be from the same hand.
 - b The handwriting on the four posters has, probably, been written by the same person.
 - c The handwriting on the four posters is very similar to the handwriting of employee A because:

There are marked similarities in:
 - i Style
 - ii Upright/irregular slant
 - iii Neglect in letter formation
 - iv Thin right in stroke
 - v Letters similarly constructed, eg (g).
 - vi There are no major differences."
51. Miss Webb, further advised that, as the documents were copied she had not been able to compare the pressure pattern on each document, giving her professional opinion, expressed on a qualitative scale, describing the strength of the evidence in respect of there being a positive match, as to:
- 1) Conclusive evidence;
 - 2) Very strong evidence;
 - 3) Strong evidence; and

4) Weak evidence;

concluded that there was “strong evidence that the writer of the four posters is, more likely than not, employee “A”. Employee A is identified as the claimant.

52. On 24 April, Mr Humpage met with the claimant and his Trade Union representative, Mr Sen, notes of which meeting are at R1 page 572. At the commencement of meeting, Mr Humpage explained that he had been asked to investigate the allegations that, he had “*defaced college notices using offensive, defamatory and threatening language.*” further stating; “*An initial elimination process of matching the handwriting on the posters identified a possible match with your handwriting and this is the reason I am meeting with you as part of my investigation*”. The claimant was then advised of the process, further being advised “*If my investigation concludes that there is a case to answer, you will be informed about the outcome. If my investigation concludes that there is a case to answer, a panel of senior managers will be convened and a disciplinary hearing will take place. At the hearing I will present my case to the panel and they will then be responsible for deciding on what sanction, if any, may be appropriate*”. The claimant was then advised that he would receive notes of the meeting.
53. The claimant was asked whether the hand writing samples which Miss Webb has conducted a comparison against, were his. The claimant confirmed they were. He was then shown the defaced posters, which he denied having so defaced, Mr Sen advising that the claimant was seeking his own handwriting expert’s report. In the course of events, a report on behalf of the claimant was not furnished for the purposes of Mr Humpage’s investigation. For completeness, the tribunal notes that whilst a handwriting report of the claimant was not furnished to Mr Humpage, the matter was addressed at the subsequent disciplinary hearing, at which Mr Sen presented evidence that the independent expert engaged on behalf of the claimant, had assessed there to have been approximately an 85% match between the graffiti and the claimant’s handwriting. The tribunal has not seen a copy of this handwriting report.
54. The notes of the meeting were subsequently sent to the claimant on 15 May. For completeness, it is here noted that the claimant questioned the accuracy of the notes, premised on his having taken a note of the meeting, but had been unable to locate them for comparison, asking that a further investigatory meeting be held. Mr Humpage having reviewed the note of their meeting, and in light of the claimant’s concerns being that he could not compare notes, on his notes being misplaced, determined that he believed the notes as sent, were an accurate reflection of the meeting which did not then call for a further meeting.
55. On 6 May, Mr Humpage sought further information of Miss Webb via Miss Taylor. Miss Taylor advised Mr Humpage to contact Miss Webb directly, removing her from the process and to avoid any suggestion of her

influencing the outcome. Mr Humpage duly contacted Miss Webb, asking her two additional questions and furnishing her the original posters to review.

56. Mr Humpage asked whether, when looking at the scale, assessing the likelihood as strong evidence as just above weak evidence, could she give him an indication of how likely she believed the handwriting to be that of the sample she had been given, expressed as a percentage and, second, having only seen copies of the posters and not the originals, whether in her opinion, would seeing the originals make her conclusions significantly more definitive. In response, Miss Webb provided an addendum to her original report, dated 8 June, advising that examining the original posters had clarified for her that the copies of the originals sent were exact replicas of the posters, which had not been tampered with in any way, and of the handwriting on the originals being clearer than the copies, her opinion in her report of the 13 April remained the same, and in respect of a percentage, stated that "strong evidence" would equate to a percentage of approximately 85%, cautioning against using numerical indicators; being the cause of confusion.
57. On the 4 June, the claimant's representative Mr Sen, wrote to the respondent, Miss Taylor and Mr Humpage in respect of further graffiti having been brought to his notice which appeared to have been freshly made, asking for it to be assessed by Miss Webb, stating:

"The handwriting appears to me to resemble handwriting in the graffiti that is alleged Laghan is responsible for. May this new piece of evidence be sent to your expert to check to see if this matches the handwriting of the other graffiti."

Mr Sen further asking that the graffiti not be erased so that appropriate tests could be carried out thereon.

58. Miss Taylor noted that Mr Humpage had been copied into Mr Sen's correspondence, and advised Mr Sen that she was not carrying out the investigation and that Mr Humpage would not doubt respond.
59. The further graffiti was subsequently furnished to Miss Webb on 27 July by Miss Porter, senior human resources advisor on behalf of Mr Humpage, asking the following questions:

- “1 Please confirm whether or not the writing/graffiti (notice 5) matches any of the other handwriting samples previously provided to you (handwriting samples 1, 2, 3, 4, 5 employees B, C, D, E, and F).
- 2 Please conform whether or not the writing/graffiti on notice 5 matches any of the notices/documents previously provided to you (I have attached notices 1, 2, 3 and 4).

- 3 Could you please confirm whether or not the writing on notice 5 is from the same person who wrote on notices 1, 2, 3 and 4 paying attention to particular letters, flow of handwriting etc.
 - 4 If notice 5 matches any of the handwriting samples and notices, please identify the corresponding match.
 - 5 How confident are you that it is a match (percentage would be good)?"
60. It is also here noted that, Mr Humpage appears to have contacted Miss Webb directly on 30 July and 5 August.
61. Miss Webb furnished her opinion on the additional graffiti on 5 August 2015, advising that the poster "contains the same handwriting as the four posters already examined. Approximately 80% match to employee A", referencing back to her report dated 13 April.
62. With respect the new graffiti, Mr Sen presented argument to Mr Humpage that this additional graffiti could not have been written by the claimant, as it was discovered at a time when he was suspended from the college. In respect hereof, Mr Humpage enquired of Mr Sen how the new graffiti had come to his attention; when, and whether he was aware as to how long the graffiti had been in situ, and whether he had recognised the handwriting and what action he had taken on becoming aware of the graffiti. Mr Sen advised that he first became aware of the graffiti on 2 June, and viewed it on 3 June, but that he did not know how long the graffiti had been there, advising that the person he had spoken to, thought they were fresh ones and that they could not have been there for over four to six weeks based on surrounding dust. Mr Sen further advised that, he had alerted Miss Taylor and Mr Humpage on becoming aware of the graffiti and that the handwriting had looked similar to the handwriting in one of the graffiti as had been sent to them.
63. On the new graffiti having been furnished, Mr Humpage felt that it had complicated matters in light of Ms Webb's clear professional opinion, that it was written by the claimant, for which he sought a second professional opinion as to whether all of the graffiti was written by the same person, Mr Humpage informing the tribunal that, whilst he had been comfortable with Ms Webb's conclusion, he felt the need to be further assured to ensure that he was doing the right thing, given the gravity of the accusations against the claimant.
64. On Mr Humpage requesting HR to find another independent expert, Ms Ivana Vojnovic was engaged; Ms Vojnovic's qualifications being that of a graphologist and a secretary of the Association of Qualified Graphologists. Ms Vojnovic was sent copies of all the initial pieces of graffiti to include the new graffiti presented by Mr Sen, and asked to compare them with samples of five college employees to include the claimant.

65. Ms Vojnovic's report was furnished on 8 August 2015, a copy of which is at R1 page 165. It was Ms Vojnovic's conclusion that:

"The handwriting in samples of employees B, D, E, F clearly did not match the handwritings present on any of the graffiti and they can thus be eliminated as potential suspects.

"Employee C", however, writes a very distinctive letter "E" in the samples provided; changes, specifically during graffiti writing to the writing of this letter would be highly unlikely. Since "Employee C's" very distinctive "E" does not appear on the graffiti samples, "Employee C" can also be discounted as a possible suspect."

66. And after addressing issues relating to the various graffiti concluded:

"All these factors taken together mean that it is not possible to conclude definitively that this is the same writer as the "graffiti" writer. The likelihood that it is in fact the same writer is nevertheless significant due to the following clear similarities."

67. Which after setting out the various similarities concluded:

"There is nevertheless a very high likelihood that all the graffiti (other than that in "Notice 4") was written by the writer of "Handwriting Sample 1-5". This likelihood is estimated to be of the order of 85% to 90%. Furthermore, the writers of all the other handwriting samples can be excluded, with 100% certainty, from being responsible for writing any of the graffiti samples."

68. Ms Vojnovic then furnished a table of her respective findings, finding that the likelihood that notices 1-5 was written by handwriting samples 1-5 were 85% and of the likelihood that notices 1-5 were written by the same writer 100%, save for Notice 4 assessed at 50%.

69. It is here noted that, with regards the samples furnished to Ms Vojnovic, the claimant had not been identified, the request being to verify whether there was a match between the graffiti and any of the samples provided to her. She had there independently concluded a match to the samples of the claimant.

70. For completeness, it is here noted that Ms Vojnovic included in her report a personality profile of the person who wrote the graffiti. The respondent's evidence is that this profile was not considered for the purposes of Mr Humpage's investigation or at the subsequent disciplinary hearing, which evidence the tribunal accepts.

71. Mr Humpage subsequently met with Ms Vojnovic and presented her with the original poster for her further review, Ms Vojnovic clear in her conclusions.

72. It was Mr Humpage's conclusion to his investigation that, the graffiti had been written by the claimant and that there was a case for him to answer. Mr Humpage's investigation report is at R1 page 499-622.

73. By correspondence of 11 September 2015, the claimant was written to and advised of the outcome of the investigation that, there was a case to answer and that it was being referred to a disciplinary hearing which was scheduled for 25 September. The claimant was further advised that, as the investigation was then completed the original graffiti would be released for his handwriting consultant's further inspection. The claimant was also advised that Mr Humpage would present the investigation case and would identify witnesses to be called, enclosing a copy of the investigation report.
74. The claimant was advised of his right to be accompanied, being asked to notify the respondent of witnesses he intended to call, and to furnish any documentation on which he wished to rely in defence of the allegations. The claimant was then advised of the possible outcomes of the hearing ranging from, no disciplinary action up to and including dismissal.
75. By the respondent's disciplinary procedures, at R1 page 625-632, at paragraph 2.4.2, it provides for the disciplinary panel where gross misconduct is alleged, to consist of a panel of two designated senior members of staff in accordance with the procedure set out at annex A.
76. In accordance therewith, Mr Welsh, vice principal, one of only three people with authority to dismiss, being; Mr Walsh, Ms Openshaw-Lawrence and Mr Andy Cole, principal, with Mr Cole being the designated officer to deal with appeals.
77. On 20 September, the claimant wrote to the respondent seeking a postponement, setting out a number of personal difficulties he was experiencing, being; the near death of his brother in a car crash, giving rise to emotional difficulties, together with difficulties over medicine to control his epilepsy, for which he advised that he was then seeing his doctor regularly who had put him on to the priority neurological consultant list to get epilepsy medicine as soon as possible, suffering from clonic tonic fits and partial seizures, and that he had recently been fitted with a leg brace to stop him tripping, which he had been doing recently following an accident where he had further broken ribs and damaged his knees, amongst others matters; the claimant suggesting time to undergo a neurologist's programme of six weeks, possibly eight weeks.
78. Miss Taylor in response, postponed the meeting for 25 September, advising that: "It isn't possible for us to delay the next meeting for as long as I think you are suggesting, as we do need to move forward with this." setting a new date for 8 October.
79. On 23 September, the respondent received a medical certificate from the claimant, suffering with a chest infection, being prescribed antibiotics and steroids, advising that he was currently unfit to attend a hearing.

80. On 25 September, Mr Sen, wrote to the respondent advising of the claimant recently being in hospital due to a lung infection, asking that in light of the claimant's medical condition, to include clonic tonic seizures, that he had expected the college to wait until his epileptic condition had stabilised or sought medical opinion before rescheduling the meeting. Mr Sen, further wrote to the respondent on 29 September seeking a postponement of 8 October meeting, advising of the complex nature of the claimant's medical problems.
81. Miss Taylor, on 2 October, advised that the hearing would be postponed, stating: "However, this will be the last postponement that we are able to agree to and the hearing will continue on this date, even in Laughlan's absence if it is not possible for him to attend." A new date was arranged for 22 October 2015.
82. On 16 October, Miss Taylor held a telephone conversation with the claimant, notes of which are at R1 page 227, during which conversation the claimant advised of having fits, having crashed his skull with lesions, having to sleep for 14-16 days upright, that he was on steroid inhalers, having a leg brace, that he was seeing his doctor, that he felt very vulnerable, that he had confidence in his representative, Mr Sen, by which Miss Taylor advised of the need for a date to be agreed suitable to all, and that arrangements could be made to accommodate the claimant attending the college.
83. Equally on 16 October, the claimant copied Miss Taylor into correspondence to his representative, advising of further appointments for 20 October and 22 October, stating:
- "I must be there to show the college a very big mistake has been made and I can do just this but would prefer to come to the hearing fitter than I am now.
- I do not wish to delay, I want a final outcome because this whole scenario is making me ill and my family worried."
84. Miss Taylor responded advising that, in light of his medical appointments and despite having stated that the hearing as listed would proceed in the claimant's absence were he unable to attend, she would nevertheless postpone the meeting to 4 November.
85. On 3 November, the claimant emailed Miss Taylor advising that, he had not looked at his emails for two weeks, recovering from illness and having been on complete bed rest, and requested that the hearing not go ahead in his absence, seeking a further postponement. Miss Taylor, keen for the hearing to proceed if possible, suggested a later start time than that scheduled, in order to make it easier for the claimant to attend and further suggested that the college cover the cost of a taxi.
86. Miss Taylor also advised that the panel would ensure that the hearing was manageable for the claimant and that he would be able to take breaks should he require, and that the panel would ensure that he would be able

to get home in time for his appointment, further advising that were he unable to attend, the panel would hear his case from his representative.

87. Later that day, the claimant confirmed that he would not be able to attend, recognising that the respondent had gone to great lengths for all to attend the hearing.
88. As a consequence of the claimant's inability to attend, Miss Taylor took the decision to further postpone the hearing, which was then re-arranged for 17 December 2015, and confirmed to the claimant on 22 November 2015.
89. On 16 December, at approximately 9.42am the claimant wrote to the respondent and his representative, advising of his medical condition and difficulties in his domestic life at some length, asking for the hearing to be re-arranged to:

“a date when I have recovered so as I am able to speak for myself and hopefully clear this issue for us all...

I apologise for the waste of time but realistically I can't apologise for my state of health under the circumstances. I recognise that the college cannot wait indefinitely and may proceed tomorrow in my absence. In that case Sen will have to do the best he can in my absence, which I am sure you will know is not the wholly satisfactory [sic] but I really have very little choice if you were to proceed in my absence.”

90. There was then a string of correspondence between the respondent, the claimant and the claimant's representative, Mr Sen, whereby discussions were had as to the hearing proceeding as scheduled on 17 December, with the claimant being represented by Mr Sen in his absence, when at approximately 9.02pm Mr Sen wrote to the respondent, after acknowledging the earlier postponement, acknowledged that the situation had now escalated to a point where because of the claimant's further medical and domestic issues, over which he had no control, these were matters that could not have been predicted at the adjourned hearings, Mr Sen advising:

“Whilst I am grateful to you express [sic] your confidence in me serving Laughlan's interest in his absence, I must also say, that in such fact sensitive matters, the dismissal panel would be deprived of the benefit of asking him questions that would be highly pertinent to its continuation of the enquiry... and further that I would not have the benefit of consulting him on matters that only he could provide answers and not me.

I must also say, due to his having fits and being aware of his medical history in the circumstances prevailing at the college (number of ongoing cases and Ofsted inspections) and having attempted to obtain all instructions from him and finding him not focused (understandably so), communication with him has not always been easy as he tends to delve into the past. For instance, I have not been able to obtain his view as to what documents should be included from his side.

Be that as it may, I will obviously try my best but I am afraid it will not be the best I would have hoped under the circumstance and certainly not as good as it would have been had he been present.

I recognise from his email it is not clear when the dark clouds hanging over him will lift and a small ray of light emerge which will enable him to be fit to attend a hearing, the only suggestion I can think of at this moment, would be to obtain OCH advice as to the likely date that medically he could be fit to attend the hearing and what reasonable steps (risk assessment, etc) ought to be taken particularly in the light of his recurring fits that will ensure he will attend the hearing safely and that adjustments are in place (such as ambulances on standby) that will ensure he is taken to A&E should he have a fit whilst in attendance.

I say what I say because having had a conversation with Laughlan, after Joseline told me about the new time of the meeting, I am not sure if Laughlan will not change his mind and struggle in tomorrow morning. I am worried for him if he does and something happens to him and we are not prepared for it.”

91. On the morning of 17 December, at 8.46am, Miss Taylor responded to Mr Sen acknowledging Mr Sen’s concerns, advising:

As you have expressed, I believe that neither you nor I can find a glimmer of information within Laughlan’s emails (yesterday’s or the ones preceding) that indicate that he will be able to attend a hearing within the reasonably foreseeable future, and, as you will appreciate, as we have adjourned the hearings in support of Laughlan’s medical condition for an exceptional period of time, it is imperative that we move, I believe this was also discussed at the previous hearing, and your commitment to proceed at the next hearing in his absence indicated your understanding and appreciation of the fact that this issue cannot stand still. We have, though, been aware of this date for quite a while now, so it is a shame that you have expressed this concern the night before the hearing...”

92. Miss Taylor further advised that the panel would be aware of the exceptional circumstances and that they would take it on board to ensure that they felt reasonably confident that they had all the information upon which to make a fair and appropriate decision.
93. Mr Sen responded at 8.59am, advising that the claimant was adamant that he would attend the hearing, Mr Sen asking for a contingency plan be put in place should the claimant have a fit during the course of the hearing or whilst on the college premises.
94. With respect the respondent having received notice on 16 December of the claimant’s intended absence at the hearing, advice was sought and arrangements made to receive evidence in the claimant’s absence as to: allowing his representative to present and respond on the claimant’s behalf, and that prior to the panel deliberating the outcome of the hearing, send the claimant the notes of the hearing and ask him whether his representative, as recorded in the notes, accurately reflects his position, as well as ask the claimant to comment on the notes of the hearing.

95. On the morning of 17 December, the panel met at 9am, not having received the notice of the claimant's intended appearance. The claimant and Mr Sen arrived at 9.40am, advising that the claimant had to eat first and had needed to take medication. The disciplinary hearing then commenced at 9.45am, notes of which are at R1 page 645-662.
96. At the commencement of the hearing, on the claimant and Mr Sen entering the hearing room, the panel immediately smelled alcohol, for which they asked whether either of them had been drinking. Both strongly denied drinking, the claimant advising that he was not able to drink due to the medication he was on.
97. It is further here noted that, the claimant was observed to be behaving very strangely, appearing to mutter to himself and acting in a disruptive manner, for which he was repeatedly asked whether he was well enough to participate in the meeting, the claimant advising that his condition made it hard for him to digest information and put things forward himself, but that he was trying his hardest. The meeting proceeded with breaks being afforded the claimant as necessary.
98. The claimant has not argued before this tribunal that having attended the hearing he was not able to fully participate.
99. The disciplinary panel was chaired by Mr Welsh, Deputy Principal, accompanied by Mr Marc Jordan, director of curriculum, as panel member and advised by Ms Joseline Porter, HR advisor. The claimant was represented by Mr Sen. Mr Humpage presented the respondent's case. The panel heard evidence from two witnesses, Miss Patel and Miss Taylor.
100. On the management case being presented by Mr Humpage, his witnesses were asked questions by the claimant's representative, as too was Mr Humpage. The claimant was also given the opportunity to present his case which was fully presented and has not been challenged otherwise before this tribunal. With regards the hearing, the tribunal notes Mr Sen advising the panel of the independent handwriting expert's report, obtained on behalf of the claimant, that it had assessed the claimant's handwriting to that of the graffiti at approximately an 80% match, although the report was not furnished.
101. A copy of the handwriting report prepared on behalf of the claimant. is at R1 page 468, dated 24 April 2015, which although the tribunal was not taken to this document during the hearing, the tribunal as seen the report in the bundle of documents and notes the conclusion of the report, which provides:

“In my opinion, there is strong evidence that Mr Fogarty wrote items 1-4. The evidence is such that I cannot completely exclude the possibility that some other person was responsible but I do consider such a possibility to be unlikely.”

102. The claimant's case at hearing was that, he had not penned the graffiti irrespective of the graphologist's findings/assessment, and that in respect of the later graffiti found whilst he was on suspension, this was evidence that he had not penned the graffiti but somebody else with similar handwriting.
103. It was the conclusion of the panel that, the documentary forensic evidence was compelling from effectively three handwriting experts giving a high percentage of 80%, that the claimant had penned the graffiti, and that in the absence of mitigation from the claimant, they found the allegations against the claimant of gross misconduct proved, which in the absence of mitigation from the claimant for a sanction lesser than dismissal, the respondent summarily terminated the claimant's employment.
104. The claimant was notified of the outcome of the disciplinary hearing by letter dated 5 January 2016, a copy of which is at R1 page 640-644.
105. By correspondence of 16 January, the claimant furnished grounds of appeal, (R1 page 313-317), which grounds of appeal were further expanded on, and is at R1 page 440-450.
106. The appeal hearing was arranged for 10 March 2016, to be chaired by Mr Andy Cole – principal; the delay being explained by Mr Cole as being for reason of college business. The respondent has not been challenged hereon. Mr Cole, was advised by Ms Openshaw-Lawrence, HR advisor. Mr Walsh presented the management case and Ms Porter, was advisor to Mr Welsh. The claimant was represented by Mr Sen. Notes of the appeal hearing are at R1 page 424-2439.
107. In essence, the claimant's grounds of appeal were distilled down to three principal concerns, namely; the disciplinary procedure not being followed; the finding of guilt being perverse; and the dismissal being an inappropriate sanction. The tribunal for completeness, further notes that the constitution of the panel was further challenged on grounds that Mr Cole was not the appropriate officer to hear the claim having delegated authority to Mr Welsh for the purposes of the disciplinary hearing; Mr Sen arguing that having so delegated his authority, Mr Cole was then effectively examining his own delegated decision.
108. In this respect, the tribunal notes the respondent's explanation that, the act of dismissal is not, act of delegated authority in accordance with the College's Articles of Government (The Articles) which issue was addressed at the commencement of the appeal hearing. The tribunal does not say further thereon.
109. On the hearing commencing on 10 March, much of the hearing was taken up with clarifying the claimant's grounds of appeal, the hearing then being adjourned to 16 May 2016.

110. On 26 April, Mr Sen advised of the possibility of the claimant not attending the resumed hearing due to his medical condition having got worse, further advising that the claimant had asked that he present the claimant's case in the claimant's absence
111. The claimant was not in attendance at the reconvened hearing.
112. At the reconvened hearing, the claimant's case as set out at the earlier hearing, was presented by Mr Sen, to which Mr Walsh had prepared a full response in writing, which was presented to the panel, copy of which is at R1 page 451-466.
113. From the notes of hearing, it is evident that Mr Sen presented full argument and challenged all evidence presented against the claimant.
114. It was Mr Cole's finding upholding the claimant's dismissal for gross misconduct, which was communicated to the claimant by correspondence of 25 May, a copy of which is at R1 page 497-498. It was Mr Cole's finding that, the College's disciplinary procedures had been correctly followed and that the hearing on 17 December, was appropriately and reasonably held taking into account the circumstances of the case, and in respect of the decision of dismissal being perverse, Mr Cole found that having been furnished with the claimant's commissioned expert report, confirming the high probability that the graffiti had been written by the claimant, giving account of the claimant's argument for graffiti being discovered whilst he was suspended, this had not explained the expert's unanimous conclusion as to the high probability that the graffiti was written by the claimant irrespective of where it may have been carried out, and that on a balance of probability, it was reasonable to conclude that the claimant was responsible.
115. With regard the harshness of penalty, Mr Cole determined that where graffiti was abusive and offensive to staff and/or students, referencing them as rapists, this amounted to acts of gross misconduct for which it was considered, dismissal an appropriate and reasonable sanction. It is here noted that, the claimant accepts that the sanction of dismissal was a reasonable sanction for the alleged graffiti, albeit he denies having penned the graffiti.
116. The claimant presented his complaints to the tribunal on 16 May 2016.

The law

117. In an unfair dismissal claim the burden is initially on the employer to identify a potentially fair reason for dismissal so as to satisfy section 98(1) and (2) of the Employment Rights Act 1996
118. It then falls to be determined whether or not the dismissal was fair. The determination depends on whether in the circumstances (including the size

and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating the reason as a sufficient reason for dismissing the employee and shall be determined in accordance with equity and the substantial merits of the case.

119. The tribunal must consider whether the employer's conduct fell within the range of reasonable responses of the reasonable employer in all the circumstances of the case, without substituting its own decision as to what was the right course to adopt for that of the employer. The burden is neutral at this stage.
120. The tribunal has to decide whether the employer who discharged the employee, on the grounds of the conduct in question, entertained a reasonable suspicion amounting to a belief in the guilt of the employee of that conduct at that time. This involves three elements: I) the employer must establish the fact of that belief; II) it must be shown that the employer had reasonable grounds upon which to sustain that belief; and III) the employer at the stage at which it formed that belief on those grounds, must have carried out as much investigation into the matter as was reasonable in all the circumstances of the case (**British Home Stores Ltd V Birchell 1970 IRLR 379**)
121. The employer does not have to prove beyond a reasonable doubt that the employee was guilty of the misconduct, but merely that they (the employer) acted reasonably in treating the misconduct as sufficient for dismissing the employee in the circumstances known to him at the time. It is not necessary that the tribunal itself would have shared the same view in those circumstances. Furthermore, it does not matter if the employer's view, if reasonable at the time, is subsequently found to have been mistaken.
122. The tribunal must remind itself that the Birchell test does not mean that an employer who fails to satisfy one or more of the three limbs is without more, guilty of unfair dismissal: (boys and girls welfare Society V McDonald 1997 ICR EAT)
123. Any procedural defect must always be sufficiently serious to render the dismissal unfair. see Fuller v Lloyds bank plc 1991 IRLR336.
124. The tribunal is mindful that the ACAS code is only a guide and is not a mandate to; failure to comply with every detail does not render a dismissal unfair. In considering compliance with the ACAS code the employer's size and resources are to be taken into account.
125. Where the tribunal considers that any conduct of the complainant before the dismissal (or, where the dismissal was with notice, before the notice was given) was such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent, the tribunal shall reduce or further reduce that amount accordingly (section 122 (2) Employment Rights Act 1996)

126. Where the tribunal finds a dismissal was to any extent caused or contributed to by any action of the claimant that was foolish, perverse or unreasonable, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable, giving regard to the findings. (section 123 (6) of the employment rights act 1996.)
127. By virtue of S.20 of the Equality Act 2010, an employer is under a duty to make reasonable adjustments where any provision, criterion or practice (PCP) that they apply, or any physical feature of premises that they occupy, in relation to a relevant matter, places a disabled person at a substantial disadvantage in comparison with those who are not disabled.
128. Once the duty is triggered, the employer must take such steps as is reasonable for them to take to prevent the PCP or physical feature having the disadvantageous effect. Failure to comply amounts to discrimination against the disabled employee.
129. Paragraph 4.5 of the Equality and Human Rights Commission 'Code of Practice on Employment' provides guidance on the meaning of 'provision, criterion or practice'. It states that the term which is not defined by the act, should be construed widely so as to include, for example, any formal or informal policies, rules, practices, arrangements, criteria, conditions, prerequisites, qualifications or provisions. A provision criterion or practice may also include decisions to do something in the future, such as a policy or criterion that has not yet been applied, as well as a "one off" or discretionary decision.
130. The disabled person must be placed at a substantial disadvantage before the duty to make reasonable adjustments will arise. According to paragraphs 6.15 and 6.16 of the Code, Mirroring section 212(1) of the Equality Act, substantial disadvantages are those which are not minor or trivial, and whether such a disadvantage exists in a particular case is a question of fact, and is to be assessed on an object basis; the comparison with persons who are not disabled being to establish whether it is because of disability that a particular provision, criterion, practice or physical feature actually disadvantages the disabled person in question.

Submissions

131. The parties presented written submissions to which they then made oral presentations. The submissions have been fully considered.

Conclusions

132. The tribunal is satisfied that the reason for dismissal was the respondent's determination that the claimant had been the author of graffiti within the respondent establishment, amounting to dismissal for conduct and is a ground that can found a fair dismissal.
133. The tribunal does not find that the reason for the dismissal was for reasons of the claimant's union membership or activities.
134. With regards the claimant's contention in this respect, the tribunal refers to its findings at paragraph 36; the action being taken against the claimant predating the union activities of which the claimant complains, and was not then the catalyst for action against him, and on which his claim in this respect is based. There is further no evidence before the tribunal raising issue as to the claimant's union membership or activities, for which such membership or activities would operate on this case.
135. The tribunal is satisfied that on the respondent discovering graffiti on 10 February 2015, as brought to HR's attention, the cursory inspection by the HR personnel, in particular that of Miss Patel, identifying similarities to the handwriting of the claimant, which although fortunate in the circumstances, the tribunal finds nothing untoward thereby in the correlation made to the claimant's handwriting.
136. On the tribunal further considering the steps of the respondent in obtaining an initial assessment of the claimant's handwriting from a handwriting expert, where the HR team had been unable to find further similar handwriting, the tribunal again can find nothing untoward by such action.
137. On the preliminary report having been received from the handwriting expert, Ms Webb, the tribunal is satisfied that the respondent then had sufficient information upon which it was reasonable to suspect the claimant to have been the author of the graffiti, warranting further investigation and for which it was reasonable to suspend the claimant.
138. On the claimant being suspended, the tribunal is satisfied that the claimant was sufficiently informed of the allegations against him and of the procedures to thereafter follow.
139. The tribunal is satisfied that the engagement of Mr Humpage to undertake an investigation was reasonable, and the enquiries Mr Humpage made in respect thereof were equally reasonable. The tribunal is satisfied that on the information before the respondent, enquiries were made of the

appropriate persons and all relevant evidence they retained elicited. The tribunal is particularly satisfied that, the efforts of Mr Humpage in establishing as fully as he was able the likelihood that the claimant had carried out the acts alleged, were particularly thorough and beyond reproach, not only qualifying the assessments of Ms Webb's reports but engaging a further graphologist to assess all of the relevant evidence.

140. The tribunal pauses here to consider the claimant's submission that, the investigation should have examined all members of staff's handwriting and anyone who could reasonably have defaced the relevant posters. The tribunal finds that this would not have been a proportionate course of action where the human resources review their files and the information therein, did not suggest any other individuals in circumstances where there is no suggestion that the HR personnel were in any way predisposed against the claimant. The tribunal is satisfied that the samples of handwriting disclosed to the graphologists were a reasonable sample.
141. On the product of Mr Humpage's investigations, the tribunal is satisfied that there was then sufficient evidence to warrant the matter being referred for a disciplinary hearing.
142. The tribunal is satisfied that the claimant was thereon fully apprised of the allegations he was to meet and furnish with all relevant information upon which the respondent relied. The tribunal is further satisfied that the claimant was then equally aware of the gravity of the allegations and that his continued employment was in jeopardy and was afforded significant time to fully prepare his case in defence.
143. With regard the disciplinary hearing as held on 17 December, on it being challenged by the claimant that, pursuant to s.20 and s.21 of the Equality Act 2010, failed to make reasonable adjustments by adjourning the hearing, the tribunal finds that in circumstances where the respondent had previously adjourned the scheduled hearing on four occasions over a period of three months on account of the claimant's ill health, in circumstances where there was then no indication of when the claimant may be fit to attend an hearing, and the claimant having been informed of the hearing being conducted in his absence, and where the claimant was represented by his union representative who had been fully engaged in the proceedings immediately following the claimant's suspension in March 2015, and fully conversant with the claimant's case in defence and the respondent's evidence, the tribunal is satisfied that on the respondent making arrangements for the claimant's representative to attend the hearing and give evidence on behalf of the claimant, being conversant with the claimant's case, and to furnish the notes of hearing affording the claimant an opportunity to review the evidence presented on his behalf by his representative and to further make comments on the case as presented, before the panel deliberated and reached their decision, this tribunal is satisfied that the arrangements then made were reasonable arrangements that would have enabled the claimant to fully partake in the

proceedings, and reasonable adjustments for the purposes of the Equality Act 2010.

144. On the claimant attending the hearing and on Mr Welsh making enquiries of the claimant as to his fitness to attend the hearing, on the claimant stating his fitness to participate as best he could, and in circumstances where he was then represented by Mr Sen, his union representative, who was fully conversant with the claimant's case, and in circumstances where the claimant had not presented to the panel that he was experiencing difficulties with the proceedings, the tribunal is satisfied that the arrangements then in place for the claimant to request breaks as and when he required and on the hearing being extended to facilitate the claimant's presentation of his case; arrangements being made for Mr Sen's teaching duties to be otherwise covered for him equally to continue at hearing, the tribunal is satisfied that those arrangements were then reasonable adjustments in all the circumstances of the case.
145. The tribunal is satisfied that the claimant was afforded the opportunity to fully present his case in defence of the allegations against him and test the respondent's evidence.
146. The tribunal is satisfied for the above reasons, that there was a full investigation from which the respondent was ceased of all relevant information upon which they could then make an informed decision.
147. On the further evidence before the appeal panel, the tribunal is satisfied that there was evidence upon which a reasonable employer could conclude that the claimant had committed the acts alleged.
148. It is not in dispute that the narrative of the graffiti, on the particular safeguarding posters on which the graffiti was written, were of such a nature sufficient to amount to acts of gross misconduct. The tribunal accordingly does not say further.
149. On the disciplinary panel having found the claimant guilty of the misconduct alleged, the tribunal finds that giving regard to the gravity of the offence and the nature of the claimant's defence, for which there was no mitigation offered, giving regard to the claimant's long service and unblemished disciplinary record, further giving consideration to the acts being out of character for the claimant, whilst this tribunal would find the sanction of dismissal harsh, the tribunal cannot say that a reasonable employer ceased of all the facts, would not have terminated the claimant's employment in these circumstances.
150. Turning to the appeal, the tribunal is satisfied that Mr Cole undertook a full examination of the claimant's case to fully consider the claimant's grounds of appeal, which appeal addressed the claimant's full arguments in defence of the allegations made against him and the sanction of dismissal.

151. For the reasons above stated, the tribunal finds that the claimant has not been unfairly dismissed when his employment was terminated for reasons of conduct.
152. On the allegations against the claimant, being allegations sufficient to amount to acts of gross misconduct, on the claimant being found guilty of the acts of gross misconduct, the sanction of dismissal was a sanction then open to the respondent. On the respondent terminating the claimant's employment for gross misconduct, the claimant was not entitled to notice. The claimant has not suffered a breach of contract on his employment being summarily terminated without notice.
153. For the reasons set out above, the tribunal finds that:
 - 153.1. The claimant has not been unfairly dismissed pursuant to section 98 of the Employment Act 1996.
 - 153.2. The claimant has not been automatically unfairly dismissed pursuant to section 152 of the Trade Union and Labour Relations (Consolidation) Act 1992,
 - 153.3. The claimant has not been wrongfully dismissed on being dismissed without notice and
 - 153.4. The claimant has not suffered discrimination on the protected characteristics of disability by a failure of the respondent to make reasonable adjustments.
154. The claimant's claims are accordingly dismissed.

Employment Judge Henry

Date: 4 December 2017.....

Sent to the parties on: .04/12/2017.....

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For the Tribunal Office