EMPLOYMENT TRIBUNALS

Claimant **Keith Brownhill**

Respondent **Dextra Group PLC**

Heard at: **Bristol (by video)** **On:** 24 & 25 August 2022

Before: **Employment Judge Hogarth**

Appearances
For the claimant: Mr Brownhill in person
For the respondent: Ms Daniella Gilbert, counsel

RESERVED JUDGMENT

The claimant was not constructively dismissed by the respondent and, accordingly, his claims for unfair dismissal and wrongful dismissal are dismissed.

REASONS

Introduction

1. On 21 July 2021 the claimant resigned from his employment with the respondent as Deputy Chairman, Group Finance Director and Group HR Director. His last day of employment was 31 July 2021.
2. On 31 October 2021 the claimant notified ACAS of his intention to bring claims against the respondent and an Early Conciliation Certificate was issued on 12 November 2021. By a claim form presented on 7 December 2021 he has brought claims for:
    a. constructive unfair dismissal (pursuant to sections 94, 95(1)(c) and 98(4) of the Employment Rights Act 1996 ("ERA 1996")),
    b. wrongful dismissal, that is to say, breach of contract relating to notice (pursuant to the Employment Tribunals Extension of Jurisdiction (England & Wales) Order 1994).
3. The respondent resists both claims. Although the claim form included claims for holiday pay and other payments, no details have ever been given of such claims. The claimant confirmed to me at the hearing that he was only pursuing claims for unfair constructive dismissal and wrongful dismissal.

Form of hearing etc

4. The hearing was conducted by video. There were some connection issues during the hearing that resulted in loss of time but did not otherwise affect the proceedings.

5. The claimant represented himself and gave sworn evidence. The respondent was represented by Ms Gilbert. Its witnesses were Mr Rupert Martin (majority Shareholder and Group Chairman, Dextra Group PLC), Mr Darren Ward (Group Technical Director), and Ms Nina Wenham (Group Financial Controller), who all gave sworn evidence.
6. There were three agreed bundles of documents: Bundle A (63 pages) containing the pleadings, orders and correspondence with the Tribunal, Bundle B (131 pages) containing other documents relied on by the parties, and a bundle of witness statements (22 pages) from (a) the four individuals who gave oral evidence, (b) Mrs Kay Gill (a former employee in the respondent's HR department) and (c) Mr Mark Leigh (nominee Director appointed by the minority shareholder).
7. The claimant's witness statement focuses mainly on documents in Bundle B and does not cover all factual allegations made by the claimant. However, there are factual allegations in the Grounds of Claim, much of which reads like a witness statement. The claimant is a lay person and appears not to have understood that his witness statement should have covered all the relevant facts within his knowledge, including those mentioned in the Grounds of Claim. Ms Gilbert did not take any point on the limited scope of the claimant's witness statement, and I note that in cross-examination of the claimant she referred to "statements" made by him in his Grounds of Claim. Accordingly, I consider it appropriate, in considering the claimant's oral evidence, to treat relevant factual statements in that document as if they had been made in a witness statement.

Preliminary matters raised at the hearing

8. On 22 August 2022, the claimant emailed the tribunal applying for permission to call Ms Wenham. The respondent informed the claimant that it was calling her in any event. In those circumstances I concluded it was unnecessary to consider the application further. Ms Wenham had put in a witness statement and the claimant would be able to cross-examine her if he wished.
9. Also on 22 August, the respondent emailed the tribunal applying for permission to submit a bundle of 131 pages containing the parties' documents (Bundle B), including 9 extra pages from the respondent to be added to the agreed bundle. The claimant sought permission to add a 3-page document relating to foreign exchange dealings. The parties agreed that it was not possible to stick to the 100-page limit and that it was desirable to allow the larger bundle on the basis that that would enable them to refer to the documents they wished, consistently with the overriding objective. I agreed to the 131-page bundle and allowed the claimant to put in his extra document on the basis that it might be relevant, and no obvious harm would be done if it was not relevant.
10. Ms Gilbert raised a further preliminary matter, referring to the lack of a list of issues and submitting that (a) it was not clear from the lengthy Grounds of Claim exactly what were the acts of the respondent that the claimant relied on as fundamental breaches of the employment contract that justify his claim to have been constructively dismissed and (b) that there were no specific contract terms identified by the claimant as having been breached.
11. On the latter point, the claimant confirmed that he was relying only on the implied term of mutual trust and confidence ("MTC implied term"), and not any other term of the employment contract.
12. As for his factual case on constructive dismissal, the claimant had made numerous factual assertions in his pleadings and witness statement without ever making clear

exactly what alleged breaches of contract he relies on. I agreed that this should be clarified before the oral evidence stage and asked him to produce a list of the factual allegations he relies on as breaches of contract. I adjourned the hearing to allow him to do that.

13. The claimant then described his list of matters he relies on as potential breaches of the MTC implied term, as follows:
    (a) In February 2021 he was excluded from meetings held by Mr Martin and relating to "private acquisitions" having previously included at similar meetings;
    (b) a false allegation that he had not taken proper expert advice when registering for VAT in relation to moving goods into Europe;
    (c) false allegations as to his arrangements for meeting the company's foreign exchange requirements, displaying a lack of trust;
    (d) bullying and lack of trust in relation to a particular HR case that had not gone in the way two other directors had wanted;
    (e) bullying and lack of trust in relation to an alleged failure on his part to obtain assistance in dealing with various issues despite being encouraged to do so;
    (f) bullying behaviour at a dinner on 9 July 2021 where he was criticised for being late.
    (g) personal attacks against him at a Board meeting in July 2021 shortly before his resignation.

    Following questions from Ms Gilbert, the claimant added the following items:
    (h) actions by the Chairman's PA Mrs Ward in posting staff vacancies without reference to the HR department;
    (i) being asked about his age by Mr Martin;
    (j) being asked about his future plans by Mr Martin;
    (k) being disparaged by Mr Martin about an issue to do with "standing desks".
14. The claimant told me that his list contained all the matters that he relies on as breaches of contract to justify his constructive dismissal claim. I explained (and I understood him to accept) that the list limited the matters he could rely on as breaches by the respondent of his employment contract. He did not subsequently ask for any changes to the list.
15. Ms Gilbert submitted that the list was still short of detail, especially in terms of dates and clarity as to who did and said what. However, in my view the claimant had given enough detail, taken with the pleadings, to identify the alleged breaches of contract sufficiently for the respondent to know the factual case it had to meet. I concluded that it would not be a productive use of hearing time to insist on further details. Instead, I asked the claimant to start his evidence by taking the Tribunal through the facts he alleges for the purposes of the matters he complains about, referencing documents in bundle B where appropriate.
16. In relation to the issues for determination in this case, Ms Gilbert referred me to paragraphs 40 and 41 of the respondent's Grounds of Resistance where (in addition to denying constructive dismissal) the respondent asserts that (a) any dismissal was fair under section 98(4) of ERA 1996, the reason being capability, conduct or some other substantial reason, and (b) the claimant would have been dismissed (fairly) in any event if he had not resigned.
17. The parties raised, as a further preliminary matter, the question whether witness statements from Mrs Gill (for the claimant) and Mr Leigh (for the respondent) could stand as evidence despite those individuals being unable to attend the hearing. I admitted the witness statements as evidence, as containing potentially relevant

evidence which the parties may wish to refer to. The fact the witnesses were not present for cross-examination would be potentially relevant to the weight to be given to their contents, so far as relevant to issues in the case.

18. The time taken to deal with the preliminary matters set out above, together with the connection difficulties, significantly affected the planned hearing timetable. There were numerous factual matters to be covered by the oral evidence. That evidence took up the remainder of the hearing, as there was not enough time for final submissions and preparation of an oral judgment. I reserved judgment on the basis that the parties would make final submissions in writing. I was asked to explore whether the hearing could be resumed on 26 August, but this proved not to be possible.
19. I was subsequently supplied with (a) written final submissions from each party and (b) a document from each party replying to the other party's written final submissions. In its submissions in reply the respondent objects to new statements of fact, apparently made as evidence, in the claimant's final submissions that were not mentioned in his witness statement, put to relevant witnesses or supported by documentary evidence. That objection is well-founded as new statements of fact made by either party in their written submissions cannot stand as evidence.

Issues

20. The first question for the Tribunal in this case is whether there was a constructive dismissal (with the burden of proof being on the claimant to show that there was such a dismissal) by reason of a fundamental breach of the employment contract by the respondent, that is to say a breach sufficiently serious for the claimant to be entitled to treat the contract as being at an end.
21. The issues relevant to that question are as follows:

    1. The claimant claims that the respondent acted in fundamental breach of the employment contract, having breached the implied term of mutual trust and confidence. The breaches he relies on are those set out in paragraph 13 above. The Tribunal will need to decide:
        1.1 Did the respondent do the things alleged by the claimant?
        1.2 If so, did the respondent behave in way that, viewed objectively, was calculated or likely to destroy or seriously damage the relationship of trust and confidence between the claimant and respondent?
        1.3 Did the respondent have a reasonable and proper cause for doing so.
    2. Did the claimant resign because of the fundamental breach by the respondent of the employment contract. The Tribunal will need to decide whether the breach was so serious that the claimant was entitled to treat the contract as being at end.
    3. Did the claimant affirm the contract before he resigned, by delay or otherwise? The tribunal will need to decide whether the claimant's words or actions show that he chose to keep the contract alive.

22. The claimant at one point described his treatment at the Board meeting on 20 July 2021 as "the last straw" that led to his resignation. But he says that his treatment at that meeting constituted a number of breaches of the MTC implied term. He relies on various things that happened at that Board meeting, and the other events or incidents in the list in paragraph 13 above, as each amounting to a breach of the implied term and, in the alternative, as together constituting such a breach.
23. If there was a constructive dismissal, various issues arise as to liability for unfair dismissal and, if relevant, remedy. In view of my conclusion that there was no constructive dismissal, it is not necessary to set those issues out.

Facts

24. I have found the facts set out in these reasons to be proved on the balance of probabilities after considering (a) the whole of the evidence, both oral and

documentary, so far as material to the issues to be determined and (b) the submissions made by each of the parties.

25. My findings of fact are set out in paragraphs 26 to 72 below and, in relation to each matter relied on by the claimant as a breach of the MTC implied term, in the paragraphs of my conclusions that appear under the heading "Findings of fact*"* as regards that matter of complaint*.*

Factual background: general

26. The claimant worked for the respondent from April 2000 in various capacities until his resignation on 21 July 2021.
27. The respondent, Dextra Group PLC, is the parent company of a number of companies which manufacture, sell and recycle commercial lighting equipment.
28. The majority shareholder in the respondent company at all material times was the Group Chairman, Mr Rupert Martin. His former wife was the minority shareholder, and she nominated Mr Mark Leigh as a Board member to represent her interests.
29. For a period of over 9 years up until July 2020 the claimant combined roles as Group CEO, Group Finance Director and Group HR Director. Mr Martin had been impressed by the claimant's management of financial matters and appointed him as CEO in January 2011, primarily for that reason.
30. In March 2020 (when the COVID-19 pandemic led to the first lockdown) Mr Martin was broadly content with the performance of the company and had been taking a less "hands-on" approach to the affairs of the company, although he attended work and exercised a supervisory role. At that time he also had a close personal relationship with the claimant, regarding him as a confidant and a friend, having over the years entrusted some personal tax affairs to him and discussed personal financial issues with him.
31. Mr Martin was aged over 70 in March 2020 and went into isolation in accordance with Government advice, effectively leaving the business in the hands of the claimant and Mr Ward, Group Technical Director.
32. At this point in the story, the evidence of Mr Martin and of the claimant diverged to some extent. I accept the evidence from Mr Martin and from the claimant as to how they each saw events at the time. Although their descriptions of what happened between March and September 2020 did not completely tally, there was a lot of common ground.
33. Mr Martin described how between March and May 2020 he became increasingly concerned about how the company was being run in the early stages of the COVID-19 pandemic. He decided to return to work at the end of May. He formed the view that the claimant's focus since the lockdown started had shifted to non-essential matters (for example in providing third parties with protective screens and PPE) rather than the company's core commercial lighting business, and that the quality and accuracy of the management information he was being provided with had deteriorated. He called a senior management meeting on 30 July 2020 at which he made clear his displeasure at the way things had been going and his expectation that his management team should pull together to get the business back on track. Mr Martin saw that the claimant was unhappy with the way he had expressed things and they agreed to meet the next day.
34. However, overnight, Mr Martin formed the view that the claimant had not taken his views on board as he expected and had not really accepted that as CEO his role was to promote the success of the business. Mr Martin decided to take back control of the company and to remove the claimant from his CEO role, leaving him as Finance Director and HR Director.

35. On 31 July the claimant and Mr Martin met and Mr Martin informed the claimant of his decision. A notice was sent to staff that day stating that with immediate effect the claimant was standing down as CEO and would resume his role as Finance Director. However, on 3 August 2020 the claimant resigned, giving three months' notice.
36. Mr Martin sought to persuade the claimant to stay on as he did not want to lose him as Finance Director. Initially this was unsuccessful, but he was told by Mr Ward that the claimant would be prepared to stay if there was an apology about the events on 30 and 31 July, which had upset him. Mr Martin attended a meeting on 24 September 2020 with the claimant and Mr Ward, at which he apologised. The claimant was offered the title of "Deputy Chairman" which was accepted, in addition to continuing as Finance Director and HR Director.
37. The claimant's evidence presented a different perspective on what had happened in the business in the period from the start of the lockdown in March 2020 until Mr Martin took back control of the company at the end of July. He did not accept that Mr Martin's perception of events between March and July 2020, including as to what the claimant had been doing during that period, was correct. He said that he and other senior staff had worked excessive hours in the early months of the pandemic to keep the business going, sorting out such matters as furlough for a proportion of staff and safe working for those still attending work. The claimant also described being offered an exit package after his resignation letter was received, and subsequently being invited to accept "early retirement" with a retirement package.
38. The claimant agreed that in the end he decided to stay on as Deputy Chairman, Finance Director and HR Director, following the management meeting at which he was asked to stay and Mr Martin apologised to him.
39. It is not necessary for me to make further findings of fact as to the events between March and September 2020. That is because there was no termination of the claimant's contract of employment after he sent his resignation letter. He agreed to a change in his roles and status and continued to work as Deputy Chairman, Finance Director and HR Director. He did not go through with his resignation.
40. From August 2020 Mr Martin took overall charge of things at Dextra, supported by a small team of directors, one of whom was the claimant. Mr Martin favoured a robust, but relatively informal management style, which was well understood by the directors and other senior staff.
41. Group Board meetings were chaired by Mr Martin. These meetings were seen primarily, but not exclusively, as a forum for reports or updates on the matters on the agenda and for discussion. The meetings were the main formal means of facilitating discussions between the members of the Board (i.e. the Group directors and the Chairman).
42. Bundle B contains the minutes of a number of Board meetings (whether of the Dextra Group Board or of the Board of a subsidiary company in the Group). The accuracy of these documents was not disputed by the claimant, and I accept them as a broadly accurate record of the agenda items discussed and of the main points made by Mr Martin and other directors present. Board minutes are not, of course, a transcript but a summary of what the author considers significant. As a matter of routine, the Board members would receive the draft minutes in advance of the next meeting and so had the opportunity to raise points or suggest corrections, including at the start of the next meeting when the minutes are formally "approved".
43. Although the claimant's position settled down for a few months after his decision not to go through with his (first) resignation, he was, and remains, very unhappy about the way he felt he was treated in the run up to his resignation in August 2020. It is clear that he has never accepted that Mr Martin's decision to demote him was fair or justified

by the facts. He took what happened very personally, and that is understandable given his long service (including 9 years as CEO) and his previous close relationship with Mr Martin. But I have no reason to doubt that Mr Martin had acted in what he saw as the best interests of the business.

44. The events leading up to the claimant's decision in September 2020 to remain in employment with the respondent are explored at some length in the pleadings and witness statements and were also the subject of some oral evidence from both the claimant and Mr Martin. However, issues relating to his demotion were not included in his list of alleged breaches of the MTC implied term as set out in paragraph 13 above. That did not surprise me, given that he decided in the end to remain in his employment, and he continued to work for about 9 months. The only relevance of the events in 2020 is therefore as part of the background to the claimant's case in relation to alleged breaches of the MTC implied term in 2021. I consider the findings set out above sufficient for the purpose of understanding the background to events in 2021. It is not necessary to resolve any further factual disputes about what took place in 2020.
45. From about February 2021, the claimant began to feel mistreated in various ways, including being (as he put it) sidelined, ostracised and criticised unfairly. Whether that perception was in fact true is a question that underlies his specific allegations of breaches the MTC implied term. I deal with the facts relating to his specific allegations in my conclusions below, but as his (second) resignation followed a Group Board meeting on 20 July 2021 I will now set out certain facts relating to that meeting.
46. An agenda for that meeting was circulated by Mr Martin's PA (Mrs Ward) on 5 July. An amended agenda was circulated on 12 July, which included new items under "Any Other Urgent Business", relating to (a) "HR -disciplinary procedures", (b) "Details and update on implication of dollar currency purchases in 2020 and beyond" (this item related to a number of TARF forex contracts to which the respondent was a party – described further below), (c) "Changes to current year accounting system to expedite management account production" and (d) "update on EU deliveries and loss of VAT". Those items all related to the claimant's areas of responsibility.
47. The claimant's perception was that they were added deliberately as an attack on him, but I have not identified any documentary or other objective evidence to support that view. He initially asserted that the late addition of items to the agenda was against the internal rules of the respondent, but he accepted in cross-examination that he was not a party to or beneficiary of the shareholder agreement he relied on for that assertion and that the agreement was flexible. The agreement in question is an agreement between the shareholders that appears to be designed to protect the minority shareholder, whose interests were represented by the nominee director, Mr Leigh.
48. The four new agenda items were added by Mrs Ward on the instructions of the Chairman (Mr Martin). Mr Leigh's witness statement explains that he requested the addition to the agenda of the foreign currency situation when he realised it had not been put on the original agenda as he expected, following on from the Board meeting on 22 June at which the TARF forex contracts entered into by the claimant on behalf of the respondent were discussed (I describe these contracts below). He also wanted the Board to discuss a VAT issue and the lack of up-to-date financial information, both of which had previously been discussed at Board meetings. This explanation was put to the claimant in cross-examination and was not disputed. He said he had not been aware of Mr Leigh's involvement previously. Accordingly, I accept what Mr Leigh said about how the three items were added to the agenda. He was the minority shareholder's nominee director, so clearly was not concerned about any possible effect on her interests of the late addition to the agenda he requested.

49. It is not clear whether the addition of the HR issue was instigated by Mr Martin or another Board member. Nothing turns on the point.
50. The claimant accepted that all the additional items had been discussed at earlier Board meetings and that at those meetings he had made no complaint about their being discussed. He also accepted that the Board meetings were the only forum where Group directors met formally to discuss issues of concern to any of them.
51. The claimant accepted that it was legitimate for Board members to ask for an update about an item if concerns were still current, but he disputed whether it was appropriate to "rehash" previous discussions (as he put it). The four additional items each related to matters that were ongoing in the sense that they had not been fully resolved to the satisfaction of the Board. None of the directors present at the Board meeting objected to the agenda items being added, either before or at the meeting
52. In these circumstances, I find that the addition of the four extra agenda items was not deliberately targeted at the claimant.
53. It terms of the claimant's decision to resign, matters came to a head at the July Board meeting. The additional agenda items were all discussed, which strongly suggests that Mr Martin (as Chairman) and the Board members collectively thought that it was appropriate for that to happen. The claimant thought that discussions of the additional agenda items beyond what he called "an update" were unnecessary and wrong because the issues had been discussed before. But the scope of the discussions that ensued was not a matter for him to decide, as it depended on the attitude of the Chairman (Mr Martin) and the other senior directors. The claimant did not say that he raised any objection to the discussions that took place and there is no record of anything of the kind in the minutes of the meeting.
54. The claimant felt he was treated unfairly, in particular by being criticised by Mr Martin in front of the other directors. He perceived the discussions on the four additional agenda items as personal attacks on him, a perception that will have owed something to his belief that their addition to the agenda was an act targeted at him.
55. I find further facts below in relation to the claimant's various allegations that the discussions of the additional agenda items involved breaches of the MTC implied term, before setting out conclusions on each matter complained about. The respondent disputes some of the facts alleged by the claimant in relation to those matters.
56. The claimant resigned for a second time on the day after the July Board meeting (21 July). After a short handover period, he left his employment at the end of July 2021.
57. Shortly afterwards, on 2 August, the claimant had a one-hour phone conversation with Mr Leigh, at the latter's invitation. Both of them made notes of the discussion.
58. Mr Leigh's note indicates the following. Mr Leigh wanted to know how the claimant thought things would go in the finance department after his departure. Among other things they discussed the VAT issue regarding exports to the EU (which still needed sorting), accounting systems and personnel, the forex position, and the way things had gone at the Board meeting on 20 July. The claimant accepted that the management accounts were behind schedule, as there had been a lot of other things to deal with. The claimant told Mr Leigh that he had expected more detail as to why things had been added to the agenda and had not understood why the items had been added, although Mr Leigh noted they all seemed very important to him and were of concern to the Board. In relation to the forex position, a schedule provided by the claimant listed all the current contracts, all of which were "out of the money" with no real prospect of any change based on current market rates. The claimant had been reviewing the options to

mitigate exposure to losses. The maximum exposure was very significant, with contracts held with 3 different agents all at similar rates. According to the claimant Dextra needed some $6-7 million a year, but he had been offered the chance to buy another $9 million and to extend the term. He acknowledged that his crystal ball gazing had caught him out. The claimant had not thought closing out the contracts was advisable, despite that being what the Board had decided should happen.

59. The claimant's note is not in identical terms, but there are similar descriptions of most of the matters discussed. His note states that he explained to Mr Leigh more of the details of the TARF forex contracts in question and why it was unwise to close out the contracts to crystallise a loss. He also explained that he had been looking at ways of using "surplus dollars" in transactions involving China and the Far East.
60. This conversation took place less than two weeks after the Board meeting, and I find that the conversation did proceed along the lines set out in the two records as summarised above. However, I should mention one significant difference between the two notes. The claimant's note states that he raised "my worry that more & more tax evasion by Mr Martin was going on again, despite the large tax payment & interest that had to be made during the divorce process, covering the previous tax evasion". Mr Leigh refers to this in his witness statement and says he does not recall the claimant commenting on alleged tax evasion. Despite the fact that Mr Leigh was not available for cross-examination, I consider that that statement of fact must carry weight. His position as a nominee director was rather different from the other Board members who all had executive roles in the company. His primary role was to represent the minority shareholder's interests, so he had some independence from the others. His note is detailed and records a number of frank disclosures by the claimant, such as his feeling that he had been "stabbed in the back". I do not consider it likely that he would have omitted to mention tax evasion, had the claimant mentioned it. For this reason, I consider that it is more probable than not that the claimant did not say the things about tax evasion he described. I note that the conversation took place shortly after the claimant had resigned and left employment and was considering his legal position. He may well have meant to mention the point, but I find that he did not in fact do so.
61. The TARF forex contracts in question were subsequently closed out, on financial advice, leading to a loss to the respondent of £434,722. The sum is not disputed, but the claimant does not agree that it was necessary or sensible to close out the contracts when that was done. It is not necessary for me to make findings of fact on that specific matter as it is not relevant to the issues to be decided in the case.

The TARF foreign exchange contracts at issue in the case

62. I will now describe some of the features of the TARF (Target Accrual Redemption Forward) foreign exchange contracts that feature in this case. During the hearing the claimant supplied the Tribunal with a helpful summary of TARFs as compared with certain other kinds of foreign exchange contract. This was broadly accepted as accurate by the respondent, and I base what follows on it. For practical purposes the key features of TARF contracts (as compared with other more conventional kinds of contract) are the availability of a favourable exchange rate and the increased level of risk of gains, or losses, resulting from subsequent changes in exchange rates.
63. As a substantial business with international suppliers and customers, it is important to the respondent for financial risks relating to changes in exchange rates to be considered and managed. For example, in placing an order for £10 million worth of

equipment (valued at the date of the order) payable in $US on delivery 6 months later, changes in the sterling/US dollar exchange rate after the order is placed could have a significant effect on the cost of acquiring the necessary dollars shortly before payment is due. The result to the purchaser could be anywhere in a range from a significant windfall gain to a significant unplanned-for loss. It is notoriously difficult to predict how exchange rates will change over any future period.

64. There are alternatives available to a purchaser other than leaving the acquisition of the necessary foreign currency to be carried out when it is needed for payment, at the exchange rate prevailing at the time (the spot rate). I mention three out of many variants.
65. Under a "forward exchange contract" a purchaser agrees to buy a fixed amount of a foreign currency at a specific date in the future. This will be at an agreed rate (set at the time of purchase) that could turn out to be higher or lower than the spot rate at the specific date. This allows the purchaser to know the cost in advance and protects them to that extent from fluctuations.
66. Under an "option" contract, the purchaser has the right to buy fixed amounts of currency at various future dates, perhaps starting some months after the date of the contract. This also provides a means of managing likely future currency requirements.
67. Under a TARF contract, the purchaser agrees to buy amounts of currency in the future at a more favourable pre-determined strike rate than the "forward" rate. However, these contracts are more complicated than the others I have described and there are features of the contract that carry risks for the purchaser as well as offering the chance of gains. There will be a number of expiry dates and there will be an agreed "strike rate" for each of those dates. The other terms of the contract produce the result that at each expiry date until the contract ends there is a risk that movements in the actual exchange rate will require the purchaser to acquire currency on what may turn out to be unfavourable terms as compared with prevailing spot rates. They may also turn out to be favourable terms leading to a gain. The "gearing" involved in the terms of the contract can accentuate any loss or gain.
68. It is possible for the holder of a TARF contract to "close out" the contract, which brings it to an end. That may come at a significant cost, depending on movements in the exchange rate since the contract was created, but it does eliminate any risk that the ultimate loss will be higher. It also avoids any chance of subsequent favourable movements in exchange rates resulting in a lower loss or even a gain.
69. The claimant described various benefits to the respondent in his entering into TARF contracts from time to time while he was employed by the respondent, including a beneficial exchange rate and the chance of higher gains (compared with the more conventional kinds of forex contract) if entered into at the right time, taking account of expected movement in exchange rates. He accepted that these contracts carry a greater level of risk but emphasised that there was also a chance of higher gains.
70. The claimant referred to the fact that in previous years going back to about 2015 the respondent had made gains, and losses, from TARF contracts but overall had gained. To that extent his evidence was not disputed although the respondent (a) did not agree the figures relied on by the claimant and (b) disputed whether the claimant had ever explained things to Mr Martin or the other directors at the time for them to understand both that TARF contracts were used in those years and the risk profile attaching to that kind of forex contract.

71. What was clear from the claimant's evidence about managing future foreign exchange requirements is that to fully understand the risks, benefits and disadvantages of different kinds of forex contract one requires either a high level of relevant commercial knowledge and expertise (including of anticipated changes in the relevant exchange rate) or sound advice from someone with that knowledge and expertise.
72. Decisions by a purchaser of foreign currency as to what kind of contract to use to manage its exchange rate risks will in part depend on its risk appetite. The purchaser's risk appetite will also affect its decisions as to the timing and size of the forex contracts it enters into. In planning how to mitigate exchange rate risks, a business will need to assess and from time to time reconsider its future requirements for any given foreign currency with a view to ensuring that, so far as possible, it will have enough of that currency to meet its requirements for that currency as they arise. It follows that an important question for the purchaser will be whether to contract for more of the currency than it estimates it will need, to provide a "cushion" in case it has underestimated those needs. If it decides to do that it will of course then need to decide how big the cushion should be. If it ends up with significantly more of the currency than it ends up needing, that may also be a problem for the business.

The law

Constructive dismissal

73. A termination of an employment contract by the employee will only constitute a (constructive) dismissal by the employer within the meaning of ERA 1996 if the employee is entitled to terminate it because of the employer's conduct. The Court of Appeal made clear in *Western Excavating (ECC) Ltd v Sharp 1978 IRLR 27* that it is not enough for the employee to leave merely because the employer acted unreasonably; its conduct must amount to a breach of the contract of employment.
74. According to Harvey on Industrial Relations, for an employee to be able to claim constructive dismissal, four conditions must be met:
    (1) There must be a breach of contract by the employer. This may be an actual breach or an anticipatory breach.
    (2) That breach must be sufficiently important to justify the employee resigning, or else it must be the last in a series of incidents which together justify his leaving
    (3) He must leave in response to the breach and not for some other, unconnected reason.
    (4) He must not delay too long in terminating the contract in response to the employer's breach, otherwise he may be deemed to have waived the breach and agreed to vary the contract.
75. In this case the claimant relies upon a breach of the MTC implied term. In *Malik v Bank of Credit and Commerce International SA* [1997] IRLR 462, the implied term was held to be as follows: "The employer shall not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee."
76. It is for the Tribunal to determine whether there has been a breach of the employment contract (*Buckland v Bournemouth University Higher Education Corporation* [ref]). The "range of reasonable responses" test that applies to other aspects of an unfair dismissal is not relevant to that question.
77. According to *Hilton v Shiner Limited [2001] IRLR 727* the MTC implied term is qualified by the requirement that the conduct of the employer about which complaint is made must have been engaged in without reasonable and proper cause. So, in determining whether there has been a breach of the implied term two matters have to be decided. First,

(ignoring their cause) were there acts which are likely on their face to seriously damage or destroy the relationship of trust and confidence between employer and employee. Secondly, was there reasonable and proper cause for those acts. For example, an employer who disciplines an employee for misconduct is doing an act which may well be "likely to seriously damage or destroy the relationship of trust and confidence", yet it could not be a breach of the implied term if there was reasonable and proper cause for taking the disciplinary action.

78. The MTC implied term is only breached by acts or omissions which seriously damage or destroy the necessary trust and confidence. Both sides are expected to absorb "lesser blows" (*Croft v Consigna PLC [2002] IRLR 851*). The gravity of an alleged breach of the implied term is a matter for the assessment of the Tribunal.
79. In *Omilaju v Waltham [2005] ICR 481* Dyson LJ said:

"14 The following basic propositions of law can be derived from the authorities.

1. The test for constructive dismissal is whether the employer's actions or conduct amounted to a repudiatory breach of the contract of employment: *Western Excavating (ECC) Ltd v Sharp [1978] ICR 221.*

2. It is an implied term of any contract of employment that the employer shall not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee: see, for example, *Mahmud v Bank of Credit and Commerce International SA* [1997] ICR 606, 610 – 611a (Lord Nicholls of Birkenhead), 620– 622 (Lord Steyn). I shall refer to this as "the implied term of trust and confidence".

3. Any breach of the implied term of trust and confidence will amount to a repudiation of the contract: see, for example, per Browne-Wilkinson J in *Woods v W M Car Services (Peterborough) Ltd* [1981] ICR 666, 672. The very essence of the breach of the implied term is that it is calculated or likely to *destroy or seriously damage* the relationship.

4. The test of whether there has been a breach of the implied term of trust and confidence is objective. As Lord Nicholls said in *Mahmud* , at p 610, the conduct relied on as constituting the breach must:

> "impinge on the relationship in the sense that, looked at *objectively*, it is likely to destroy or seriously damage the degree of trust and confidence the employee is reasonably entitled to have in his employer" (*emphasis added*).

5. A relatively minor act may be sufficient to entitle the employee to resign and leave his employment if it is the last straw in a series of incidents. It is well put in *Harvey on Industrial Relations and Employment Law,* para DI [480]:

> "Many of the constructive dismissal cases which arise from the undermining of trust and confidence will involve the employee leaving in response to a course of conduct carried on over a period of time. The particular incident which causes the employee to leave

> may in itself be insufficient to justify his taking that action, but when viewed against a background of such incidents it may be considered sufficient by the courts to warrant their treating the resignation as a constructive dismissal. It may be the 'last straw' which causes the employee to terminate a deteriorating relationship.

15. The last straw principle has been explained in a number of cases, perhaps most clearly in *Lewis v Motorworld Garages Ltd [1986] ICR 157* . ***487** Neill LJ said, at p 167c, that the repudiatory conduct may consist of a series of acts or incidents, some of them perhaps quite trivial, which cumulatively amount to a repudiatory breach of the implied term of trust and confidence. Glidewell LJ said, at p 169:

> "(3) The breach of this implied obligation of trust and confidence may consist of a series of actions on the part of the employer which cumulatively amount to a breach of the term, though each individual incident may not do so. In particular in such a case the last action of the employer which leads to the employee leaving need not itself be a breach of contract; the question is, does the cumulative series of acts taken together amount to a breach of the implied term? (See *Woods v W M Car Services (Peterborough) Ltd [1981] ICR 666* .) This is the 'last straw' situation."

16. Although the final straw may be relatively insignificant, it must not be utterly trivial: the principle that the law is not concerned with very small things (more elegantly expressed in the maxim "de minimis non curat lex") is of general application.

...

19 The question specifically raised by this appeal is: what is the necessary quality of a final straw if it is to be successfully relied on by the employee as a repudiation of the contract? When Glidewell LJ said that it need not itself be a breach of contract, he must have had in mind, amongst others, the kind of case mentioned in the *Woods* case at p 671 f– g where Browne-Wilkinson J referred to the employer who, stopping short of a breach of contract, "squeezes out" an employee by making the employee's life so uncomfortable that he resigns. A final straw, not itself a breach of contract, may result in a breach of the implied term of trust and confidence. The quality that the final straw must have is that it should be an act in a series whose cumulative effect is to amount to a breach of the implied term. I do not use the phrase "an act in a series" in a precise or technical sense. The act does not have to be of the same character as the earlier acts. Its essential quality is that, when taken in conjunction with the earlier acts on which the employee relies, it amounts to a breach of the implied term of trust and confidence. It must contribute something to that breach, although what it adds may be relatively insignificant.

20 I see no need to characterise the final straw as "unreasonable" or "blameworthy" conduct. It may be true that an act which is the last in a series of acts which, taken together, amounts to a breach of the implied term of trust and confidence will usually be unreasonable and, perhaps, even blameworthy. But, viewed in isolation, the final straw may not always be unreasonable, still less blameworthy. Nor do I see any reason why it should be. The only question is whether the final straw is the last in a series of acts

> or incidents which cumulatively amount to a repudiation of the contract by the employer. The last straw must contribute, however slightly, to the breach of the implied term of trust and confidence. Some unreasonable behaviour may be so unrelated to the obligation of trust and confidence that it lacks the essential quality to which I have referred.
>
> **21** If the final straw is not capable of contributing to a series of earlier acts which cumulatively amount to a breach of the implied term of trust and confidence, there is no need to examine the earlier history to see whether the alleged final straw does in fact have that effect. Suppose that an employer has committed a series of acts which amount to a breach of the implied term of trust and confidence, but the employee does not resign his employment. Instead, he soldiers on and affirms the contract. He cannot subsequently rely on these acts to justify a constructive dismissal unless he can point to a later act which enables him to do so. If the later act on which he seeks to rely is entirely innocuous, it is not necessary to examine the earlier conduct in order to determine that the later act does not permit the employee to invoke the final straw principle.
>
> **22** Moreover, an entirely innocuous act on the part of the employer cannot be a final straw, even if the employee genuinely, but mistakenly, interprets the act as hurtful and destructive of his trust and confidence in his employer. The test of whether the employee's trust and confidence has been undermined is objective (see the fourth proposition in para 14 above)."

80. In *Kaur v Leeds Teaching Hospitals* [2019] ICR 1, Underhill LJ gave the following guidance at paragraph 55:

> "In the normal case where an employee claims to have been constructively dismissed it is sufficient for a tribunal to ask itself the following questions:
>
> (1) What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or her resignation?
>
> (2) Has he or she affirmed the contract since that act?
>
> (3) If not, was that act (or omission) by itself a repudiatory breach of contract?
>
> (4) If not, was it nevertheless a part (applying the approach explained in *Omilaju* [2005] ICR 481) of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a (repudiatory) breach of the *Malik* term? (If it was, there is no need for any separate consideration of a possible previous affirmation, for the reason given at the end of para 45 above.)
>
> (5) Did the employee resign in response (or partly in response) to that breach?"

81. In deciding whether the employee resigned in response or partly in response to the breach the question is whether the repudiated breach played a substantial part in the reasons for resigning (*Wright v North Ayreshire Council* [2014] ICR 77, *United First Partners Research v Carreras* [2018] EWCA Civ 323).

Wrongful dismissal

82. A claim for notice pay for wrongful dismissal depends on the employee in question having been dismissed in circumstances where the employer did not have the right to terminate the contract by virtue of the employee's repudiatory breach of the employment contract.
83. In this case the claimant asserts that he was constructively dismissed, and the law governing the question whether there was a constructive dismissal is as described above. If the claimant was not constructively dismissed the claim must fail. Given my conclusion that there was no constructive dismissal it is not necessary to set out the issues that arise if there had been a wrongful dismissal.

Conclusions

84. I deal first with the specific breaches of the MTC implied term asserted by the claimant under seven headings in his written final submissions, using his description of each matter of complaint. I then deal with the other matters relied on by the claimant in the list in paragraph 13 above as breaches of the implied term, before setting out my conclusion on the question whether the claimant was constructively dismissed.

Complaint 1: "Lack of trust shown by Mr Martin" (in relation to the claimant's involvement in Mr Martin's personal financial affairs)

Complaint 1: introduction

85. The claimant relies on what he refers to as the lack of trust in him shown by Mr Martin in early 2021 as to his personal financial affairs as amounting to a breach of the MTC implied term. He says that he was wrongly excluded by Mr Martin from meetings in early 2021 with an advisor in relation to a possible IPO (initial public offer) involving his shares. The respondent's position is that he was not entitled to be at the meetings, which were confidential, and that there was no breach of contract by the respondent.
86. I note that the claimant's written final submissions include some additional factual statements about his activities for Mr Martin. I have not taken into account, as evidence, anything not mentioned in a witness statement or oral evidence.

Findings of fact as regards complaint 1

87. In February 2021 Mr Martin, in his private capacity as a shareholder, had some preliminary discussions about a possible IPO relating to shares in the company. This would have potentially affected both his shareholding and that of the minority shareholder. As I understand it, an IPO would have enabled Mr Martin and his ex-wife to realise some or all of the value of their shareholdings. It would also have a significant impact on the company if, as a result, it became a listed company.
88. Mr Martin regarded those meetings as confidential and sensitive, and they were conducted in private. His PA, Mrs Ward, was present as a note taker at his invitation.
89. The claimant described numerous occasions before 2021 when he assisted Mr Martin with personal financial matters, such as his tax return, his divorce settlement, and pension arrangements. He referred to working in the evenings on the divorce settlement. When venture capitalists had been called in by Mr Martin on two previous occasions the claimant had been present to advise. None of that evidence was disputed.
90. Mr Martin agreed, when asked, that he had involved the claimant in tax, pension and other personal financial affairs. But that was all he said. He did not say (and was not asked) that he always involved the claimant, from the outset, when considering

something relating to his personal financial affairs. His position was that he was not obliged to involve the claimant in those affairs.

91. The claimant has not substantiated his assertions that Mr Martin always involved him in his personal financial affairs and that he was somehow entitled to be at the relevant meetings about the possible IPO. While the claimant believed at the time (and still believes) that was the case, I did not identify any objective evidence to support a conclusion that his belief was correct, He did not ask Mr Martin about whether he always involved the claimant, and nor did he explain how he knew that he had always been involved in all Mr Martin's affairs. In any event, Mr Martin was a successful businessman of many years' standing. I consider it highly improbable that he would ever have given up his right to decide for himself whether, and when, to involve anyone else in his personal financial affairs. For these reasons I do not find that Mr Martin always involved the claimant in those affairs. Nor was there any basis disclosed by the evidence for the claimant's apparent belief he was entitled to be involved because of the things he had done for Mr Martin previously. It was at all times a matter of personal choice for Mr Martin as to whether, and when, to involve the claimant in relation to his personal financial affairs.
92. In his oral evidence the claimant referred to the fact that it was odd (as he saw things) that Mr Martin had asked his PA to be present at the meetings in early 2021 and that he was excluded. Mr Martin stated (and I accept) that she was there simply as a confidential note taker. The fact she was there does not support his belief that he should have been there and that it was wrong to exclude him. When asked if it was legitimate for Mr Martin to choose who was there, he replied "yes".
93. The claimant put the point slightly differently in his written final submissions, referring to the existence of a customary practice of involving him in financial matters involving the company or Mr Martin personally.
94. In my view there is an important distinction between Mr Martin's private financial affairs in themselves and the possible impact on the respondent company of Mr Martin's decisions, or potential decisions, in relation to his personal financial affairs. I find that there was no customary practice in relation to involving the claimant in Mr Martin's personal affairs as such. The claimant's prior involvement in some of those affairs was a personal matter, reflecting what was at the time a close relationship between himself and Mr Martin as friends. I accept Mr Martin's evidence on this point. There is nothing in the evidence (other than the claimant's own assertions) to suggest otherwise.
95. As for situations where a personal financial decision might have a significant impact on the respondent company (such as a decision to proceed with the suggested IPO in 2021), Mr Martin was aware that at some point it would be likely to be appropriate for him (as Group Chairman and majority shareholder), to inform the claimant (as Financial Director) and/or the other directors, and discuss the potential impact on the respondent. He might also need advice or information from them to assist him in deciding what to do. It would have been part of the claimant's duties as an employee of the respondent to participate in such discussions and provide relevant information and advice. However, it was a matter for Mr Martin to judge when the time was right for him to inform or consult the claimant or the other directors.
96. Mr Martin's evidence about the circumstances relating to the possible IPO (which I accept) was as follows. The initial discussions were strictly confidential because the matter was speculative and he wanted to explore what was involved in an IPO before

informing anyone else, including the claimant. An IPO would have a big effect on the business, so he decided to keep things private until he had taken a view on the matter. He felt that leakage of information at that stage could be damaging to the business. He did not inform the claimant, or anyone else in the company (other than his PA), in order to maintain confidence.

97. After his initial discussions with an adviser, Mr Martin did inform the claimant and other directors about the possible IPO. He required management and financial information as part of his decision-making, and they provided information and advice. This was involvement in the claimant's capacity as an employee, rather than as a friend.
98. The claimant's view was that the IPO plan as put to him was impracticable, in that the time needed to put everything in place was nearly twice the time proposed. He asked Mr Martin whether Mr Martin had been advised it would be difficult to complete things in 2022 as proposed. Mr Martin agreed that he had been told that, but said the advice he received was that there were possible advantages in acting that quickly.
99. Mr Martin decided not to proceed with the IPO for a number of reasons. He considered that the company had been over-valued, the expectations of his advisers as to its future profitability were too optimistic, and the changes to the way of working, manufacturing style and capital investment would not have been good for the business. A number of significant changes would be needed to the way the company was organised, including a "refurbished" finance department. He agreed, when asked, that that might have involved replacing the claimant as Finance Director. I note that the claimant does not claim that he was aware of that specific fact at the time, although he would have been aware that an IPO could lead to changes at board level and elsewhere in the company.

Conclusions on complaint 1

100. The claimant was consulted about Mr Martin's possible plan for an IPO, so his complaint is really that he was not consulted sooner, before Mr Martin decided to inform the respondent's senior management of his possible plans.
101. I have found that Mr Martin was not under any obligation to involve the claimant (as a friend) in his personal financial matters. That includes the early discussions about the IPO that the claimant complains about, which related to Mr Martin's and his ex-wife's personal shareholdings. At the time Mr Martin was acting in a personal capacity, and it was a matter of choice for Mr Martin how he wanted to proceed in those early stages. It was also a matter for Mr Martin to decide, if he wanted to take the matter further, when to inform the Financial Director (the claimant) and/or other directors about the matter.
102. For those reasons my conclusion on this complaint is that the claimant has not proved the existence of any actions that were calculated or likely to seriously damage or destroy the relationship of confidence and trust between employer and employee. Accordingly, there was no breach of the MTC implied term in relation to this complaint. If I had concluded that there were actions having that effect (and that Mr Martin's actions were attributable to the respondent), I would also have concluded that there was reasonable and proper cause for excluding the claimant from the early meetings with the adviser, namely Mr Martin's wish to keep everything confidential at that stage.

Complaint 2*: *"False allegations in respect of using export agencies and losing £10, 000 in VAT on product entering Europe"

103. The claimant complains about the way he was treated at the Board meeting on 20 July in relation to an agenda item relating to a VAT loss incurred in relation to some exports to France. He says that that he was unfairly criticised for errors not of his making and that Mr Martin shouted at him.

Findings of fact as regards complaint 2

104. Issues relating to the respondent's VAT registration in different countries fell within the claimant's areas of responsibility as Finance Director.

105. The claimant arranged for the respondent to be registered for VAT in Ireland and France, to facilitate entry of goods into the EU. This was done using expert agencies. The Irish registration went through promptly and was in place for goods entering Ireland in early 2021. However, the French registration was not complete by June 2021 and so was not in place for a delivery to the parent company of TK Maxx in France that was to take place in that month. The French registration was being conducted by an expert agency, Avalara, on behalf of the respondent.

106. The delivery to France took place towards the end of June 2021 and resulted in a loss of VAT of about £10, 000. There had been discussions between the claimant and other senior staff about alternative means of getting the goods to France that might have avoided a loss of VAT.

107. The delivery took place on the instructions of Mr Martin. An email dated 24 June 2021 from James Conduit (a senior manager and director) to the claimant and others states that "Rupert has just instructed that we are to send sales order 820692 on our vehicle ASAP and we will sacrifice the VAT". It appears that shortly after this email was sent an alternative way of delivering the goods without a VAT loss had been found, but this was not pursued.

108. The Board minutes for the 20 July meeting record that Mr Martin was concerned that EU deliveries had not yet been sorted and that the company had already lost £10,000. The issue had been minuted at previous meetings and Mr Martin asked the claimant why it had taken so long with no solution being found. The claimant replied that he had chased, but the process in France had not concluded as they were on week 8 of a 10-week process. He said goods had gone through Ireland the previous week, which involved some extra transport costs but enabled VAT to be reclaimed. It can be seen from the minutes that Mr Martin's concern was about the failure (as he saw it) to get the French registration sorted out in time for the delivery that had caused a loss of VAT.

109. In his oral evidence (which I accept) Mr Martin confirmed that he decided it was more important to get the delivery to the purchaser in time as the relationship with the purchaser was important to the business, that a £10,000 VAT loss was regrettable but accepted and that at the time he did not think there was a viable alternative that would work and avoid the VAT loss. He was aware alternatives were being explored but had been told that the best solution would not work in June but might work in July. Mr Martin accepted that there might in fact have been a viable alternative to the direct delivery of goods to France, but he was not aware of that at the time.

110. Mr Martin also said that at the time (a) he was aware the claimant had involved a specialist agency in relation to VAT registration in Ireland, but thought that was not the case in relation to France and (b) he was under the impression from information provided by another manager that the claimant had made a mistake of some kind in the documentation supplied to the French VAT authorities. I accept that Mr Martin did

think those things, but on both points he was under a misapprehension. There was an expert agency involved in the French VAT registration process, and there is no evidence to suggest that the claimant had made any mistakes in the documentation. The process in France was taking a long time to conclude after the application was made, but it appears that that was nothing out of the ordinary.

111. Mr Martin was concerned and irritated (at the time of the July Board meeting) that sorting out a tax efficient means of exporting goods to the EU following Brexit had taken so long. It appears from the minutes that he felt something had gone wrong at the outset, although it is not clear exactly what he thought the mistake was or whose mistake he thought it was. It is more probable than not that (a) Mr Martin had formed a view that that the claimant bore some responsibility for some early mistakes, and (b) Mr Martin expressed those thoughts at the Board meeting.

112. The claimant's evidence (which I accept) was that he was criticised unfairly by Mr Martin during the discussion on two matters – his failure to use an expert agency for the French registration and his supply of incorrect paperwork. However, the claimant had the chance to explain what had happened and he explained that he had used an agency in connection with the French VAT registration, and that he had not supplied incorrect paperwork. He also explained that there had been an alternative to Mr Martin's decision to go for a direct delivery of goods to France that would not have led to the loss of VAT (although there would have been some extra transport costs involved), One of those present at the Board meeting, James Conduit, had direct knowledge of the relevant events and was in a position to support the claimant's position on those points. The claimant said (and I accept) that Mr Conduit did do that. This was not disputed.

113. What is not clear from the evidence is that all Mr Martin's concerns about the VAT issue and the delay in securing French VAT registration were answered to his satisfaction by the claimant's explanations. It is more probable than not that his concerns were not all met, in at least two respects. Given the last-minute nature of the attempts to find an alternative way of getting the goods to France without losing VAT, I consider it probable that he thought the alternatives to a direct export to France should have been explored and costed sooner. I also consider it probable that he was not satisfied that when the problem of VAT on exports to the EU was first identified (as a consequence of Brexit) everything had been done as efficiently and speedily as he would have liked. It is also more probable than not that he considered the claimant bore some responsibility for those matters, as Finance Director, and that he expressed that view in the discussion. In my view, that is the most likely explanation for Mr Martin's conclusion, as recorded in the minutes, that the claimant "was busy enough so asks him to use a specialist company to work on projects like this in the future and pay for their help so that KB can focus on day to day and accounts on time". In other words, Mr Martin was saying that specialists for similar projects should be instructed from the outset (despite the cost involved) so that the claimant would not have to deal with the necessary work on top of his other day-to-day responsibilities. This was a forward-looking conclusion, but it does suggest strongly that he thought that had not happened in relation to exports to France.

114. The discussion of this agenda item did become heated, because Mr Martin felt strongly that things had not been done well and that this had contributed to a loss of £10,000. I do not find that Mr Martin shouted at the claimant. The claimant failed to prove, on a balance of probabilities, that he did.

Conclusions on complaint 2

115. The "VAT issue" was a current issue that was an appropriate matter to be on the agenda for discussion at the Board meeting on 20 July. The loss occurred towards the end of June. It was added to the agenda at Mr Leigh's request, but there was nothing sinister in that in terms of the claimant's belief that its addition was somehow part of a plan to "get at him". Mr Leigh's function as a Board member was to represent the interests of the minority shareholder and it would have been quite natural for him to want the Board to discuss the VAT issue. There had been a loss to the company that might have been avoidable, and it was perfectly legitimate for him to seek reassurance that steps were being taken to avoid that happening again.

116. It was in my view appropriate for the Board members, in discussing this agenda item, to hold the claimant to account for what he (or others in his finance department) had done on the matter and would do in future. It was important for the Board to ensure any necessary lessons were learned for the future.

117. At the time of the July Board meeting, the events leading to the loss of VAT on the export of goods to France were very recent and the process of VAT registration in France was ongoing. Only those directly involved would have been familiar with all the facts and details. In those circumstances it is not surprising that Mr Martin and the other Board members were not fully aware of all those facts and details at the start of the discussion. It was in my view legitimate for the Board members to seek to establish what had happened and why, to express their concerns and views (even if misplaced), to explore options and decide what to do about the issue and consider how things could be done better in future. I do not see anything out of the ordinary in that, or in the "responsible director" (here the claimant) finding that uncomfortable or feeling that any criticism of him was unfair.

118. In addition to the events surrounding the specific export of goods that had led to a loss of VAT, the wider issue of setting up a tax-efficient means of exporting goods to the EU had not been sorted out by the July meeting and it was also legitimate for Mr Martin and other Board members to question the claimant about this.

119. When the discussion of this agenda item began, Mr Martin was unaware of the involvement of an agency in the French VAT registration process, and he was also under the impression that the claimant had made mistakes in the paperwork. Criticism of the claimant on those specific matters was misplaced and so to that extent was unfair. But he had the chance to respond on those points and did so, with James Conduit's support based on his direct knowledge of what happened. There is nothing in the minutes to suggest that the claimant was not believed on those two points.

120. In my view the criticism experienced by the claimant (including that referred to in paragraph 112 above) is not of a kind that was serious enough to be "calculated or likely to destroy or seriously damage the relationship of trust and confidence" between the claimant and respondent. I would reach the same conclusion whether or not the criticisms mentioned in paragraph 113 were in fact accurate. Doubtless the claimant felt at the time that all the criticism of him and/or his department was unfair because Mr Martin was not on top of all the facts. The claimant's personal feelings at the time will have been accentuated by his belief that the agenda items were added late as part of a deliberate attempt to get at him in some way. But he was able to correct the two misapprehensions on the part of Mr Martin described above and he had the opportunity to defend himself on any other points. But whatever his feelings at the

time, in my view a robust discussion of the kind that took place on this issue, with a level of criticism aimed at him (whether in relation to his actions or those of his team) is exactly the sort of thing a person in the claimant's position must accept from time to time. Mr Martin was entitled to express his views on the matter, and one of the purposes of a Board level discussion is to enable views to be freely expressed and debated. Indeed, it was surely better (from the claimant's point of view) for Mr Martin's views to be expressed, debated and corrected at the meeting than for Mr Martin to continue to believe that the claimant had failed to use an expert agency and to supply the correct paperwork.

121. Accordingly, I do not consider that anything that happened at the meeting in relation to this complaint was calculated or likely to seriously damage or destroy the relationship of confidence and trust between employer and employee. There was no breach of the MTC implied term. If I had concluded that actions of that nature had taken place, I would also have concluded that there was reasonable and proper cause for them, namely that the other board members were entitled to hold him to account and discuss their concerns.

Complaint 3*: "*False allegations and lack of trust in respect of the foreign currency products"

122. The claimant complains about the way he was treated at the Board meeting on 20 July in relation to an agenda item relating to the TARF contracts in place at the time. He asserts that he was authorised to enter into the contracts in question and that it was unfair for his actions to be criticised at the meeting. He also complains about the way the other directors at the meeting criticised him. His position has always been that the TARF contracts in question provided benefits to the respondent (as compared with other common kinds of forex contracts) including a better exchange rate and the chance of higher gains, as well as the risk of higher losses. He also maintains that the claimant had profited significantly from similar contracts in previous years.

123. The respondent's position is that the other board members were not aware of the scale and nature of the respondent's exposure to risks related to the TARF contracts entered into by the claimant until around the Board meeting in June 2021, that it was a perfectly legitimate agenda item for the July Board meeting and that it was also perfectly legitimate to hold the claimant to account at the meeting for what he had done. Their concerns related to the risky nature of the contracts, the expected losses, and the fact that the contracts covered a quantity of dollars far in excess of the likely needs of the company.

Findings of fact as regards complaint 3

124. Over the 18 months or so prior to the July Board meeting the claimant, acting on behalf of the respondent, entered into a number of TARF dollar forex contracts. The claimant had been using TARF contracts previously, and his evidence (which I accept) was that in previous years the company had profited, or lost, from the use of these contracts depending on the circumstances at the time in terms of exchange rate movements. This was not disputed. However he did not establish that Mr Martin or the other directors were at the time aware of the nature of the contracts and the risk profile attaching to them. I find that they were not actually aware of that.

125. The claimant believed that the TARF contracts were beneficial to the company because of the favourable exchange rate on offer when they were entered into,

together with the prospect (if entered into at the right time) of higher gains. As I have found above, the possibility of gains was accompanied by the possibility of extra losses, if exchange rate movements proved to be unfavourable. In my view there was plainly an element of speculation involved in entering into these contracts. The claimant must have thought that there was a good chance of making a gain or breaking even, rather than making a loss, but he was plainly taking on some risk on behalf of the respondent.

126. The claimant believed that he had the authority to enter into the contracts. As he was the Finance Director the brokers he used must have assumed that, formally, he was able to bind the company by entering into the contracts in its name.

127. However, at no time did the claimant refer to the Board (or to Mr Martin) the specific question whether they were (or he was) in agreement with (a) the use of TARF contracts as opposed to less risky kinds of forex contract and (b) the total value of the contracts being entered into compared with the likely needs of the business for $US. There was no evidence that he did this. The claimant believed that it was for him to decide those things, as Finance Director and that Mr Martin and the Board members were not that interested in the details of his forex arrangements.

128. He used three different brokers for the relevant TARF contracts in existence at the time of the July Board meeting. He must have had some advice as to likely movements of exchange rates, but equally he must have known that there were no guarantees.

129. A Group Board meeting was held on 22 June. The minutes record a discussion about the foreign currency position as set out in a document supplied to the members, as follows:

> "ML asked about the foreign currency note on page 19 and the exposure to the dollar with a loss of £422,000. KB had dollars in stock at the end of December, pre-bought dollars at a lower price, if the rate drops then can sell them so wont have any further losses. RHJM advised KB at Christmas when first aware of the issue to walk away as soon as possible as first loss is often the best loss. RHJM asked if the company were committed to using these moving forwards, KB confirmed that we were contracted up until 2022. KB —the dollar is getting stronger and RHJM would like to move as many as possible as soon as possible, KB will monitor this or swap to Euro. Contract currently held between now and October 2022 worth $18m. ML agrees with RHJM and for KB to dispose of as many dollars as possible once the rate is below $1.37 and not buy anymore. KB confirmed that the company spend was $6/8m per year. NP —low cost unit purchases from the Far East and the top 5 accounts used are in sterling. RHJM has no intention of moving chip supplier from Osram to Seoul Semi Conductors as the predicted savings have not become apparent and also supply chain is not reliable at the moment. KB is managing this and using the dollars as best as possible. RHJM concerned that any further losses can't be quantified until year end as doesn't like surprises in the accounts."

130. This discussion related to the TARF forex contracts. The reference at the end to a change of chip supplier refers to a possible change that had been considered previously and might have resulted in a need for more foreign currency.

131. As described in my findings of fact in paragraphs 46 to 52 above, the matter of the TARF contracts was added, at Mr Leigh's request, to the agenda for the next Board meeting (20 July) as an additional item under "any other urgent business". This was circulated a few days before the meeting. The minutes of the July meeting record the discussion as follows:

> "RHJM very concerned about the currency situation and advised that when he and fellow directors were informed they were gobsmacked. RHJM asked KB to explain the background and current situation on this. Negotiated dollar contracts in April to June 2020 that roll for 4 years, all contracts total $26m if all come in. Auditors assessed loss of £400,000 in 2020 accounts. RHJM asked for annual dollar usage, KB - $3.4m to date this year. RHJM asked for worst case scenario at year end, KB - $88,000 or have to provide $290,000 and then a some to roll over in to 2022. RHJM disappointed that the company is stuck in the middle of a firm contract that the board should have been made aware of, prior to signing up. KB is the custodian of the company's money, a company that makes light fittings, not a currency trader and very disappointed that the company's money has been gambled and asks KB to ensure nothing like this occurs again. ML asked KB if he had yet sought advice from the brokers on how best to manage until the end of the contract and like RHJM is very disappointed with the liability and exposure to the company that should have had board sanction prior to being agreed.
> RHJM asked KB to prepare a plan ready for the next board meeting so that the company can get out of this with limited downside and then the board can discuss the best way forward with it.
> RHJM reiterated to KB that it is well known, under the court order, that the minority shareholder has the ability to instruct third party accountants to investigate the group's affairs if it is suspected the company is not being run correctly. RHJM has done everything possible and correctly to ensure that everything is complied with and done properly, and KB has exposed him and the company with this."

132. In his oral evidence (which I accept) Mr Martin re-iterated his view that the respondent should not be gambling, as he saw it, on exchange rate movements and that their forex contracts should be aimed at no more than the amount of dollars (or any other currency) that it needed from time to time in connection with its business. He said (and again I accept), that he had not fully understood before the June meeting that the company was exposed to TARF contract risks different from other kinds of forex contract and that the scale of the contracts in place was well in excess of any reasonable requirements the respondent had for dollars. He felt that the contracts in place were, in effect, speculating on movement of exchange rates and that, had he been aware, he would not have agreed either to the use of TARF contracts or the scale of the contracts in place.

133. At the time of the Board meeting on 20 July the outstanding TARF contracts up until October 2022 (a period of about 15 months) amounted to some $US 18 million worth. . The £18 million figure was disputed by the claimant. However, it appears to have been the figure that the Board were informed was the total at the time of the June Board meeting. It is figure given in the minutes for that meeting and, while it is impossible for me to be sure of its accuracy, it is more probable than not that the true figure was not significantly different from that amount The figures appearing in the various documents before me were not all completely consistent but, on any view of the evidence, the sum involved was large and I do not consider that any likely margin of error could affect the validity of my conclusions

134. In the two previous years the company's requirements for dollars had been in the region of $US 3-4 million per year. In 2021 the dollar requirements up to the July meeting had already amounted to some $US 3.4 million, although the need for dollars was expected to reduce for the remainder of the year. Although there had been a new potential purchase for that year from Korea that might have required more $US in future, that purchase was not going through. According to the claimant, the company needed some $US 6-7 million a year. That figure was higher than the respondent's

estimate, but even on his maximum figure (and allowing a small cushion to cater for the possibility that that was an underestimate) it can be seen that the company's TARF contracts amounted to more than twice the amount of $US dollars it was likely to need over the following 15 months. That excess would be $US 9 million or more. A figure of anything of that order of magnitude was, on any view, very substantial.

135. I note also that in his conversation with Mr Leigh (see paragraphs 57 to 60 above) shortly after he resigned, the claimant referred to having been offered $US 9 million worth of TARF contracts at what he thought was a favourable rate with an offer to extend the term. The claimant took up that offer and commented that his "crystal ball gazing" had caught him out. He did not, it appears, suggest to Mr Leigh that the business actually needed the dollars in question, and his comment about crystal ball gazing supports the view that he had taken on extra TARF contracts at least partly for the purpose of aiming to make a gain on the forex deal, rather than to manage exchange rate risks for the respondent's business needs for dollars over the following 12 – 18 months. The contract amount he referred to broadly corresponds to the excess I describe in paragraph 134 above, which also supports that view.

136. TARF contracts are complex, and not easy for lay people to understand. I find (based on the direct evidence of Mr Martin, Mr Ward and Mr Leigh) that prior to May/ June 2021 they had not fully understood either the risks attached to TARF contracts or the true scale of the respondent's exposure to such risks. The claimant asserted that he had explained TARF contracts to Mr Martin in particular, and to other directors, on previous occasions. I accept that he did attempt to do that, but he did not succeed in making Mr Martin or the other directors fully conversant with what the contracts involved or the scale of the contracts the respondent was taking on. It appears from the minutes of the June Board meeting that Mr Martin became aware there was a foreign exchange issue at the end of 2020 and that his instinct and advice to the claimant was to "walk away" to minimise the risk of further losses. I accept his oral evidence that he was not then fully aware of the risk profile of TARF contracts or the potential scale of the losses involved. These were valued at the time of the June Board meeting at £422,000. The issue was a complex one and the various ramifications of the contracts held by the respondent were not easy to understand.

137. At the June Board meeting Mr Martin expressed concerns about the issue and the claimant does not complain about that. Mr Ward and Mr Leigh shared those concerns. Mr Leigh, who is a nominee of the minority shareholder, was especially concerned about the TARF contracts and the losses to the respondent (and hence to the minority shareholder) that might result from closing out the respondent's position.

138. Among his complaints about the Board meeting on 20 July, the claimant alleges that he was "shouted at" by Mr Martin in relation to at least two of the agenda items in question. Although in his grounds of claim he refers to being shouted at in relation to both the foreign exchange issue and the loss of VAT issue, the evidence was focused only on the discussion about foreign exchange. His witness statement does not mention the point, but in his oral evidence he referred to being shouted at in the context of the discussion of the TARF forex contracts. He asked Mr Martin (in cross-examination) whether he raised his voice at the meeting. Mr Martin's response was that he spoke firmly to the claimant as he thought he "had crossed a line" in relation to the TARF contracts as he (Mr Martin) was not a gambler. But he asserted he had not spoken to the claimant unfairly, and he specifically denied raising his voice. Mr Ward's witness statement states that (in relation to the forex issue) "Rupert was clearly upset

by what had happened but, although his voice was raised, he did not act inappropriately or say anything which I considered to be unjust or aggressive". In cross-examination Mr Ward refined that statement, saying there was no "undue volume" and that Mr Martin's comments had been understated given the magnitude of the issue. He said there was nothing different from other discussions and, specifically, that there was no shouting. Finally, Mr Leigh states in his witness statement that:

> ".. as with all board meetings I attended, the behaviour of all present was civil and, while Rupert held Keith to account for his involvement in those matters that were concerning me, his conduct was in no way untoward. In many ways, I consider that he was more generous in his treatment of Keith than most individuals would have been."

139. My finding on this point, having considered all the evidence, is that the discussion did become heated and that this did include a raised voice on the part of Mr Martin on a matter that had upset and frustrated him. However, the claimant's assertion that Mr Martin shouted at him was not substantiated by the evidence as a whole and I find that this did not happen.

Conclusions on complaint 3

140. I have already concluded that, despite the claimant's belief to the contrary, that the agenda item was not added to the agenda late, deliberately to get at him in some way. In the light of the discussion at the June meeting (when the Board became aware of the potential losses due to the scale of the TARF contracts in place), it was inevitable that the subject would be discussed again. Mr Leigh asked for the item to be added when he saw the original agenda, and it was perfectly legitimate for him to do that and for the agenda to be changed.

141. The claimant regarded the discussion that followed at the meeting as illegitimate because it had been discussed at the June meeting and a plan of action had been agreed. He accepted that an update might have been appropriate but not a discussion. In my view this belief was naïve. Given the bad news discussed at the June Board meeting it would have been astonishing if the matter had not been discussed again at the July Board meeting.

142. I consider that it was perfectly reasonable at the July meeting for Board members to demand to know exactly what had been going on in relation to the respondent's forex contracts and why the TARF contracts were entered into. It was in my view equally reasonable for them to focus on why Board approval (or the approval of Mr Martin) for using TARF contracts at all, as well as the scale of the TARF contracts in place, had not been sought. The claimant believed that he had all the authority he needed as Finance Director, and that it was somehow wrong or unreasonable for the Board to quiz him about the contracts and to criticise the decisions he made (acting without reference to Mr Martin or any of the other directors). But again that belief was, in my view, naïve. The reality was that he had taken on a substantial quantity of dollar TARF contracts, way in excess of any reasonable estimate of the business' upcoming needs, without referring the matter to the Board or to Mr Martin. Once Mr Martin and the other directors became aware of the scale of the contracts in place and of the possible loss to the respondent as a result, further questioning and criticism was inevitable.

143. I do not accept the claimant's argument that because he had used TARF contracts before, and very successfully in some years, it was somehow illegitimate or unreasonable of the Board to raise the matter and to criticise him because things had

gone wrong in 2021, due to adverse movements in dollar/sterling exchange rates that he had not anticipated. Mr Martin and the other Board members had not understood the risks of TARF contracts, or the scale of the respondent's exposure to those risks, prior to May/June 2021. In other words the claimant had never sought to establish that the Board and/or Mr Martin (as majority shareholder) shared the same risk appetite in relation to the use of TARF contracts as he had. If he had successfully explained everything to Mr Martin, or to the Board, in advance of his entering into the contracts, his argument would carry a lot more weight. But he did not do that sufficiently for any of the directors to truly understand the nature and scale of what he was doing. Mr Martin did become aware of a possible problem with the business' forex contracts at the end of 2020, but he was not fully aware of the nature or scale of the problem until shortly before the June Board meeting. That does not surprise me as the facts involved were complicated and difficult to understand.

144. Given the facts set out above it is no surprise that that the claimant was criticised at the July Board meeting. In this regard I note Mr Leigh's comment in his witness statement that he thought the claimant had been treated more generously by the chair than most individuals would have been.

145. I conclude for all the above reasons that there were no actions taken by Board members in relation to this agenda item that were calculated or likely to seriously damage or destroy the relationship of confidence and trust between employer and employee. A director must expect to be held to account for their actions and those of their department, and to be criticised where there are perceived shortcomings in those actions. In any event, even if there is any room for doubt on that matter, I have concluded that the Board members had a reasonable and proper cause for their actions. They were entitled to hold the claimant to account, including by demanding more information and explanations and by criticising the claimant for his actions, which had not been approved by or properly referred to the Board or Mr Martin.

146. It follows from those conclusions that there was no breach of the MTC implied term in relation to the matters underlying this complaint.

Complaint* 4: "*Bullying & Lack of trust in respect of the HR processes"

147. In his final written submissions the claimant deals with two different matters under this heading. One relates to an HR matter discussed at the July Board meeting (item (d) in the claimant's list of matters in paragraph 13 above). The other relates to some instances where the claimant says vacancies were advertised without reference to himself or the HR department (item (f) in the claimant's list). I propose to deal with these two matters separately, as complaints 4A and 4B

Complaint 4A: introduction.

148. The claimant complains about the way Mr Martin and others treated him at the July Board meeting about an HR issue involving a particular manager (who I shall refer to as "E"). His position is that the item relating to the issue was added late to the agenda to get at him, that the issue related to the outcome of a grievance raised against E by a non-Board director (at the instigation of Mr Ward), that the outcome of the grievance was confidential and that Mr Ward was aggrieved that the claimant would not give him details, and that at the Board meeting Mr Martin demanded what had been done and was informed by the claimant that the matter had been dealt with under the respondent's policies and in accordance with the ACAS code of practice.

The claimant asserts that he was criticised at the Board meeting, by Mr Martin and Mr Ward, because he wanted to follow a legally compliant process rather than aiming to gather evidence to justify a termination of E's contract of employment.

149. The claimant's Grounds of Claim include some factual assertions (mostly about things allegedly said or done by Mr Ward in relation to the procedures followed in E's case) that were not covered in the claimant's witness statement or in anything said by the various witnesses in their oral evidence. Paragraph 40 of the claimant's witness statement simply refers to the minutes of the discussion at the 20 July Board meeting Mr Martin's witness statement does not deal with the HR matter involving employee E. Nor does Mr Ward's witness statement, bar one general reference to some ongoing HR problems.

Findings of fact as regards complaint 4A

150. The agenda item "HR - disciplinary procedures" was added late to the agenda for the Board meeting on 20 July. This related to a matter that had come up previously.

151. The minutes for the July meeting (the accuracy of which as a summary of things said in the discussion is not disputed) say this about this agenda item:

> "RHJM very concerned about HR and disciplinary procedures and not happy about two examples. KB —the company refer to ACAS and internal practice. The Group board discussed specific examples. One has been minuted at board level on numerous occasions over the last 4 years and RHJM is very disappointed that nothing has been done on this. RHJM very concerned that procedures are weak and not followed for all and asks for KB to consider this situation to ensure it is improved and doesn't happen again. It is very important that the company is seen to act fairly. ML —concerned that staff do not know the outcome of disciplinary cases and also that the 3d party manager making the decisions is unbiased and trained to do this. RHJM asked KB to diffuse the specific situation and talk to the individuals involved and ensure that procedures are correct moving forwards for the best interest of all and suggests another meeting on this if required."

152. The particular case referred to in this minute is that of employee E, who had been seen for some time as a problem, because of a perception by some Board members that he was hard to manage and was an impediment to the progress of the company. In the minutes of a Board meeting on 10 November 2020 for one of the Dextra Group companies there is a minute of an earlier discussion about E. It records that Mr Martin thought there was a tremendous team spirit in the company that E "just doesn't buy into". Mr Leigh thought the situation needed to be dealt with quickly and the need was to work out how to make it happen. Mr Ward said all need the courage of conviction to see it through. Mr Martin ended by saying that "this" is an HR issue and asked the claimant to deal with it. The accuracy of those minutes was not disputed.

153. Those minutes indicate that the Board were looking to the claimant to do something (as HR director) to sort out the problem they saw with employee E. Although the wording of the minuted item is not entirely clear as to what the "it" was that they wanted, it appears that the other directors were expecting the claimant to find a way of ensuring that E left his current role. That is how the claimant described things in his oral evidence, and that description was not disputed.

154. In cross examination, the claimant gave some further details of the matter. An employee had raised a grievance against E, saying that E had accused the employee of racial discrimination. Accordingly, the respondent was obliged investigate the

grievance. Another manager was asked to do that, and he had worked on various statements and correspondence. There was no meeting with the complainant to discuss the grievance. Nor had there been a formal outcome sent to the complainant, although an advisory letter had been sent to E which indicated (according to the claimant) that the grievance had been upheld to some extent. None of this was disputed by the respondent.

155. The claimant agreed that at the end of June 2021 the original complainant had chased him as to progress with his grievance. He said he told the complainant what had happened, but he agreed no formal outcome letter had been produced.

156. Ms Gilbert put it to the claimant that there was scope for saying that the grievance had not been well handled. His answers were somewhat evasive, saying that anything could be improved and that she was "cherry-picking" by asking him about this one case. He did accept however that there had been developments in the case in June 2021 that meant that any concerns about it were current in July.

157. While the direct responsibility for carrying out the grievance process fell on the manager conducting it, HR issues of this kind fell within the claimant's responsibilities. Accordingly, it naturally fell to him to be asked to account to the Board for what had been going on with E's case.

158. The discussion of the agenda item was critical of the way E's case had been handled and Mr Martin and Mr Ward expressed frustration about that and the failure (as they saw it) to make progress in dealing with E more generally. Again, that will have involved criticism of the claimant, partly because he was the Director with overall responsibility for HR matters but also because Mr Martin and Mr Ward were expecting some sort of disciplinary or other action to be taken against E.

159. The claimant's position at the meeting on the more general issue of what to do about E was that any procedures adopted in relation to E should be legally compliant.

160. There is no reference in the minutes to any disciplinary action having been taken or proposed at the claimant's instigation. Nor is there any evidence before me of the claimant taking or instigating any specific action following the Board meeting in November 2020 (see paragraphs 152 and 153 above) or reporting back to the Board, Mr Martin or Mr Ward as to what could be done or, if that was his view, that he had concluded no disciplinary action that could properly be taken against E. I find that he did not do any of those things.

161. I note that at various places the documents and the oral evidence referred to "disciplinary procedures" being followed by the respondent in contexts where they must have been referring to the respondent's grievance procedures (at least so far as E's case is concerned). Those are different things, subject to different rules and with different potential consequences. Following a "grievance procedure" instigated by one employee may end up with action being taken against another employee being complained about. For example, advice might be given to a manager who had mistreated the complainant in some way: but the focus of the process is on the complaint and the way the complainant was treated. But a "disciplinary procedure" is a process taken by an employer "against" an employee in relation to their conduct or performance and may lead to disciplinary action against the employee including, in the worst cases, dismissal. The requirements of the ACAS Code applicable to disciplinary procedures are different from those applicable to grievance procedures.

162. Although the minutes of the July Board meeting refer to two HR cases of concern to the Board, the only case explored in the evidence was E's case.

Conclusions on complaint 4A

163. In my view it is more probable than not that some of the Board members had either not fully understood the difference between the respondent's grievance procedures and its disciplinary procedures or got confused as to which they were talking about. They may well have had concerns about both procedures, but E's case related to a grievance rather than a disciplinary matter, despite the references in the agenda and the minutes to disciplinary procedures. This confusion is likely, in my view, to have increased the level of frustration felt by all those contributing to the discussion at the Board meeting (in particular Mr Martin, Mr Ward, Mr Leigh and the claimant). For example, if some Board members had been expecting some sort of disciplinary action to be taken against E since November 2020, a grievance procedure on a complaint against E raised by another employee was never likely to satisfy those expectations. If there were concerns about E's performance or behaviour, it would doubtless have been possible for the respondent to follow first informal, and then, if necessary, formal disciplinary procedures which could have resulted (if appropriate) in dismissal on the grounds of capability or misbehaviour.

164. In any event, I have concluded that there was nothing out of the ordinary in the item being added to the agenda and discussed at the July Board meeting. This is for several reasons. First, there were grounds to justify Board members to think that the case of E might not have been handled well and in accordance with the ACAS code of practice. So they would naturally have wished to question the claimant about the matter. Secondly, the circumstances the claimant described in relation to E's case called into question whether the respondent's grievance procedures were robust and satisfactory. Again, that was a matter that Board members may have wanted to discuss. Thirdly, the previous discussion at the Board meeting on 10 November demonstrates that some Board members had thought for at least 9 months that E was an ongoing problem. By July 2021 they would properly have thought that all options for dealing with that problem, including disciplinary action, should have been explored and that some decisions as to what to do were due. Again, that was a matter it was reasonable for them to want to discuss.

165. The claimant was not personally involved in the grievance process against E, so any criticism of the process carried out by the decision manager in E's case only indirectly involved the claimant. On the claimant's own account, the grievance against E had not been well handled, with no outcome properly communicated to the claimant. That was a matter on which he could have offered advice or information to the decision manager. Criticism of the handling of the case, or of the effectiveness of the respondent's procedures for handling grievances, was not in my view untoward or unfair. Also, the wider issue of what to do more generally about E was a legitimate topic for discussion as it had not been resolved. If any Board members were unhappy about that, it was in my view legitimate for them to make that clear at the meeting. They had been looking to the claimant for action, or at least advice as to how to deal with E, and there was little sign of anything having been done beyond dealing with the grievance.

166. The claimant's evidence (which I accept) was that he felt under attack. But, as I have concluded above, criticism by Board members of what they saw as shortcomings on the part of the grievance manager, the claimant and the respondent's procedures in relation to E's grievance, as well as the lack of progress in dealing with the problem of E more generally were all, in my view, legitimate matters for discussion. The claimant was able to stand up for his own point of view, which was that any processes adopted by the respondent needed to comply with the law and the ACAS code of practice. But I

am not surprised that some Board members did not see that as an adequate response to their concerns.

167. I conclude for the above reasons that there was no breach of the MTC implied term in relation to this complaint. It was legitimate for the item to be added to the agenda and have resulted in a robust discussion of matters that those involved felt strongly about. There was nothing done by the Board in the discussing this agenda item that was calculated or likely to seriously damage or destroy the relationship of confidence and trust between employer and employee. Further, even if there is any room for doubt on that matter, the Board members had reasonable and proper cause for their actions in discussing the agenda item. That is because they were entitled to hold the claimant to account for his actions and for matters falling within his area of responsibility as HR director, including by demanding information and explanations and by making criticisms.

Complaint 4B: introduction

168. The other HR-related matter relied on by the claimant as a potential breach of the MTC implied term concerns actions of Mr Martin's PA, Mrs Ward, in relation to certain advertisements for job vacancies, which the claimant said she posted without prior involvement of the HR Department. There is also an allegation that in at least two cases, Mrs Ward posted advertisements online, without the approval of the HR department, that gave contact details that were not those of the HR department.

169. The Grounds of Claim refer to staff adverts being posted on Facebook by Mrs Ward, which were not always spotted by the HR department as sometimes the first they heard of it was when they received calls from people in response to the adverts. This is a more general allegation than that pursued at the hearing, which focused on two chains of emails in Bundle B. There is also a reference to Mrs Ward not choosing the right vacancies to promote in her posts on social media.

170. The respondent's position is that it was part of Mrs Ward's role to post job advertisements on social media and elsewhere and that at least some of them were approved by, or notified in advance to, the claimant or Mrs Gill. It regards any failures on Mrs Ward's part in this regard as trivial, and certainly too trivial to constitute a fundamental breach of the claimant's contract of employment.

Findings of fact as regards complaint 4B

171. At all material times the respondent's website had a careers section on which advertisements and information for vacancies in the Group would appear. The HR department had control over what appeared in that part of the website. The claimant makes no complaint about the adverts appearing on that part of the website.

172. Particular vacancies appearing on the website would also be "plugged" in other ways, such as on social media or in specialist journals. Mrs Ward had some marketing responsibilities, which included posting about vacancies on social media and in such journals. This activity related to vacancies for roles that the respondent was already advertising on its website. I would expect this activity to be seen by senior management as having a wider purpose than simply plugging particular vacancies in the hope of generating more interest from potential applicants, and that it was also intended to raise the respondent's profile as a dynamic business and employer.

173. There are two email chains in the bundle that are relevant to the claimant's complaints about marketing activity by Mrs Ward. One is an email chain between Mrs Ward and Mrs Gill from his HR department about social media posts. The other relates to an advertisement relating to a vacancy for a "specification manager".

(1) Emails between Mrs Gill and Mrs Ward

174. The first email in the chain on 7 July 2021 (sent at 12.33) is from Mrs Gill to Mrs Ward stating that there were a lot of vacancies at the time and asking her to "rotate some of them round social media". It continues "Maybe go first with Engineering Services Technician (I will be uploading it onto our website this afternoon). Along with Projects Co-ordinator again." The reply from Mrs Ward (sent at 12.36 the same day), states that Mr Martin asked her about social media the previous day and so she put something out "this morning" (i.e. the morning of 7 July) from the current positions on the website. She said she would follow up with the Engineering Services Technician post the next day, once it is available on the website.

175. Pausing there, the email chain was initiated by a member of the HR department Mrs Gill, who had two suggestions but appeared to be leaving it to Mrs Ward to decide what to do. She was informed at 12.36 of a post by Mrs Ward earlier that day (presumably aiming to comply with what she thought Mr Martin wanted) relating to some existing vacancies. This confirms that Mrs Ward did in one sense act unilaterally, without seeking the prior approval of the HR department to what she proposed to do. The vacancies in question were active vacancies already on the website – and it appears that those would have been uploaded by the HR department. However, there is nothing in the first email from Mrs Ward to suggest she thought she needed prior approval or that it was odd for Mr Martin to ask her to do something on social media. Nor did Mrs Gill indicate that she needed to see what was to be posted in advance.

176. The claimant stated in his oral evidence (and I accept) that of the 5 vacancies covered by the post, 3 were in Mr Ward's department. There is at page B64 a copy of an advertisement that mentions 5 vacancies and has the date "07/07/2021" at the bottom which appears to be the advertisement to which the claimant referred.

177. Mrs Gill's reply (sent at 12.44 on 7 July) was "Yes, that's great, thank you very much" and she then informed Mrs Ward that she took off two filled vacancies "yesterday afternoon" and that she had two more to put on "this afternoon". There is nothing in this email to suggest that Mrs Gill thought anything out of the ordinary had happened or that Mrs Gill thought it was for her to micromanage what Mrs Ward did on social media.

178. The next email is from Mrs Ward on 9 July (sent at 09.39) saying "This has been posted locally on FB" - to which Mrs Gill replied at 9.42 "Yes I noticed, thank you" and also informing her that all the factory vacancies are also with 3 agencies and that they were not getting much out of them either. Mrs Gill's email indicates that she was monitoring the respondent's Facebook account and would soon become aware of what was being posted, even if she was not informed about what was to be posted.

(2) Emails about marketing a vacancy for a specification manager

179. On 8 July 2021 at 09.48 Mr Jenner (a sales director) emailed the claimant to say he was struggling to fill a vacancy on the website and that he wondered if something could be done in a professional electrician publication at a cost of £200. He proposed asking Mrs Ward to create an advert. The claimant's response suggested that the HR department should do it first. In the next email (sent 09.51 am) Mr Jenner then said "are you happy for me to liaise with Tash?" and the claimant replied (at 09.52) "yes please", saying that the job description was on the website. So the claimant indicated to Mr Jenner that it was alright for Mr Jenner to liaise with Mrs Ward over the wording.

180. Mr Jenner then sent an email to Mrs Ward referring to the emails in the chain and asking her to look at an advert targeted at people interested in transferring their skills into sales. There follow a number of emails about the proposed advertisement and its wording. In an email sent on 8 July at 16.48 Mr Jenner instructs Mrs Ward to make some changes to the wording of the advertisement appearing on page B64. Instead of the contact address "enquiries@dextragroup.co.uk" (an address that would be monitored by Mrs Ward), he asks her to give Mr Burt's name, position and email address (see paragraph 185 below). On Monday 12 July at 12.47 Mrs Ward emailed Mr Burt and Mr Jenner to confirm the final wording, saying at the end that "If I can get this confirmed today, they will be able to get it released mid-week". The wording set out in the email includes wording inviting the reader who wants further information on the job requirements to visit the careers website and to contact Chris Burt using his contact details.

181. The final email is from Mr Jenner to the claimant sent at 18.05 on Tuesday 13 July with "High" importance and attaching "job enquiries advert 2021.pdf". The attachment is not included with the email chain in the bundle (pages B123-29) but earlier in the bundle (at page B69) there is a copy of an advertisement for the "specification manager" vacancy which has the same file name. It has on it the date "09/07/2021", but as it is the document the claimant complains about (as having changed contact details) it is more likely than not the document attached to the email. The wording is a little shorter than that set out in the earlier email of 12 July at 12.47, which indicates that some further refinements were made after that email was sent.

182. The respondent submits that the email sent to the claimant on 13 July communicated the advertisement to him before it was published "mid-week" as indicated by Mrs Ward in her email of 12 July at 12.47. As the idea was for it to appear in a professional electrician's publication it appears to me more probable than not that the claimant was sent the final version (described further below) before it appeared in that publication, although it may have been sent to the publication on Tuesday 13 July before a copy was sent to the claimant. In any event, it was sent to the claimant at 18.05 on Tuesday 13 July, although it is not possible to tell when he read it.

(3)The two advertisements complained about (pp. B64 and B69 in Bundle B)

183. The two advertisements are on their face secondary advertisements, in the sense that they are designed to draw attention to vacancies already appearing on the respondent's careers website. The first refers to five vacancies at Dextra's site in Gillingham, Dorset and the second refers to a particular vacancy for a "specification manager" (a sales role). Both invite readers to visit the careers section on its website for more information. I would expect that information to include a job description, person specification and details of salary and other terms and conditions, as well as details of how to apply. These details would have been uploaded by someone in the HR department.

184. The claimant would have been happy with the form of both of those adverts had that been all they said. He relies on an older advert from 2019 (in the form of a post on social media) as an example of what he said was the usual practice of simply referring to vacancies on the careers section of the Dextra website: the advert simply invites readers to look at the website for "further information/application form".

185. However, the two advertisements also give an email address in the bottom right corner. The first has "enquiries@dextragroup,co.uk" which is an email address that would be monitored and dealt with by Mrs Ward. The second has the name and email address of the Southern Regional Director, Mr Burt. There is no express indication as

to the purpose of those email addresses, although clearly they are there to offer a means of making enquiries. In both advertisements the respondent's website address ("dextragroup.co.uk") appears under the email address in the bottom right corner.

186. There is no evidence that the claimant or Mrs Gill raised any objection to either of the advertisements after they became aware of them.

Conclusions on complaint 4B

187. In my view the documents relied on by the claimant do not bear out his assertion that he and his HR department were being deliberately sidelined and excluded from their proper role in relation to advertising job vacancies, that the HR department were not consulted about job advertisements arranged by Mrs Ward and that that job advertisements arranged by Mrs Ward wrongly failed to give an HR department email address for enquiries.

188. There is nothing in the two email chains in the bundle to support the claimant's apparent belief that he was somehow the target of a deliberate attempt (presumably on the part of Mrs Ward and/or Mr Martin) to exclude him and his department from their proper role in relation to advertising vacancies. In particular, there is no sign of any attempt to conceal anything from the claimant or Mrs Gill. Nobody from HR was involved before the first advertisement was posted on social media on the morning of 7 July 2021, but Mrs Gill was informed the same day and would in any event have soon seen anything posted on the respondent's social media accounts. Mrs Ward and Mrs Gill corresponded about what was posted the next day. The claimant was, on 13 July, sent the final version of the second advertisement, before it was published.

189. It is clear that the two specific advertisements the claimant complains about related to job vacancies already appearing on the careers section of the respondent's website. The claimant does not complain about the way those vacancies were advertised on the website: his department effectively controlled those advertisements and their uploading to the website. The website would have given the information necessary to enable a reader to make an application.

190. This means that the main aim of the two advertisements was to plug vacancies that the HR department had placed on the careers section of the respondent's website. Indeed, they both directed the reader to the careers section, with the relevant link. Doubtless extra publicity for the vacancies could be helpful in assisting the recruitment process. It is difficult to see how the advertisements could do any harm. The claimant says that there was a risk of Mrs Ward choosing to market the wrong vacancies (in terms of the HR department's own priorities) or vacancies that had been filled. He must be right about that, to an extent. But in my view the harm that would arise if either risk manifested itself was minimal. The email chain between Mrs Ward and Mrs Gill's demonstrates that the HR department were perfectly able to ask Mrs Ward for marketing action and to make suggestions as to what vacancies to market. So, if a key vacancy was missed that could easily be remedied quickly by Mrs Ward, if she was asked to do so. And if a filled vacancy was marketed by mistake, it would be easy enough to delete a post referring to it. In any event, a reader would soon find out if the vacancy was no longer live if they looked at the website. Also, an error of that kind would most likely be made only if at the time Mrs Ward marketed the vacancy it was showing as live on the website – a matter that would be for the HR department to resolve if the information on the website was misleading.

191. Neither of the two advertisements set out contact details for the HR department. However, I cannot see that it was essential for this to be done, given that such contact would have been given in the information on the careers section of the website about the vacancies. For that reason, I do not see that the omission of HR department

contact details from the secondary advertisements was of much significance, even from the claimant's point of view. There is no documentary evidence of any particular purpose of the email address given (in addition to the link to the careers section of the respondent's website) in the first advertisement, beyond giving a means of contacting the respondent. In the case of the second advertisement, Mr Burt's email address was clearly given in case a potential qualified applicant who saw the ad in the relevant professional publication wished to ask him for more information, for example about the role or the team in which the jobholder would be working. I do not see any essential reason for the HR department to be the first port of call for a potential applicant who wanted more information of that kind.

192. The advertisements did not suggest that job applications should be made using the email addresses given as contact details. The claimant referred to a risk that this might happen (so that the HR department would not know about applications resulting from the advertisement), but that risk appears to me to have been minimal at best. The careers section of the website would have given details about how, and to whom, to apply for the vacancy. And if anyone did try to apply in any other way, there is no reason to think that they would not soon be told they had got it wrong and referred to the information about applications on the website.

193. There is no evidence of any rule operating within the respondent company requiring the prior approval or other involvement of the HR department before secondary advertisements were posted or otherwise made public. Nor in my view has the claimant proved (on a balance of probabilities) that there was an established practice of seeking prior approval or other involvement of the HR department for posts on social media or other secondary advertising, such as to justify the claimant's apparent belief that this was required. The emails from Mrs Gill in the exchange described above do not indicate any surprise as to Mrs Ward's actions in posting information about 5 existing vacancies or in at the fact that Mr Martin had asked Mrs Ward to do something on social media. If there had been such a rule or established practice, I would have expected either that this would have been mentioned somewhere in the email chains contained in the bundle or that the claimant or Mrs Gill would have raised the matter after the event.

194. It would clearly have been sensible for the respondent's HR department to know what was being done in relation to secondary marketing of vacancies, and for them to be able to offer views as to what was needed or not needed; but that is a long way from the claimant's claim that the failure to consult the HR department before posting the first amendment and/or the giving of specific contact details on both advertisements somehow constituted a fundamental breach of his employment contract.

195. In any event, the HR department were made aware of the first advertisement (at page B64) very soon after it appeared on the respondent's social media account. The HR department had access to the company's social media accounts and so would have soon seen what had been posted, even if Mrs Ward had not told Mrs Gill about it on the day it was posted. The later post on 7 July was requested by Mrs Gill. The claimant was made aware of the second advertisement (at page B69) just before it was published, although I accept that he may have been sent the advertisement after Mrs Ward had sent it off for publication. But he had previously agreed in writing that the wording should be sorted out by Mr Jenner with Mrs Ward. In all three cases it is in my view impossible to identify any significant failure by the respondent that could conceivably have impinged on the claimant's contract of employment. Indeed, even if the text of the second advertisement was sent to the claimant after it was published,

any force in his complaint about the wording of that advertisement giving inappropriate contact details (without prior reference to him) is undermined, in my view, by the fact that (a) he gave his consent to the wording being sorted out by Mrs Ward and Mr Jenner and (b) he did not complain at the time about the wording sent to him on 13 July.

196. For all the above reasons, I do not consider that there are any plausible grounds for concluding that the respondent (through Mrs Ward) did anything that was calculated or likely to seriously damage or destroy the relationship of confidence and trust between employer and employee. Indeed, even if there had been an established rule or practice to the effect that the HR department should be involved in all decisions about secondary advertisements prior to their publication (whether on social media or elsewhere), or that only HR contact details should be given, then I would regard what happened in relation to the two advertisements described above as at the trivial end of the scale. What happened, judged by the contemporary documents in the bundle, would not have been a serious matter. It is clear from her emails that Mrs Gill would have soon picked up on what was posted on Facebook or other social media accounts quite quickly, even if she was not specifically informed about any posts. Nothing was being hidden by Mrs Ward as anyone could access her posts on social media. Mrs Gill was told about Mrs Ward's plan to post something about the new "Engineering Services Technician" vacancy the next day, and her response was to mention some new vacancies to Mrs Ward. And the claimant was sent the second advertisement when it was finalised. If either Mrs Gill or the claimant had thought at the time that there was something inappropriate in the way these secondary advertisements were being worded or publicised, they could have taken it up with Mrs Ward, Mr Martin or any other relevant senior manager. There is no evidence that they ever did anything like that.

197. I conclude that there is nothing in this complaint that constitutes a breach of the MTC implied term. These were not actions by the respondent that were calculated or likely to seriously damage or destroy the relationship of confidence and trust between employer and employee.

Complaint 5: "Bullying at the Directors Dinner on 9 July 2021"

198. The claimant complains that he and his wife were mistreated at the respondent's annual "Directors' Dinner" on 9 July 2021 and relies on this as a breach of the MTC implied term. The respondent's position is that the allegations about the event are trivial and do not disclose any breach of contract, that not all the allegations were substantiated by evidence and, in any event, that some of the matters he addressed at the hearing and in his written submissions were not mentioned in his pleadings.

199. At different times in the proceedings the claimant appears to have changed his case as to what he relies on as amounting to a fundamental breach of contract. In his original Grounds of Claim, he refers to possible breaches of the COVID rules, the fact there were only 5 people on his table, the fact he was seated next to his wife who had nobody opposite her, and the fact their table was apart from the rest of the party. In his witness statement there are no specific factual allegations about the dinner, but in his oral evidence he referred to breaches of the COVID rules in relation to masks and the number of people on some tables exceeding 6, as well as the other matters mentioned in his grounds of claim.

200. In summarising his complaint on the first hearing day he referred only to being criticised for arriving late when others arrived later. In cross- examination he said he mentioned this because the respondent's Response document mentions his lateness.

In other words, he seemed to be complaining about a statement in the Response to his claim, rather than something he actually experienced at the Dinner.

201. However, despite the limited nature of his complaint as so summarised, his oral evidence did cover most of the other matters raised in earlier documents and he was fully cross-examined, so I have considered the factual matters covered by the oral evidence.

Findings of fact as regards complaint 5

202. There was a Directors' Dinner held on 9 July 2021 at a local hotel, at a time when COVID restrictions and/or guidance were still affecting social gatherings. Prior to the event Mrs Ward sent an email to those attending advising them to do a lateral flow test on the day, that if the weather was dry pre-dinner drinks would be outside, and that otherwise masks should be worn inside other than when sat at the table.

203. The claimant attended with his wife, arriving by taxi a little late. He referred at the start of the hearing to his complaint being about the fact he was criticised by Mr Martin for being late (see paragraph 13(f) above). If that was an allegation about something that happened at the event, he has not proved, on a balance of probabilities, that any serious or unfair criticism about this was made to him by Mr Martin at the time (whether privately or in front of someone else). This allegation is not mentioned in the original Grounds of Claim or in the claimant's witness statement, and nor did he put the point to Mr Martin in cross-examination.

204. The claimant complains about a number of matters that, he said, made him and his wife uncomfortable and feel that they were being ostracised or otherwise being deliberately treated badly. I accept, from his evidence, that that was how they felt at the time. But the question then is whether that feeling was objectively justified: were they in fact mistreated and, if so, was that deliberate on the part of the respondent.

205. The claimant and his wife were seated in accordance with a seating plan displayed at the venue. They were on a table at which five guests in total were seated, with three other guests who were all attending on their own. Two other tables (at least) had more than six guests on them. Their table was sited a little apart from the others. The claimant and his wife were seated next to each other and there was nobody seated opposite Mrs Brownhill.

206. A number of guests failed to attend the event, which is not surprising given that COVID was still a concern for many at the time. One absentee was the partner of one of the guests on the claimant's table, which would explain the empty seat opposite Mrs Brownhill. The claimant would have known why there was an empty seat on his table.

207. The claimant asserted that other couples at the event were seated opposite each other and that that was the invariable practice or custom at these events. This was disputed. Mr Ward's evidence (which I accept) was that he was not seated near to his partner (unlike the claimant) and that his table also was to one side from other tables. Mr Ward observed that he did not at the time think there was anything odd about either of those things, and he mentioned some other senior colleagues who were seated on their own. The claimant has not proved that there was a set practice or custom that couples were seated opposite each other.

208. The claimant was asked in cross examination why (as Deputy Chairman) he did not simply change the seating arrangements on his table if he wished to sit opposite his wife. He said that he did not feel that he or his wife could move, despite there being an empty seat at their table, because that would have affected the others on the table. But if he felt strongly about this at the time, it would have been easy enough to ask the others if they minded altering the seating for the table to utilise the empty seat for his

wife's benefit. But he did not ask them. I consider it to be highly improbable that the three other guests would have minded being asked or would have objected to changes to the seating at their table.

209. The claimant also said that he would have had to check with the table planners whether changing the seating plan for his table was acceptable. He may have thought that at the time, but I consider it more probable than not that that was not in fact the case. In the circumstances (with some guests not turning up) it is most unlikely that anyone would have noticed, or minded, if one or two individuals on his table moved. In any event, he gave no plausible explanation as to why he did not ask for changes to be made, if he felt strongly about the matter. It would have been easy enough to do so, and there is no reason why that would have caused any difficulty. I consider it likely that the seating plan for the event was devised by a member of the respondent's staff (rather than someone at the venue) but there was no evidence to identify who that person was or whether that person was present on the night. But it is likely that someone from the respondent's staff (whether or not one of the guests) would have been on hand, at least at the start of the event, to ensure that the arrangements for the event went smoothly and to liaise with the venue's staff.

210. The claimant also complains about the failure by someone (again not identified) to move the guests around to produce a better distribution across all the tables, taking account of those who did not turn up. But he accepted that he had not asked for any changes of this kind to be made, which would have been easy enough to do if he felt strongly at the time that the arrangements were unsatisfactory. I consider it more probable than not that the explanation for the "failure" (as the claimant described it) was that it did not occur to anybody to change the seating plan after the event began. Apart from anything else, it would have not necessarily have been clear for some time whether any absentees were going to turn up.

211. As for the placement of the tables in the room, I consider it unlikely that this would have been the result of actions taken by someone from the respondent's organisation, rather than someone from the venue's staff. It is most improbable, in my view, that someone from the respondent's staff would have moved the claimant's table or asked for it to be moved. There is no evidence that anyone did that. As with other matters complained of, the claimant did not ask at the time for the table to be moved.

212. The claimant has asserted that there was a failure to comply with the COVID "rules" at the event, and that this made him and his wife feel uncomfortable. However, I am unable to make any findings that there were breaches of the rules or guidance. I was not given any details (a) of the rules and/or guidance in operation at the time that were allegedly breached or not followed or (b) of who was responsible for any breach of a rule or failure to follow guidance and whether they were acting on behalf of the respondent. It is notorious that during the period of the COVID pandemic there was general confusion among the public as to what the rules were from time to time and whether "restrictions" people were told applied to them were in fact law imposed by regulations or merely official guidance.

213. The COVID-related matters mentioned in the original grounds of claim were that the claimant and his wife were shocked to be told it was not necessary to wear masks indoors at the event (rather than being told to wear them when moving around and not seated at the table for dinner) and that there should not have been more than 6 people on a table.

214. The claimant and his wife wore masks when moving around indoors, but not everyone did that, contrary to the advice from Mrs Ward in her email to the guests of 7 July. The claimant did not raise any concerns about the matter at the time (although he said that he may have mentioned some complaints to Natasha Ward later in the evening). Nor did the claimant say who informed him and other guests that mask wearing was optional (or whether that person was from the venue or the respondent's staff). Mr Ward's evidence (which I accept) was that he was unsure of the rules at the time or whether it was for the respondent or the venue to enforce them. He also said (and I accept) that there was not much "mingling" at the event and that some people wore masks and others did not.

215. The evidence was that there were at least two tables with more than six guests on them. But that did not directly affect the claimant. His table only had five guests on it. There was in my view nothing in the evidence to suggest that there was anything "sinister" in the fact his table only had 5 people on it or that there was an empty seat opposite his wife. One guest placed on his table in the plan had not turned up, although her partner did. The most likely explanation for the things mentioned by the claimant is that it was not clear in advance of the event who would turn up and that nobody ever thought to alter the seating arrangements after the event began.

216. The claimant accepted, in cross-examination, that any failures in relation to COVID rules were not aimed personally at him or his wife. That was a realistic response as the alleged failures affected all the other guests as well. He accepted that the mask-wearing issue did not itself amount to a breach of the MTC implied term.

217. It is in my view almost inevitable at a work gathering of the kind in question that some guests will be disappointed by where, and with whom, they are placed. It simply does not follow that any such disappointment on the part of a guest is evidence of a deliberate snub on the part of the organisers. I have not identified anything in the oral or written evidence (apart from the claimant's own assertions) that supports his belief that the matters he complained about were deliberately aimed at him and/or his wife. For that reason, I find that they were not.

Conclusions on complaint 5

218. In July 2021 organisations and individuals were still struggling with the effects of COVID and at the time social events of any kind were problematic because many people were nervous of the risks in attending them, due to both the actual health risks and the general uncertainty as to the applicable rules and/or guidance. It is not surprising that some of the guests (who had been asked to do lateral flow tests on the day) did not show up and that, as a result, some of the arrangements turned out to be sub-optimal from the claimant's point of view, such as the empty seat on his table. The same sort of thing is likely to have adversely affected the experience of other guests, such as Mr Ward who had an empty seat next to him.

219. Ms Gilbert commented that if someone had wanted to make the claimant feel awkward or ostracised, the things he complained about were a rather odd way of doing it. I agree.

220. In any event, in view of my finding that none of the matters complained of were deliberately aimed at the claimant and/or his wife, I conclude that they did not involve actions by the respondent that were calculated or likely to seriously damage or destroy the relationship of confidence and trust between employer and employee. It follows that there was no breach of the MTC implied term.

Complaints 6 and 7: bullying allegations relating to respondent's demand for payment and complaint to ICAEW

221. Items 6 and 7 on the claimant's list of matters that he regards as breaching the MTC implied term relate to two further allegations about what he regards as bullying behaviour by the respondent.

222. Item 6 relates to an allegation that an emailed letter from the respondent sent on 8 April 2022 (page B110) amounted to bullying behaviour against him. This letter demanded £461,587.68 in respect of losses (with interest) it claims resulted from the crystallisation in August 2021 of TARF contracts entered into by the claimant when working for them. In the letter the respondent claims that these losses were caused by the claimant's breach of duties owed to the respondent. The claimant says that the way the claim was sent to him while he was away on holiday, and the claim itself, amount to bullying.

223. Item 7 relates to the fact that in March or April 2022 the respondent (through Ms Ward) reported the claimant to the Insitute of Chartered Accountants for England and Wales complaining about various matters relating to his conduct when working for it. The specific complaints are listed in a letter from the ICAEW to Ms Ward dated 20 April 2022 (page B116). The claimant regards those complaints as unfounded and as amounting to bullying behaviour. The letter to Ms Ward indicates that the ICAEW did not consider it had been given sufficient evidence of any disciplinary matters that it should investigate. A letter from the ICAEW to the claimant dated 23 May 2022 states that no further action will be taken owing to insufficient evidence of a potential disciplinary liability, unless substantial new information is received.

224. Both of these complaints relate to events that took place well after the claimant's resignation, when he was no longer employed by the respondent. Accordingly, they cannot have played any part in his decision to resign and he cannot rely on either matter as a breach of the MTC implied term. The matters raised are not relevant to the issues before me and so I do not comment further on them.

Other complaints within the list of matters in paragraph 13 above

225. The seven "complaints" listed above are taken from the claimant's written final submissions. Complaints 1 to 5 appear to cover most of the matters in his list of potential breaches of the MTC implied term in paragraph 13 above. I discuss in the following paragraphs matters covered by the list which are not part of those seven main complaints.

(a) ***"Bullying and lack of trust in relation to an alleged failure on the claimant's part to obtain assistance in dealing with various issues despite being encouraged to do so".***

226. This is item (e) in the list. When setting out his list the claimant referred me to paragraph 31 of the grounds of resistance which says: "*It is denied that the Claimant was side-lined, ignored, left out, humiliated, castigated, bullied or abused by Mr Martin or anybody else. The Claimant was asked to explain and rectify a number of issues for which he was either directly, or indirectly, responsible. The Claimant was encouraged to obtain assistance in dealing with those issues but failed to do so*".

227. On the face of it this appears to be a complaint about the way the response was worded, to which the claimant had taken exception as asserting something he does not think is correct, rather than a complaint about actions amounting to a breach of contract taken by the respondent prior to his decision to resign. In any event, this specific item in the claimant's list was not explored in the written or oral evidence.

There was no evidence to suggest that the point relates to anything specific done by the respondent which could be seen as breach of the MTC implied term prior to the claimant's resignation.

228. I conclude that there was no breach of the MTC implied term prior to the resignation arising from anything covered by this item in the claimant's list.

(b) ***"Personal attacks at the Board meeting on 20 July": agenda item about management accounts***

Introduction

229. This relates to part of item (g) in the list in paragraph 13. My findings of fact and conclusions in relation to complaints 2, 3, 4 and 5 as set out above cover the great bulk of the matters covered by this item in the list. However, there is one other agenda item discussion at the July Board which the claimant has complained about as an unfair attack on him. He says that the discussion about the item "Changes to current year accounting system to expedite management account production" that was added to the agenda a few days before the meeting constituted another matter on which he was unfairly attacked at the Board meeting.

Findings of fact in relation to the agenda item discussion

230. I have already made findings of fact about the late addition of this item to the agenda, at the request of Mr Leigh. The item picked up on points discussed at the May and June Board meetings. The issue of monthly accounts was something Mr Leigh and others were concerned about. The minutes of the July Board meeting deal with the item as follows:

> "RHJM expressed concern at the last board meeting about the time it was taking to produce monthly accounts. If we were a public company this would be totally unacceptable. KB explained the delay was due to waiting for audited accounts for bad debt provision and stock. RHJM asked for this to be moved back to December, make provision on that date that can be adjusted as necessary in M13 accounts so that year end can be closed off early for management accounts to be produced much more promptly. ML —the company can make estimates on prevailing circumstances, review and make own adjustment /provision —this is in Dextra's control and not the auditors. RHJM —needs the monthly accounts asap in order to run and manage the company effectively. DW — the company is always aggressive on stock. ML —the stock provision can be done throughout the year rather than just at year end. ML asked KB when the June accounts will be ready. RHJM has just seen March. KB has April to check and Nina will keep the pressure on to move forwards asap. ML —best practice is to work one month in arr."

231. It can be seen from this that Mr Martin in particular was concerned that the monthly accounts were not being produced quickly enough and that steps needed to be taken to remedy that.

232. The claimant's initial position, as set out in his Grounds of Claim, was that Mr Martin's interest in management accounts had started in early 2021 when he became aware of the expectations for companies listed on AIM. Mr Martin's evidence confirmed that he had been advised, in connection with the possible disposal of his shares, that there were issues with the speed of production, quality and detail of the monthly management accounts. However, he had had concerns about the timing and quality of management accounts going back longer than that.

233. In his oral evidence the claimant explained that there had been a slight delay in finalising the accounts for the first Quarter of 2021, because of difficulties in finalising figures for the previous financial year. By working extra hours he had them in draft aiming for them to be ready for the August Board meeting. He said Mr Martin was upset at the delay. He also said that the cycle for production of monthly accounts had been well established, but that Mr Martin had been asking for this to be speeded up, which could be implemented. None of this was disputed.

234. The question when the first Quarter accounts for 2021 would be ready was raised at the Board meeting on 4 May 2021. Mr Martin queried why they were not ready and the claimant explained that it would be a priority once the final accounts for the previous year were finalised. It appears from the minutes that the claimant had thought they could be ready (at least for January and February) by the next meeting in June. Mr Leigh is recorded as having observed that the complicating effects of furlough should no longer be affecting the accounts.

235. The discussion at the July Board meeting was perceived by the claimant as critical of him, when the work was in fact done by the Financial Controller and their team. I accept that the discussion did involve criticism of the claimant and the team producing the accounts. Mr Martin felt that they were not being produced quickly enough to the right standards in terms of their content and accuracy.

236. The production of these accounts fell within the claimant's responsibilities as Financial Director, even though the work was largely delegated to others. The claimant was personally involved in ensuring the necessary information was provided to the team producing the accounts, in checking the end result and in their distribution.

237. However, given that the claimant was the Financial Director, other Board members considered that it was for him to secure, one way or another, that the Board's expectations in terms of the production of reliable monthly accounts were met.

238. During the conversation the claimant had with Mr Leigh after his resignation (see paragraphs 57 to 60 above) the claimant acknowledged that the management accounts were behind schedule in July.

Conclusions on the complaint regarding the agenda item discussion

239. In my view the matters covered by this agenda item were a legitimate addition to the agenda, not least because they were a current concern for Mr Leigh who was expecting it to be on the agenda following discussions at previous Board meetings. It was also a matter of concern to Mr Martin who had become aware earlier in 2021 of the expectations around the production of management information applicable to AIM-listed companies. As with the other items added to the agenda, I do not consider there was anything sinister about the addition of this matter, as far as the claimant personally was concerned.

240. The claimant's position was that an update from him on the matter would have been appropriate and sufficient but a full discussion was not appropriate. However, the issue of the monthly accounts and their timing was a current matter of concern to Board members and the actions envisaged at the May Board meeting had not been completed on time. It was in my view perfectly legitimate for the Board to discuss the matter again if they wished, the Chairman having agreed to Mr Leigh's request for the item to be added to the original agenda. In these circumstances I consider the claimant's belief that a discussion was somehow illegitimate to have been naïve. I note also that nobody raised any objections at the time to that discussion.

241. I am not surprised that, in the circumstances, some Board members felt frustrated and critical about what they saw as lack of progress on this issue and that they expressed those feelings at the meeting. In my view this is the sort of thing a Board level director has to accept as part of the rough and smooth of commercial life, whether or not they consider themself personally at fault. The matters raised were within the claimant's areas of responsibility, even if much of the actual work in producing the accounts was not personally done by him. He had overall authority over and responsibility for his team and was ultimately responsible for the arrangements in place for enabling his team to produce the right documents at the right time. He was answerable to the Board for his performance and that of his team. So, if Board members were concerned about the nature, quality or timing of what was produced, it was appropriate for them to hold him to account, and to criticise him.

242. My conclusion is that none of the Board members did anything calculated or likely to seriously damage or destroy the relationship of confidence and trust between employer and employee. The criticism made, whether of the claimant personally for what he did or did not do, or otherwise of his team, was not action of that nature. It follows that there was no breach of the MTC implied term. Even if I had concluded that any of the actions of the Board members were of that nature, I would also have concluded that the Board members had reasonable and proper cause for their actions. They were entitled to hold the claimant to account for his actions and those of his department, and to criticise him.

(a) the claimant being asked about his age by Mr Martin;

(b) the claimant being asked about his future plans by Mr Martin

243. These are items (i) and (j) in the claimant's list in paragraph 13 above and relate to two conversations the claimant had with Mr Martin which the claimant regarded as inappropriate and surprising. I will deal with these two items together

Findings of fact in relation to the two conversations

244. In March 2021, shortly before the claimant's birthday, Mr Martin asked him how old he was, perhaps 62 or 63, which the claimant found strange. He told Mr Martin he would be 60 on his birthday. The claimant was not worried about that exchange at the time. But he became more worried about it after a second conversation, about a week after the claimant's birthday. Mr Martin asked the claimant how long he intended to stay at Dextra, and the claimant response was "about 5 years".

245. The claimant said in his oral evidence that Mr Martin told him in the second conversation that he should find and train a replacement and then could continue to be paid for a year with long holiday breaks, without worrying about the company policy on the maximum length of a holiday break. This process would, according to the claimant, have taken about two years in total.

246. Formally, the respondent denied the allegation that a replacement was discussed, but the way in which the claimant was cross-examined and in which the respondent put things in its final written submissions indicates that it does not now dispute that Mr Martin said something about finding a replacement. However, the respondent does dispute the claimant's assertion that Mr Martin said or implied that he wanted the claimant to find a replacement and then leave.

247. In cross-examination, Ms Gilbert suggested to the claimant that Mr Martin was indicating in the second conversation that, when the time came, he could find a replacement and would be "looked after". The claimant's oral responses were to the effect that he was being asked to find a replacement, although he accepted there was

no timeline attached and that, even on his own account, he had a year to find a replacement and would then continue to be paid, with limited duties, for another year.

248. There is no evidence that anything actually happened in the four months after this conversation as a result of it. In my view that supports the respondent's position on the facts - that Mr Martin was not telling the claimant he wanted him to find a replacement and leave, after a year; but instead Mr Martin had said that at some stage he would be happy for the claimant to find and train up a replacement and that he could then stay on for a year with extra holidays.

249. The claimant did not cross-examine Mr Martin as to whether the words he used indicated that he wanted the claimant to leave, which significantly affects the weight I can give his oral evidence. Also, the claimant's oral statements differed from the way in which he described what happened in two of his documents.

250. In his Grounds of Claim the claimant stated that Mr Martin told him that:

> "he would be happy for me to find & train a replacement & then he would be happy to pay me for 1 more year & during that time, I could take off 1 month holiday at a time to go overseas. I was so shocked, I reminded him that the holiday policy was for a maximum of 12 days off at a time & he replied, "there's no need to worry about that"."

In his final written submissions he refers to:

> "The strange conversations around my 60th birthday in March 2021 & then asking me, after my birthday, how long I intended to stay at Dextra. That I could train a replacement & take extended holidays against the company holiday policy."

That language (and especially the word "could" in in the second of the above extracts) supports the suggestion made by Ms Gilbert in cross-examination as to the purpose of the comments. I should mention that the claimant put his interpretation of the conversations more forcefully in his comments in reply to the respondent's final written submissions, but if those comments were intended to be taken as evidence they are plainly inadmissible for that purpose as they were made too late.

251. For the above reasons, I find that Mr Martin did not indicate in the conversation that the claimant should find a replacement, train him or her up and then leave after another year. In my view it is more probable than not that Mr Martin said he could do that (in due course) and that he was in effect thinking out loud as to how to manage the claimant's departure when he decided to retire.

252. The claimant said he was "a bit gob-smacked" by the question about his future plans, as Mr Martin was himself 72. I accept the claimant would have been surprised by the question. He was after all the HR Director and would have been aware of normal HR concerns in relation to conversations of this kind, which can cause legal and other difficulties.

Conclusion on complaint relating to the two conversations

253. I have concluded that there was nothing out of the ordinary in the first conversation, in the context of an upcoming birthday.

254. Similarly (and whether or not good practice from an HR point of view) I do not consider there to be anything out of the ordinary in Mr Martin (a) asking the claimant what his plans for the future were and (b) proposing a possible way of managing his departure when the time came. The claimant was 60 and had held senior positions in the business (as Finance Director and HR Director, and as CEO) for many years. Mr Martin, as the majority shareholder and Chairman, clearly had an interest in considering what succession planning would be needed to ensure the claimant's eventual retirement did not disrupt the business. I also agree with the respondent's submission that what was being proposed was, if anything, beneficial from the

claimant's point of view: it would have enabled him (if he wanted) to "downsize" over a period of about 2 years with the opportunity for longer holidays.

255. In my view nothing done or said by Mr Martin in relation to the matters complained of amounted to conduct calculated or likely to seriously damage or destroy the relationship of confidence and trust between employer and employee. It follows that there was no breach of the MTC implied term.

(c) ***the claimant being disparaged by Mr Martin about an issue to do with "standing desks***".

Introduction

256. This is item (k) in the list in paragraph 13 above. The claimant complains that he was disparaged by Mr Martin in relation to a sample "standing desk" procured by the claimant. He also says that his time in researching and sourcing a sample desk was wasted when Mr Martin opted to use desk converters instead of an actual standing desk.

Findings of fact in relation to the complaint regarding standing desks

257. Certain members of staff with back problems indicated in their health and safety "self-assessment" risk assessments that standing desks for work would be preferable for them to sitting for 8 hours a day at a traditional desk. This made the claimant and other managers aware that some staff may have health needs that were best served by standing disks.

258. A health and safety manager researched options for standing desks, which included converters that could be used with traditional desks or new desks designed for people who need to stand when working. The claimant then consulted Mr Martin on 9 June 2021 and showed him a picture of the converter as a possible solution. Mr Martin asked him to get a picture or sample of a dedicated standing desk. He commented that the company needed to look after its good staff. Later Mr Martin's PA (Mrs Ward) sent a message to the claimant indicating that Mr Martin thought that anyone who wanted one should be able to have a standing desk.

259. The claimant arranged for a sample to be sent. When it arrived two senior managers, who had back problems, tried it and said they liked it. However, in the end Mr Martin's decision was to go with the cheaper converters.

260. The above facts were not disputed. What was disputed was the content of a conversation the claimant asserted took place between Mr Martin, his PA (Mrs Ward) and the Health and Safety Manager on 5 July 2021. The claimant said that Mr Martin asked who had asked them to get the standing desk and when the Health and Safety manager said the claimant did, Mr Martin scoffed and said "why do you listen to Keith?". He said the manager could not believe how the claimant was being belittled in his presence and that of the PA.

261. The claimant has not proved that the alleged comments were made by Mr Martin. He did not raise the matter with Mr Martin in cross-examination, which considerably undermines his own hearsay evidence as to what Mr Martin said at the meeting on 5 July. The claimant was not present at the meeting and did not produce any documentary evidence to substantiate his allegations, whether from anyone present at the meeting or from any contemporaneous note of what he had been told (presumably by the Health and Safety Manager). Nor did he explain anything about how or when he was told about the meeting.

262. The claimant did not raise any concerns at the time about the decision on the converters or the conversation at which he alleged Mr Martin made disparaging remarks.

263. The claimant accepted in cross examination that Mr Martin was free to make whatever decision he wanted and that the waste of his time (as he saw it) on dealing with the dedicated standing desk (when the converters were what the claimant initially proposed to Mr Martin) was just a fact of life, and part of the vagaries of being an employee.

Conclusions on complaint regarding standing desks

264. The main aspect of this complaint is that Mr Martin made disparaging remarks about the claimant to other colleagues and belittled him. However, as I have not found that Mr Martin did that, all that remains is the complaint that Mr Martin went back on his initial statements that the company should look after its staff and provide standing desks to staff who need them and that the claimant had been made to waste a lot of time on dealing with an alternative to his original proposal to order the converters.

265. Those are both trivial matters. In my view Mr Martin was entitled to ask to see a sample desk with a view to deciding later which solution to adopt and then to make his decision, which in the end was to accept the claimant's own original proposal to use the converters. The claimant accepted that Mr Martin was within his rights to make that decision and that the time then "wasted" (as he saw it) in sourcing the sample desk was a fact of life.

266. In those circumstances I can understand why the claimant was unhappy and frustrated about what had happened. But there is no basis on which the actions of Mr Martin could be categorised as behaviour calculated or likely to seriously damage or destroy the relationship of confidence and trust between employer and employee. They were not of that nature. It follows that there was no breach of the MTC implied term.

Other complaints

267. I have reached conclusions on all the specific incidents and events covered in the claimant's list of potential breaches of the MTC implied term as set out in paragraph 13 above. However, the claimant's pleadings, witness statement, oral evidence and final written submissions all touched on a number of factual matters not covered by anything in that list.

268. The claimant was invited to produce his list of matters in order to clarify his case for alleging constructive dismissal. Ms Gilbert requested clarity about his factual case in order for the respondent to know what case it had to meet in presenting evidence and cross-examining the claimant. I explained to the claimant that the point of the list was to tie down his factual case in advance of the oral evidence, so that all concerned (the claimant, the respondent's counsel and the tribunal) could proceed in the knowledge of what that case is. The claimant told me that his list included all the matters he relied on. There were no requests by him to change or add to his list. The respondent was therefore entitled to rely on the list in presenting its evidence and in cross-examining the claimant.

269. For these reasons I do not consider it necessary or appropriate to reach conclusions on any factual allegations that are not related to any of the items in the claimant's list. They are not relevant to the issues in this case as set out in paragraph 21 above. However, there is one set of allegations referred to in his final written submissions that I will comment on, as they are serious allegations about tax evasion on the part of the respondent and Mr Martin. In his final submissions the claimant maintains that his concerns about tax still "stand", and he refers to two matters mentioned by Mr Martin in his oral evidence that he says support his allegations of tax evasion. The respondent denies that any tax evasion occurred and says that the matters referred to were not current at the time the claimant resigned and that the claimant never raised concerns about tax matters prior to his resignation.
270. The allegations about tax matters referred to in the claimant's final submissions do not relate to any item in the list in paragraph 13. If the claimant had included "tax evasion" in his list I would have required him to list the specific instances of tax evasion he was relying on. That is because the Grounds of Claim mention a large number of matters relating to tax, but without giving much detail of the allegations or the breaches of contract the claimant relies on as having played a part in his resignation.
271. Tax evasion is criminal conduct involving the deliberate or fraudulent evasion of tax due, often by concealing the true state of affairs. It is not just a question of making a decision or mistake of some kind in filling in a tax return. For his allegations to have succeeded (assuming he had included tax evasion in his list of alleged breaches of contract) the claimant would have needed to prove, among other things, that the respondent had engaged in such criminal conduct, that he was aware of that conduct when he resigned and that it was one of the reasons for his resignation. He might also have needed to explain why he did not object or take any other action when he became aware of the alleged criminal conduct.
272. The claimant's final submissions refer to two specific things Mr Martin said in his oral evidence. One was that he had asked his PA about how to reclaim £8,000 VAT on a horse box a shooting business of his was sponsoring, which the claimant says was in fact being sponsored by the respondent. The other is that in 2021 Mr Martin had in 2021 used a Dextra employee ("Rob") as a gardener/handyman, which the claimant says did not result in the salary and related national insurance and pension costs being charged to Mr Martin by the respondent as it should have been. I should note that Mr Martin said that he expected to be charged for the time Rob spent working for him, that there was nothing secret about the arrangement and that the account used for that sort of thing was under the claimant's control.
273. Even if I had thought it appropriate to deal in these conclusions with allegations of tax evasion, neither of those statements by Mr Martin, on their own, prove that any tax evasion took place.

Was the respondent constructively dismissed?

274. In my conclusions above I have rejected each of the claimant's specific complaints, either because the facts do not disclose behaviour on the part of the respondent calculated or likely to seriously damage or destroy the relationship of trust and confidence between the claimant and his employer or because there was reasonable and proper cause for whatever the respondent did do. None of those complaints, looked at separately, constitute a breach of the MTC implied term.
275. It remains for me to consider whether any of the actions of the respondent in relation to the matters complained of, taken together, amount to a breach of the MTC

implied term. I have concluded that they do not. I have not identified any possible basis for reaching a different conclusion.

276. The claimant put his case forward on the basis that most of the matters in question amounted (separately or together) to a deliberate attack on him. However, I have not found anything in the evidence that substantiates his belief that that was the case in relation to any of the individual matters complained of. In my view the position is no different if one looks at all the relevant allegations taken together.

277. The claimant also put his case forward on the basis that his treatment at the July Board meeting (i.e. the way the relevant agenda items were discussed and the criticism made of him) was unfair, as well as being deliberately targeted at him. However, with the exception of the two relatively small matters mentioned in paragraph 112 above, my findings do not support his belief that he was treated unfairly. I have concluded that there was no breach of the MTC implied term in relation to those two matters, and in my view the same conclusion results even if one takes all the actions of those present at the July Board meeting together. They did not, taken together, constitute a breach of the implied term as amounting to actions calculated or likely to seriously damage or destroy the relationship of trust and confidence between the claimant and his employer.

278. It follows from my conclusions that the claimant was not constructively dismissed. Accordingly, his claims for unfair dismissal and wrongful dismissal fail and are dismissed.

Employment Judge Hogarth
Dated: 26 September 2023

Sent to the parties on

30 October 2023 By Mr J McCormick

For the Tribunal office