EMPLOYMENT TRIBUNALS

Claimant: Mr R Simpson

Respondent: Bestway Panacea Holdings Limited

Heard at: Manchester Employment Tribunal

On: 11, 12, 13, 14 and 15 December 2023

Before: Employment Judge M Butler
Ms M Dowling
Mr A Gill

Representation
Claimant: Self-representing, assisted by Mr R Wheeler (Brother-in-Law)
Respondent: Ms S Firth (of Counsel)

JUDGMENT

The tribunal unanimously decided the following:

1. The claims of victimisation are not well-founded and are dismissed.

2. The claims of having been subject to a detriment on the grounds of having made a protected disclosure are not well-founded and are dismissed.

3. The claim that the claimant was unfairly dismissed for the reason of having made a protected disclosure is not well-founded and is dismissed.

By majority judgment, the tribunal has decided that:

4. The claimant has been unfairly dismissed by the respondent.

5. There is a finding of 50% contributory fault on the part of the claimant.

6. The claimant has been wrongfully dismissed.

The minority judgment of the tribunal is:

7. The claimant was not unfairly dismissed by the respondent.

8. Had the claimant been unfairly dismissed, there would have been a finding of 80% contributory fault on the part of the claimant.

9. The claim of wrongful dismissal does not succeed and is dismissed.

In relation to remedy:

10. The claimant has informed the tribunal that he is seeking an order for reinstatement or reengagement.

11. A remedy hearing will now be listed to consider whether the tribunal will order reinstatement or reengagement. And if no such order is made, to determine the amount of compensation to be awarded to the claimant.

REASONS

<u>INTRODUCTION</u>

12. An oral decision in this case was handed down to the parties on day 5 of this hearing. The respondent requested written reasons by email dated 03 January 2024. These are those written reasons.

13. The claimant presented his claim form in this case on 07 January 2021. Following two Preliminary Hearings, the first on 09 August 2021 before Employment Judge Feeney and the second on 08 December 2021 before Employment Judge Rice-Birchall, the parties agreed a list of issues that would be determined at this hearing. In

short, the claim being considered during this hearing consisted of a claim of victimisation, of being subjected to detriments on the grounds of having made a protected disclosure, of automatic unfair dismissal and of ordinary unfair dismissal.

14. The tribunal benefitted from an evidence file that ran to 613 pages. Although, I do note that the electronic file was not compliant with the President's guidance in respect of electronic bundles and remind the respondent's legal representative that the Presidential Guidance ought to be adhered to in any future cases they are involved in. There were also additional documents admitted as evidence during the course of proceedings due to their relevance (and having given the parties the opportunity to make submissions on), including documents relating to the outcome of the claimant's appeal.

15. In addition to the evidence file, the tribunal was provided with an agreed cast list, an agreed chronology, and an agreed key document list.

16. The claimant gave evidence in this case and called no additional witnesses. Whilst the respondent produced witness statements for the following witnesses, all of whom gave evidence:

    a. Mr Insley, who conducted the claimant's disciplinary hearing and was the dismissing officer.
    b. Mr Stevenson, who managed the claimant's appeal against dismissal, and
    c. Mr Khan, who heard and decided on the claimant's grievance.

LIST OF ISSUES

17. The parties had an agreed list of issues in this case (although the heading on that document is draft list of issues, it was explained to the tribunal that these had now been agreed). The parties confirmed that this remained the list of issues to be determined by the tribunal, and the claimant confirmed that the list of issues covered the entirety of his claim. The list of issues was contained at pages 96-103 of the evidence file. For ease, I have attached the list of issues to the back of this judgment to assist anybody reading this judgment to understand the issues that have been decided in this case.

18. The claimant during this hearing withdrew various parts of his claim. I do not note them specifically here but make it clear which parts have been withdrawn in the findings of fact section (see below). This was

the simplest way to record these.

LAW

19. This section provides a brief overview of the relevant law to be applied in this case.

    (i) Public Interest Disclosure/Protected Disclosure

20. It is at s.43B of the Employment Rights Act 1996 (hereinafter 'ERA') where it is set out what is meant by a qualifying disclosure (relevant to the claimant's detriment claim and automatic unfair dismissal complaint):

    43B Disclosures qualifying for protection.

    (1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, [F2 is made in the public interest and] tends to show one or more of the following—

    (a) that a criminal offence has been committed, is being committed or is likely to be committed,

    (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,

    (c) that a miscarriage of justice has occurred, is occurring or is likely to occur,

    (d) that the health or safety of any individual has been, is being or is likely to be endangered,

    (e) that the environment has been, is being or is likely to be damaged, or

    (f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

21. In essence, what a tribunal must determine can be broken down into its constituent parts:

    a. Did the claimant disclose any information?

b. If so, did the claimant believe, at the time they made the disclosure, that the information disclosed was in the public interest and tended to show one of those matters listed in s.43B(1) ERA?
c. If so, was that belief reasonable?

22. The concept of disclosure of information was considered in **Cavendish Munro Professional Risks Management Limited v Geduld 2010 IRLR 37**, Slade J stated:

> “That the Employment Rights Act 1996 recognises a distinction between “information” and an “allegation” is illustrated by the reference to both of these terms in S43F……It is instructive that those two terms are treated differently and can therefore be regarded as having been intended to have different meanings………the ordinary meaning of giving “information” is conveying facts. In the course of the hearing before us, a hypothetical was advanced regarding communicating information about the state of a hospital. Communicating “information” would be “The wards have not been cleaned for the past two weeks. Yesterday, sharps were left lying around.” Contrasted with that would be a statement that “you are not complying with Health and Safety requirements”. In our view this would be an allegation not information. In the employment context, an employee may be dissatisfied, as here, with the way he is being treated. He or his solicitor may complain to the employer that if they are not going to be treated better, they will resign and claim constructive dismissal. Assume that the employer, having received that outline of the employee’s position from him or from his solicitor, then dismisses the employee. In our judgment, that dismissal does not follow from any disclosure of information. It follows a statement of the employee’s position. In our judgment, that situation would not fall within the scope of the Employment Rights Act section 43 … The natural meaning of the word “disclose” is to reveal something to someone who does not know it already. However s43L(3) provides that ”disclosure” for the purpose of s 43 has the effect so that “bringing information to a person’s attention” albeit that he is aware of it already is a disclosure of that information. There would be no need for the extended definition of “disclosure” if it were intended by the legislature that “disclosure” should mean no more than “communication”.

23. There has to be something more than simply voicing a concern,

raising an issue or setting out an objection. This does not establish the disclosing of information. However, a communication – whether written or oral – which conveys facts and makes an allegation can amount to a qualifying disclosure.

24. In **Kilraine v London Borough of Wandsworth UKEAT/0260/15**, Langstaff J stated:

> "I would caution some care in the application of the principle arising out of Cavendish Munro. The particular purported disclosure that the Appeal Tribunal had to consider in that case is set out at paragraph 6. It was in a letter from the Claimant's solicitors to her employer. On any fair reading there is nothing in it that could be taken as providing information. The dichotomy between "information" and "allegation" is not one that is made by the statute itself. It would be a pity if Tribunals were too easily seduced into asking whether it was one or the other when reality and experience suggest that very often information and allegation are intertwined. The decision is not decided by whether a given phrase or paragraph is one or rather the other, but is to be determined in the light of the statute itself. The question is simply whether it is a disclosure of information. If it is also an allegation, that is nothing to the point".

(ii) Detriment on the grounds of having made a protected disclosure

25. Under section 47B ERA:

> "(1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure."

26. Section 47B will be infringed if the protected disclosure materially influenced (in the sense of being more than a trivial influence) the employer's treatment of the whistleblower, see **Fecitt v. NHS Manchester [2012] IRLR 64**.

27. The meaning of detriment for the purposes of public interest disclosure claims, although undefined in the Employment Rights Act

1996, closely mirrors that adopted under Equality legislation. A detriment thus will be taken to exist if a reasonable worker would or might take the view that the action or inaction of their employer was in all the circumstances to his detriment: **Ministry of Defence v Jeremiah 1980 ICR 13**, CA and **Shamoon v Chief Constable of the Royal Ulster Constabulary** 2003 ICR 337, HL.

28. It is provided by s.48(2) ERA, where a claim under s.47B is made, that "it is for the employer to show the ground on which the act or deliberate failure to act was done".

(iii) Automatic Unfair Dismissal

29. Section 103A ERA provides that '[a]n employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.

(iv) Victimisation

30. Section 27 of the Equality Act 2010 states that:

(1) A person (A) victimises another person (B) if A subjects B to a detriment because—

(a) B does a protected act, or

(b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act—

…

(c) Doing any … thing for the purposes of or in connection with the EqA 2010.

(d) making an allegation (whether or not express) that A or another person has contravened this Act.

(v) Burden of proof under the Equality Act 2010

31. We reminded ourselves of the burden of proof in discrimination

cases, with reference to section 136 of the Equality Act 2010:

> (1) This section applies to any proceedings relating to a contravention of this Act.
>
> (2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

32. Lord Justice Mummery (with which Laws and Maurice Kay LJJ agreed) in **Madarassy v Nomura International plc [2007] ICR 867**, at paragraphs 56-58, provided a summary of the principles that apply when considering the burden of proof in Equality Act Claims:

> "56. The court in *Igen v Wong…* expressly rejected the argument that it was sufficient for the complainant simply to prove facts from which the tribunal could conclude that the respondent "could have" committed an unlawful act of discrimination. The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal "could conclude" that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination.
>
> 57. "Could… conclude" in section 63A (2) must mean that "a reasonable tribunal could properly conclude" from all the evidence before it. This would include evidence adduced by the complainant in support of the allegations of sex discrimination, such as evidence of a difference in status, a difference in treatment and the reason for the differential treatment. It would also include evidence adduced by the respondent contesting the complaint. Subject only to the statutory "absence of an adequate explanation" at this stage (which I shall discuss later), the tribunal would need to consider all the evidence relevant to the discrimination complaint; for example, evidence as to whether the act complained of occurred at all; evidence as to the actual comparators relied on by the complainant to prove less favourable treatment; evidence as to whether the comparisons being made by the complainant were of like with

like as required by section 5(3) of the 1975 Act; and available evidence of the reasons for the differential treatment.

58. The absence of an adequate explanation for differential treatment of the complainant is not, however, relevant to whether there is a prima facie case of discrimination by the respondent. The absence of an adequate explanation only becomes relevant if a prima facie case is proved by the complainant. The consideration of the tribunal then moves to the second stage. The burden is on the respondent to prove that he has not committed an act of unlawful discrimination. He may prove this by an adequate non-discriminatory explanation of the treatment of the complainant. If he does not, the tribunal must uphold the discrimination claim."

33. Mummery LJ also explained further how evidence adduced by the employer might be relevant, noting that it could even relate to the reason for any less favourable treatment (paras. 71-72):

"71. Section 63A (2) does not expressly or impliedly prevent the tribunal at the first stage from hearing, accepting or drawing inferences from evidence adduced by the respondent disputing and rebutting the complainant's evidence of discrimination. The respondent may adduce evidence at the first stage to show that the acts which are alleged to be discriminatory never happened; or that, if they did, they were not less favourable treatment of the complainant; or that the comparators chosen by the complainant or the situations with which comparisons are made are not truly like the complainant or the situation of the complainant; or that, even if there has been less favourable treatment of the complainant, it was not on the ground of her sex or pregnancy.

72. Such evidence from the respondent could, if accepted by the tribunal, be relevant as showing that, contrary to the complainant's allegations of discrimination, there is nothing in the evidence from which the tribunal could properly infer a prima facie case of discrimination on the proscribed ground…."

34. Lord Justice Mummery also pointed out that it will often be appropriate for the tribunal to go straight to the second stage. An example is where the employer is asserting that whether the burden

at the first stage has been discharged or not, he has a non-discriminatory explanation for the alleged discrimination. A claimant is not prejudiced by that approach since it is effectively assumed in his favour that the burden at the first stage has been discharged.

35. To summarise, the claimant must prove, on the balance of probabilities, facts from which a Tribunal could conclude, in the absence of an adequate explanation that the respondent had discriminated against him. If the claimant succeeds in doing this, then the onus will be on the respondent to prove that it did not commit the act. This is known as the shifting burden of proof. Once the claimant has established a prima facie case (which will require the Tribunal to hear evidence from the claimant and the respondent, to see what proper inferences may be drawn), the burden of proof shifts to the respondent to disprove the allegations. This will require consideration of the subjective reasons that caused the employer to act as he did. The respondent will have to show a non-discriminatory reason for the difference in treatment.

(vi) Unfair dismissal

36. The burden of proof rests on the respondent in respect of establishing that the reason for dismissal falls within one of the potentially fair reasons for dismissal listed under s.98(2) of the Employment Rights Act 1996, or some other substantial reason.

37. The Court of Appeal in **Abernethy v Mott [1974] ICR 323**, per Cairns LJ, laid out the correct approach to identifying the reason for the dismissal (although this must now be read against the Jhuti case, which does not affect this decision):

> "A reason for the dismissal of an employee is a set of facts known to the employer, or it may be of beliefs held by him, which cause him to dismiss the employee."

38. The tribunal must then consider, per section 98(4), whether the dismissal was fair or unfair by asking:

> "(a)… Whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and
>
> (b) shall be determined in accordance with equity and the

substantial merits of the case"

39. The test requires that the tribunal reviews the reasonableness of the employer's decision, rather than substituting its own view. The question the tribunal must ask itself is whether the decision to dismiss the claimant fell within the band of reasonable responses: **Iceland Frozen Foods v Jones [1983] IRLR 439** EAT.

40. **BHS v Burchell [1978] IRLR 379**, sets out more specific questions to assist a tribunal when considering the fairness or unfairness of a dismissal in a misconduct case:

    (a) Did the Respondent have a genuine belief that the Claimant was guilty of the misconduct?
    (b) Did the Respondent have in mind reasonable grounds upon which to sustain that belief?
    (c) Did the Respondent carry out as much investigation as was reasonable in the circumstances?

41. The employer may not need to conduct a full investigation when the employee accepts important facts: **Boys and Girls Welfare Society v Macdonald [1996] IRLR 129 [33].**

42. According to the Court of Appeal in **Sainsbury's Supermarkets v Hitt [2003] IRLR 23**, the range of reasonable responses test applies equally to the Burchell criteria as it does to whether the misconduct was sufficiently serious to justify dismissal. Again, it is not for the tribunal to substitute the procedure or investigation that the tribunal itself would have adopted.

43. The above considerations apply to the appeal process, which is capable of remedying any unfairness. **West Midlands Co-operative Society Ltd v Tipton [1986] IRLR 112**. See paragraphs 18 and 24.

44. After an appeal, the question is whether the process as a whole was fair; see **Taylor v OCS Group Limited [2006] IRLR 613** CA, per Smith LJ:

    "46. […] In our view, it would be quite inappropriate for an ET to attempt such categorisation. What matters is not whether the internal appeal was technically a rehearing or a review but whether the disciplinary process as a whole was fair.

    47. […] The use of the words 'rehearing' and 'review', albeit only intended by way of illustration, does create a risk that

ETs will fall into the trap of deciding whether the dismissal procedure was fair or unfair by reference to their view of whether an appeal hearing was a rehearing or a mere review. This error is avoided if ETs realise that their task is to apply the statutory test. In doing that, they should consider the fairness of the whole of the disciplinary process. If they find that an early stage of the process was defective and unfair in some way, they will want to examine and subsequent proceeding with particular care. But their purpose in so doing will not be to determine whether it amounted to a rehearing or a review but to determine whether, due to the fairness or unfairness of the procedures adopted, the thoroughness or lack of it of the process and the open-mindedness (or not) of the decision-maker, the overall process was fair, notwithstanding any deficiencies at the early stage."

45. Reducing compensation for an unfair dismissal by reason of contributory fault is provided for at s.123 of ERA 1996. **Steen v ASP Packaging Ltd [2014] ICR 56** sets out the questions which ought to be considered when determining the appropriate deductions (if any) for contributory fault:

    (a) Which alleged conduct gives rise to the contributory fault?
    (b) Was that conduct blameworthy?
    (c) Did the blameworthy conduct cause or contribute to the dismissal to an extent?
    (d) To what extent should the award be reduced and to what extent is it just and equitable to reduce the award?

CLOSING SUBMISSIONS

46. The tribunal was assisted by a written document presented by Ms Firth on behalf of the respondent. This provided a clear and accurate representation of the legal principles to be applied in this case, as well as written closing submissions.

47. The tribunal also benefitted from oral closing submissions, made by Ms Firth and by the claimant.

48. Although not repeated here, the closing arguments have been considered as part of the decision making process.

FINDINGS OF FACT

We make the following findings of fact based on the balance of probability from the evidence we have read, seen, and heard. Where there is reference to certain aspects of the evidence that have assisted us in making our findings, this is not indicative that no other evidence has been considered. Our findings were based on all the evidence, and these are merely indicators of some of the evidence considered in order to try to assist the parties understand why we made the findings that we did.

We do not make findings in relation to all matters in dispute but only on matters that we consider relevant to deciding on the issues currently before us.

GENERAL FINDINGS

49. The claimant was employed as a Field Sales Manager by the respondent. He commenced employment on 29 September 2005.

FINDINGS OF FACT: PROTECTED DISCLOSURES/PROTECTED ACTS

50. On 25 February 2020, the claimant attended an appeal meeting in respect of his appeal against the outcome of his first formal 'Improving Performance' meeting. The meeting was chaired by Ms Hare (the notes of this meeting are at pp209-220).

51. During that meeting, the claimant after having made his points in relation to his appeal was then asked whether he had anything else to add (this conversation is recorded at p.219 of the bundle). The claimant responded by explaining that there were 'More negative things that would involve me going into a complaint. So if we can go back to normal, if not, here's the other stuff'. Ms Hare pressed the claimant on this matter, with the claimant eventually explaining that it concerned WhatsApp messages in a business group, which he found sexist/racist. The claimant also explained that it was in a works WhatsApp group, and that it needs 'knocking on the head'.

52. The claimant during this discussion, then showed Ms Hare two images. The first image is that at p.231, which involved a picture of a woman and contained derogatory gendered language. The second image is at p.233 and included a picture of a woman of Asian descent wearing a face mask, with the words 'Chinese Mail Order Bride: now 75% off regular price'.

53. The claimant did not show Ms Hare the images at pages 230 or 232

in this meeting, and this was his clear unequivocal evidence under cross-examination when taken to this meeting. Although his evidence later changed, we consider that his first response was most likely to be accurate.

54. The claimant raised the matter about the WhatsApp messages during his grievance Hearing on 02 October 2020, with Mr Khan (notes of this hearing are at pp.377-389, however, this is raised at p.384). Again, he refers to sexist and racist content. He explained to the tribunal that he raised it as the company needed to look at standards, and that that it really annoyed him at the time.

55. The claimant emailed Ms Lunari and Mr Harrison, copying in Ms Lees and Mr Insley, on 15 September 2020 (pp.341-342, and this is the email that the claimant identified as being the second of his protected disclosures). The claimant did not provide any information about Mr Jackson and a racist comment, or the use of the word 'silverback'. Nor did the claimant provide any information in this email about any other WhatsApp messages. At its height, there is reference to 'Investigation of Racist/Sexist content of Company communications'. The claimant accepted this under cross-examination.

CONCLUSIONS: PROTECTED ACT AND PROTECTED DISCLOSURES

56. With respect the first alleged protected act/protected disclosure, the respondent accepts that the claimant made a protected act when raising the WhatsApp messages. However, it disputes whether it is a protected disclosure. This is on two grounds, first that the claimant has not established that the disclosure was made in the public interest. And that he has not established that he had a reasonable belief that he was disclosing information concerning a criminal activity or a failure in a legal obligation.

57. And to a degree, the tribunal agrees with those submissions.

58. Although the claimant appears to have some subjective motivation behind raising this matter, in that the tribunal considered it to have been raised with a view to try to protect himself during the improving performance process, the tribunal also accepted the claimant's oral evidence that he was also raising it due to his strong feelings against use of such sexist and racist language, especially in work contexts. This in the tribunal's view, and given that it is calling out inappropriate language that has inherent racial and sexual

connotations, satisfied that, at least in part, it was being raised in the public interest.

59. The tribunal does not accept in these circumstances that the claimant had a reasonable belief that there was some criminal offence being committed, and this is especially given that even at this hearing the claimant was not able to explain in what way he considered a criminal offence was being committed. However, the tribunal did accept that he had a reasonable belief that a person was failing to comply with legal obligations to which they are subject, namely in respect of the non-discrimination principle enshrined in the Equality Act 2010. This is clear when the claimant explained the WhatsApp messaged in the meeting of 25 February 2020 using the terms sexist and racist, and that they needed knocking on the head. This was further supported by the claimant's submissions, which related to personal reasons as to why he feels strongly against such derogatory terms.

60. The tribunal concluded that raising of the matter in the meeting of 25 February 2020, combined with the showing of the images in question, was a qualifying disclosure in this case.

61. With respect the email of 15 September 2020, this is found neither to be a protected act or a qualifying disclosure. The claimant did not provide any information in this email that comes close to be a qualifying disclosure or a protected act.

DETRIMENTS

62. Detriment a:
    a. The claimant brought no evidence that Mr Insley had acted in a hostile manner towards him on 27 February 2020. The 27 February 2020 is not mentioned in the claimant's witness statement.

       Conclusion
    b. The tribunal concluded that he had not been subjected to this treatment as alleged, and therefore this allegation is dismissed.

63. Detriment b:
    a. On 05 March 2020, the claimant had a recorded conversation with Ms Evanson due to perceived inappropriate behaviour of the claimant.
    b. The claimant did not dispute that he had exhibited the three

inappropriate behaviours in question, namely talking in team meetings about unrealistic targets and no bonuses, that he had not submitted a journey plan as required and that he was sending customers inappropriate information, which contained internal action points. The claimant at this meeting agreed that he would not repeat these behaviours.

c. The claimant had the opportunity to add to the notes. He was invited to add any specific comments or responses. The claimant did not add anything to those notes that suggested that Ms Evanson had made any comment about how he expected the team to feel about him given that he had reported the WhatsApp messages. And on balance, the tribunal finds that he did not add this detail as it was not said in this meeting. Supporting this conclusion is that there was nothing preventing the claimant from raising such a matter on this form, and this is the evidence that we have that is made closest to the time in question.
d. The claimant signed the notes as being accurate, as they are an accurate reflection of what was discussed at that meeting.

Conclusion

e. The tribunal was not satisfied that the claimant viewed this signing of a recorded conversation document at the time as a detriment. The tribunal has also found that he was not subject to the comment as alleged. The claimant is found not to have been subjected to this detriment, and this allegation is dismissed.

64. Detriment c:
    a. In the appeal outcome discussion on 10 March 2020, Ms Hare talked the claimant through her decision. It was explained to the clamant that the meeting and outcome was the end of the appeal, and the process had now finished.
    b. The claimant respondent by explaining that it was a 'natural end of sequence'.

    Conclusion

    c. The tribunal concludes that the claimant himself did not view these words as detriment. And, in any event, being told that an appeals process has ended/been exhausted when it had been could not reasonably be viewed as a detriment. An appeals process must have an end point, and this was it. This allegation of detriment does not succeed and is dismissed.

65. Detriment d:

a. The claimant responded directly to Mr Hobbs, the CEO of the respondent on 18 March 2020. This was a response to an email sent by Mr Hobbs the previous day (see p.235).
b. The claimant's email suggests a plan for inter-branch transfer of wardles items and medicines.
c. The claimant does not recall whether Mr Insley informed him not to contact Mr Hobbs by email or orally.
d. On balance, Mr Insley told the claimant that if he had any future suggestions that he should pass them on to his line manager, Ms Evanson. Mr Insley cannot recall having said anything to the claimant about this matter. However, Mr Insley reasons in his witness statement that if he had said something, it would have been around going through the claimant's line manager given that the CEO would be more likely to be involving himself in very senior things (see paragraph 14 of the claimant's witness statement and paragraph 12 of Mr Insley's witness statement).

Conclusion

e. Mr Hobbs is the respondent's CEO. And the country was experiencing the COVID pandemic at this time. There is nothing to support that the claimant considered being told to go through the line of management with ideas, starting with Ms Evanson, to be a detriment. And in the circumstances, where this is all that was said when a CEO would have been focused on other difficult matters, it would not be reasonable for the claimant to view it as such.
f. The tribunal find that this was not the subjecting of the claimant to a detriment and this allegation is dismissed.

66. Detriment e:
a. The claimant was told to complete all his designated calls by lunchtime on 25 March 2020, which followed an agreement between the claimant and Ms Evanson on 24 March 2020 (see emails at pp.439-440).
b. The claimant responded to Ms Evanson on 25 March 2020 (p.439) to explain that he would do and would be adding a few extras too.

Conclusion

c. The tribunal is not satisfied that the claimant himself perceived this to be detrimental treatment. And in circumstances where part of the claimant's role was to contact customers, having some targets set down (and especially where there is agreement) is not a detriment. This allegation is dismissed.

67. Detriment f:
    a. The claimant copied Ms Liddle into an email that he had sent to Ms Evanson on 25 March 2020, at 07.54 and 08.07. In neither of these emails did the claimant require a response from Ms Liddle, nor was there anything that could reasonably require Ms Liddle to reply to.

    Conclusion
    b. Ms Liddle not replying to an email that she was merely copied into (rather than being the targeted recipient of the email) and that did not require a reply is found not to be a detriment by this tribunal. This allegation is dismissed.

68. Detriment g:
    a. Prior to COVID, the dispensing doctors' accounts and key accounts were embedded within the regions, with the relevant Sales Representatives.
    b. The respondent decided to restructure the way that work was distributed. Part of this was a decision made by Ms Evanson that dispensing doctor accounts and key accounts would be taken out of the regions and dealt with by a single contact.
    c. All dispensing doctors accounts were taken out of region and given to Graham on a trial basis (see p.437H). The claimant described Graham as being the best person for this role, and therefore we find that Graham was given this role as he was the best suited candidate for it.
    d. The Key Accounts were taken out of region and were given to 2 Key Account Managers.
    e. The claimant had no objection to this restructuring, and that was the evidence he gave.
    f. The claimant did not express an interest at the time in either of these roles. The claimant accepted this under cross-examination.
    g. The claimant accepted that the moving of key accounts was out of necessity and explained that he was not maintaining this specific allegation as a detriment.

    Conclusion
    h. Considering above, the tribunal concludes that the claimant did not consider either of these decisions to be detriments at the time. And further, it would have been unreasonable to consider not offering him of a role that he expressed no interest in as a detriment. No detriment is found. This allegation is dismissed.

69. Detriment h and k:
    a. The claimant attended a first stage formal improving performance meeting on 27 January 2020. In that meeting, the claimant raised concerns about achieving sales growth in a region that had been worked for 15 years (see p.182).
    b. As part of restructuring of the sales processes in the respondent, Ms Evanson adjusted the geographical boundaries of the sales representatives (this was explained by Ms Evanson to Mr Khan as part of the grievance investigation, see p.437G, and in the email from Ms Evanson to the claimant on 06 July 2020, see p.259).
    c. Considering the claimant's comments about growing a region that had been worked for 15 years, Ms Evanson explained that his region had been amended to include postcodes outlined during the team briefing. In short, this meant that the claimant would continue to work 3 postcodes that he had previously worked, and 3 new postcodes.
    d. However, Ms Evanson had made an error as to where the claimant lived, believing that he lived in Derbyshire when he lived on the border with Nottingham.
    e. The claimant highlighted this error by email on 06 July 2020 (see top email on p.259).
    f. Ms Evanson resolved this matter and apologized to the claimant (see pp.257-258).
    g. The claimant concluded on this matter by email on 07 July 2020 (see p.257) by thanking Ms Evanson for the change to regional boundaries.
    h. The claimant emailed Mr Insley on 10 July 2020 (pp.278-279), during Mr Insley's investigation, in which he explained that 'Qtr1 2020/21 return from furlough to a new region with new incentive which is great'.

    Conclusion

    i. In the circumstances highlighted above, the tribunal does not find that the claimant has been subjected to the detrimental treatment as alleged. The boundary changes, which introduced new customers to the claimant, were made at the request of the claimant to try to help him develop new business, given his views of having to continue to work the same postcodes that he had for the previous 15 years. This allegation is dismissed.

70. Detriment i: Dismissed on withdrawal by the claimant.

71. Detriment j:
    a. The claimant could not identify who he says told him that the respondent had promised Ms Kosser the opportunity to work in his territory.
    b. This was unsubstantiated rumour and no more than gossip around the office. This was the claimant's evidence under cross-examination.

    Conclusion
    c. In the circumstances, the tribunal concludes that the respondent had made no such promise. The claimant was not subject to treatment that he alleges was detrimental treatment. This allegation is dismissed.

72. Detriment l:
    a. The claimant was asked to help cover any queries received in respect of postcodes that the claimant previously managed on a reactive basis, until a new appointment was made. This mirrored a previous arrangement where the claimant, Jo, Sarah and Adam had helped out with customer queries whilst a permanent worker was not in place (see email from Evanson on pp259-260).

    Conclusion
    b. The claimant was simply helping the business, should a customer enquiry be received. This is not subjecting the claimant to a detriment. Furthermore, this is an arrangement done previously, and one that others had done, and therefore was not caused by the qualifying disclosure/protected act. This part of the claim must fail.

73. Detriment m:
    a. The claimant, throughout his role in sales, has always been subject to certain targets.
    b. Ms Evanson on 06 July 2020 introduced new targets for the claimant. These are at p.266.
    c. The targets that were introduced were the same as those for the claimant's colleagues. In making this finding the tribunal is relying on the written notes of the meeting between Ms Evanson and Mr Khan on 05 November 2020 (particularly see p.437G), which we accept as an accurate note. And in circumstances where the claimant accepted that he simply did not know whether he was subject to the same targets or not, and therefore adduced no positive evidence to dispute the respondent's evidence on this matter.

d. The claimant considered that the introduction of these targets were reasonable ones by his manager when looked at in isolation. The claimant gave this evidence under cross-examination.

Conclusion

e. Given the above, the tribunal concludes that the claimant was not subject to a detriment. The claimant's position was that it was the combination of these targets with targets laid down in the IPP that introduced undue pressure on him. However, the IPP targets were laid down for specific matters. And subjecting a sales representative to targets, in an environment where such targets are common, is not a detriment. This allegation is dismissed.

74. Detriment n:
    a. The claimant sent an email to Sarah Harker on 06 July 2020 (see pp255-256). This email contains some praise of Ms Harker. However, it is written using capital letters in places, and different coloured fonts and a change in font size at the end. Ms Evanson is copied into this email.
    b. Ms Evanson replies to this email to the claimant, with nobody else copied in, on 06 July 2022 (see p.255). In this email Ms Evanson explains that it is great that the claimant appreciates Ms Harker's work but reminds the claimant to think before copying others into emails. She also raises a question over the use of capital letters and multi coloured font.
    c. The claimant responds that same day to explain that he will tone it down a bit.

    Conclusion

    d. Having considered the above, the tribunal concludes that not only did the claimant not perceive this to be a detriment at the time, given his response, but that it would also be unreasonable for him to do so. Ms Evanson was clearly giving some advice in respect the email, and it was no more than that. This allegation is dismissed.

75. Detriment o: Dismissed on withdrawal by the claimant.

76. Detriment p:
    a. On 09 July 2020, at 08.55, the claimant emailed Ms Evanson a chart that laid down where the claimant says there were pinch points in respect of work. The chart provides no explanation other than simple headings and is colour coded,

without any explanation as to what the different colours mean.

b. M Evanson replied that same day at 10.06 and explained that she did not 'understand this- you will need to talk me through it! I can't see you on the generics call, are you on a call?'

Conclusion

c. The tribunal was not satisfied that this email from Ms Evanson was subjecting the claimant to a detriment. The claimant produced a chart which is far from self-explanatory. Ms Evanson merely explained that she could not understand it and would need it explained to her. And then enquires as to whether the claimant is on a call. The tribunal is not satisfied that the claimant perceived this response as a detriment at the time, and it would be unreasonable for him to do so in the circumstances. This allegation is dismissed.

77. Detriment q:

a. On 10 July 2020, the claimant emailed Mr Insley, copying in Ms Liddle. In this email he explains that all he could do was lay out why he was feeling stressed (see pp.278-279).

b. Mr Insley responded to that email on that same day (see p.278). At no point in that email did Mr Insley explain to the claimant that he should feel stressed on his return to work.

Conclusion

c. The allegation made by the claimant is quite specific. He brings this allegation on a specific email, that at p.278. The allegation is simply not made out on the evidence, and therefore must fail. This allegation is dismissed.

78. Detriment r:

a. In the claimant's email of 10 July 2020, at no point does he request or require Ms Liddle to take any action.

b. Ms Liddle did not take any action.

c. Ms Liddle took no action as she was not being asked to take any action.

Conclusion

d. The tribunal is not satisfied that in these circumstances the claimant was being subjected to a detriment. And even if the tribunal concluded otherwise, it would not be reasonable for the claimant to view Ms Liddle not taking action in circumstances where no action was required to be a detriment. This allegation is dismissed.

79. Detriment s:
    a. On 13 July 2020, Ms Evanson sent the claimant an email to chase up 6 objectives that were overdue and still outstanding (see p.280). This was part of the Clear review objectives for the financial year that had just ended.
    b. On 14 July 2020, the claimant replied to Ms Evanson (see p.280). In his reply he accepts he was late and apologises. He also explains that he has corrected his objectives. In short, he had now completed the work that was outstanding. The claimant's email did not require a response from Ms Evanson.
    c. Ms Evanson sent an email to the entire Field Sales team on 16 July 2020 (see p.281). There is no criticism of the review. This email is simply summarizing where the team is and shows Ms Evanson accepting some fault in some of her explanations in respect of some actions that had not been completed.

    Conclusion

    d. The tribunal concludes that the claimant has not been subject to the detriment as alleged. The claimant has not established that Ms Evanson was critical of the Claimant's company Clear Review programme nor that she ignored his explanation. As such this allegation must fail. This allegation is dismissed.

80. Detriment t:
    a. On 22 July 2020, a customer contacted various employees of the respondent seeking price information (see p.286).
    b. Ms Withington emailed the claimant that same day believing that the customer fell within the claimant's sales area (see p.285), copying in Mr Dibb as he had previous responsibility for the client.
    c. Mr Dibb replied to explain that the customer fell within his territory (email at 10.05 on 22 July 2020, p.285).
    d. Ms Harker replied to explain that the accounts sits in the claimant's region and therefore would remain with him (see p.283).
    e. Ms Withington replied at 10.49 on 22 July 2020 to explain that they should all be moved to Mr Dibb's region as that is where the customer's head office was located.
    f. This was simply a mistake by Ms Harker, a matter accepted by the claimant under cross-examination.

    Conclusion

    g. The tribunal concludes in these circumstances that it was a simple error by Ms Harker, confused by the Head Office of the

customer being located in Mr Dibb's region and a branch being situated in the claimants. It would not be reasonable for the claimant to view such as a detriment. This allegation is dismissed.

81. Detriment u:
    a. The claimant was never told that he would not be getting a dedicated tele-sales team. There is simply no evidence adduced of this.
    b. Rather, on 11 August 2020, in an email sent to the claimant by Ms McCartan, it was explained that Sue was off sick and would be until 23 August 2020, and that Mica would be providing cover.

    Conclusion
    c. The claimant has simply not established that the was subject to this treatment as alleged. He was not subject to this detriment. This allegation is dismissed.

82. Detriment v and x:
    d. On 08 July 2020 sent to Ms Evanson a journey plan for July 2020 (see pp.274-275). In response to the journey plan, Ms Evanson emailed the claimant on 08 July 2020 to ask if any calls had been missed off the plan, that she could not see any other activity on that day, save for creating the action plan, and to explain that she was struggling to see where the hours had gone if that was the extent of his work. Ms Evanson invited the claimant to explain what work her had been doing since his return to work (see p.273-274).
    e. The claimant responded to Ms Evanson later that same day to provide a summary of the work he had done since he had returned from furlough (pp.272-273). This included referencing having spoken to his customers in his new region on a pro-active basis.
    f. Again, on 08 July 2020, Ms Evanson emailed the claimant in response, explaining that he had been back for a week and that was the time to catch up since his return, and that she had concerns that the claimant had only referred to having made 9 calls on the Monday, which she described as being very low (see p.271).
    g. Ms Evanson decided to investigate the claimant's call and email record.
    h. The claimant was found to have only logged 19 emails in the whole of July, which was less than one email per day, and an average of 1 hour of phone calls in a day and with teams

online of 16 hours (see the summary in the disciplinary hearing with Mr Insley that was heard on 15 September 2020, at p.348).

i. The claimant at no point disputed this data.

j. This is despite the claimant having explained to Ms Evanson in an investigation meeting concerning is customer activity on 13 August 2020 that he had contacted all key customers and was calling 15 customers a day.

Conclusion

k. The tribunal on considering this matter has concluded that the claimant was not subject to a detriment in these circumstances. Although Ms Evanson was critical of the claimant's work output, and Ms Evanson did undertake an investigation into the claimant's work output, this was entirely reasonable in the circumstances. The claimant had produced a plan which highlighted that he was not contacting customers as required, in circumstances where the respondent's way of working had shifted to calls and email engagement following the pandemic. It was entirely sensible for Ms Evanson then to interrogate the data to understand what work the claimant had been doing, especially in circumstances where it appeared that he was not completing the hours he was suggesting he was. And further, when it was interrogated, he told untruths in respect of the amount of work he was doing. In those circumstances it would not be reasonable for the claimant to consider such questioning of his output and undertaking an investigation into it was a detriment. This allegation is dismissed.

83. Detriment w: The claimant has given no evidence on this in his witness statement. Nor did the claimant put this matter to Mr Insley in cross examination. We therefore find that the allegation Is not made out and is dismissed.

84. Detriment y: Dismissed on withdrawal by the claimant.

85. Detriment z: Dismissed on withdrawal by the claimant.

86. Detriment aa: Dismissed on withdrawal by the claimant.

87. Detriment bb:

a. The claimant had a meeting with Ms Evanson on 4 September 2020. This meeting was in relation to an allegation that the

claimant had shared confidential information with colleagues regarding investigation into his conduct.

b. As part of the investigation into the matter, Ms Liddle interviewed the three colleagues in question. Each were interviewed on 04 September 2020. A record of those three interviews are pages 332-336.
c. The claimant was not present at those interviews, and nor does he know whether other matters had been raised in those interviews and omitted from the record.
d. The claimant has no evidence that any of the interviews have been falsified in any way.
e. The claimant was shown these records of interview as part of the investigation.

Conclusion

f. The claimant's concerns with respect the three interview records is that they do not contain the detail that he was hoping they would include. Namely, reference to the term 'silverback'.
g. The claimant may not have liked the record of the conversations, however, that is no more than an unjustified grievance.
h. There is nothing to suggest that Ms Liddle falsified the interview records in any way, and therefore the tribunal accept them as being accurate.
i. This is not a detriment for the purposes of this complaint. This allegation is dismissed.

88. Detriment cc:
    a. The claimant had been placed in the respondent's formal Improving Performance Procedure on 21 January 2020 (see p.177). The first stage of which was held on 27 January 2020.
    b. The outcome of the first stage was that the claimant was deemed not to have met the required level. He was placed on an Action Plan, with a review meeting to be held at the end of Q3 (see p.197).
    c. The claimant appealed the decision in respect of the first stage, with his appeal being rejected on 10 March 2020 (pp.227-230).
    d. The review meeting could not take place, due to the pandemic.
    e. The claimant returned to work, having been furloughed in July 2020.
    f. The claimant remained in the procedure during this time.
    g. The claimant was invited to an Improving Performance review

meeting by letter dated 09 September 2020, to be held on 14 September 2020.

Conclusion

h. The claimant was in the respondent's Improving Performance Procedure. This involved a review meeting, after having had targets set out. This review meeting was delayed because of the pandemic. Inviting the claimant to a review meeting after the claimant had returned to work after a period of furlough and after a short period of time to allow the industry to normalize, is not a detriment. The tribunal does not accept that the claimant viewed this as a detriment, given it was inevitable, nor does the tribunal accept that it would have been reasonable for him to do so in the circumstances. This allegation is dismissed.

89. Detriment dd: Dismissed on withdrawal by the claimant.

90. Detriment ee: The findings of fact for this detriment are contained in the section on unfair dismissal/wrongful dismissal below. In short, in the circumstances, and given the conduct of the claimant, the tribunal is not satisfied that inviting the claimant to a disciplinary hearing based on the findings of the investigation could reasonably be considered a detriment in the circumstances. And further, inviting him to a disciplinary hearing was because of the information that had been uncovered during that investigation. This invitation was not caused by the protected disclosure/protected act. This allegation is dismissed.

91. Detriment ff:

a. On 15 September 2020, the claimant emailed Ms Lunardi and asked her to intervene and prevent the disciplinary process that he was involved in (see p.340).
b. On that same date, Ms Lunardi replied to the claimant (see pp.339-340). She explained that it would be wrong for her (or Jeremy) to use her director status to stop or pause the disciplinary process that other managers have commenced and that are in line with the company processes. She explained to the claimant the purpose of a disciplinary hearing. And the right to appeal any outcome. Ms Lunardi urged him to submit a grievance if he had allegations that he could evidence.
c. The claimant accepted those views of Ms Lunardi at the time and explained that he would now fully commit to help Mr

Insley to understand the range of issues and that he would supply the supporting documentation.

Conclusion

d. The tribunal concludes that the response by Ms Lunardi was entirely appropriate. Refusing to use her director status to stop a disciplinary process is not subjecting the claimant to a detriment. The claimant did not perceive it as such at the time, evidence by his response, and it would not be reasonable for him to do so in circumstances where there was a disciplinary case for him to answer. This allegation is dismissed.

CONCLUSIONS: DETRIMENTS AND CAUSAL LINK

92. In respect of every one of the alleged detriments above, the claimant has adduced no evidence that would link any of the treatment to the protected disclosure/protected act. The claimant's evidence throughout was to speculate that the treatment could have been caused by the protected disclosure/protected act. Or to assert that he considered that it was, without providing any evidence from which the tribunal could draw any such causal connection.

93. As recorded above, the tribunal has concluded that none of the alleged detriments on which the claimant brings those complaints, are him being subjected to detrimental treatment.

94. Not only has the tribunal concluded that the claimant has not been subjected to any detrimental treatment as alleged, but even if he had been, there was no evidence to support that such treatment was caused by him having made a protected disclosure/protected act

95. The claims of having been subjected to a detriment on the grounds of having made a protected disclosure and for victimisation fail in their entirety.

FINDINGS OF FACT: UNFAIR DISMISSAL/WRONGFUL DISMISSAL

96. The claimant's employment service started on 19 September 2005. He had continuous service of just over 15 years.

97. The claimant throughout his 15-year employment, save for the incident that resulted in his dismissal, had no formal disciplinary action taken against him.

98. The claimant, at the time of dismissal, was employed in a managerial

role. He managed his day and his daily tasks, albeit subject to various targets. He was required to provide evidence of him achieving those targets.

99. The respondent is a large national pharmaceutical company, operating in at least 3 countries of the UK.

100. The respondent uses a platform called 'Sales Force'. This is used by the respondent to record activity between the sales team and its customers.

101. The claimant was responsible for inputting his data onto Sales Force, and for ensuring that his records on that platform were accurate. That was part of his role, and an important aspect of it. This was the system where the respondent would have a record of the work done by the claimant and his interactions with clients/customers (both telephone and email), and where details relating to any actions undertaken with customers was maintained, as well as their status with the respondent (see para 51 of Mr Insley witness statement, which was accepted by the claimant).

102. Given its importance to the respondent, the claimant was expected to input accurate information on Sales Force.

103. During March to July 2020, that being the first lockdown during the Coronavirus pandemic, the claimant was furloughed. The claimant undertook redeployment as a delivery driver delivering medication direct to patients for a short time during this period.

104. On the respondent's workforce returning to work, it had a focus on winning back customers or fixing customer relationships that were lost or impacted upon during the furlough period. This primarily involved a national telephone campaign. The claimant when he returned from being furloughed was part of a continuance of this campaign to re-build relationships.

105. On 13 August 2020, the claimant was invited to an investigation meeting with Ms Evanson. This was due to Ms Evanson having concerns about the claimant's customer activity. During this meeting, the performance data of the claimant was questioned, insofar as the amount of work that the claimant had been doing, in relation to call logs and emails. This was the only data that Ms Evanson had available to her at this stage that identified the work the claimant had been doing between 01 and 24 July 2020. The notes of this meeting are at pages 304-312.

106. In the meeting of 13 August 2020, the following was discussed and recorded in the accompanying meeting note:

a. It was recorded that the claimant understood that the investigation was confidential and must not be discussed with colleagues.
b. It was explained to the claimant that following returning form furlough, Ms Evanson had looked at the claimant's activity level and productivity because of his performance plan.
c. Ms Evanson explained that she considered there to be a disconnect between what the claimant has recorded as his inputs and the outputs that were being seen.
d. The claimant accepted that all customer contact was now being made through telephone or email.
e. That the claimant between 01 July to 23 July (18 working days) had only sent 113 emails, which was an average of 6 per day.
f. The claimant merely responded by asking 'Were they big emails?' Before then explaining that he had contacted all his key contacts. And stating that Ms Evanson had to be careful, before stating that '....I don't want this to be about your inadequacies.'
g. The claimant constantly deflected to past performance rather than explaining his current performance.
h. The claimant explained that he was contacting at least 15 customers a day, in addition to making phone calls.
i. However, on further interrogation, the claimant accepted that between 01 and 08 July, all but one email was an internal email. And he had sent no emails to customers, despite his initial response.
j. The claimant (see p.307) then explained that it was from 09 July that he started to contact non-spending customers.
k. When Ms Evanson raised that there were only 16 emails to customers during the entire period of 01-23 July, the claimant merely responded to say that he believed his contact had been superb.
l. The claimant explained that the majority of his contact would be by phone and that he would follow up with an email if necessary. He explained that he maintained accurate data on Sales Force.
m. Ms Evanson then explained that his mobile phone record showed that across that 18-day period, the claimant had only made 23 hours, 28 minutes of talk time. However, that only 14 hours and 8 minutes were external calls. Ms Evanson

explained that the data supports an average of 6 emails per day and 47 minutes of phone calls to customers (at most) per day across the 18-day period.

n. In response the claimant explained that he considered that to be an acceptable level and that this will increase going forward. As he had spent a lot of time planning.
o. When asked by Ms Evanson as to what else the claimant has been doing with his time, he merely responded with 'I am not making it up' (see p.308).
p. The claimant again explained that his Sales Force data was accurate and up to date. Attention at this stage focused on data that had been added to that system.
q. Ms Evanson identified that there were 4 entries made by the claimant labelled 'prospect', which was to do with the scoping of potential new work. And that those 4 entries were inaccurately recorded on Sales Force.
r. The claimant provided an explanation, that being that he recorded pipeline accounts as being open. However, Ms Evanson responded, saying that the claimant's explanation made no sense given that the claimant had not recorded 28 pipeline accounts that the claimant had identified during the IPP as also being open.
s. The meeting was concluded with further explicit comments that the discussion was to be kept confidential.

107. Despite the claimant having explained to Ms Evanson that he had made contact during this period with all his 50 key customers, this was untrue. The claimant accepted in evidence that he had provided this information to Ms Evanson despite this not being accurate.

108. On 19 August 2020, the claimant attended a further investigation meeting held by Ms Evanson (notes of which are at pages 317-322). This was to reconvene the meeting of 13 August 2020, after she had undertaken further investigation into the claimant's customer data and as Ms Evanson was still uncertain on what activities the claimant had been doing during 01-23 July 2020.

109. In this meeting the following took place:

a. It was again explained to the claimant that there was little evidence of activity during 08-23 July, even if there was allowance for planning/catching up during 01 -07 July following the claimant returning from furlough.
b. The claimant raised his work over previous years in response

and explained that from 09-24 July he had produced a 'gold standard journey plan and gold standard joint plan'. Ms Evanson attempted to bring the focus back to his activities during the period in question.

c. The claimant again gave an ambiguous response, explaining that 01-08 July was spent looking backwards and from 09 July was spent looking forwards.
d. The claimant continually referred to performance matters of the past two years during this meeting whilst Ms Evanson was trying to focus on the claimant's conduct and current activity levels. The claimant on several occasions failed to answer in respect of specific activities that he did during this period.
e. An issue concerning LP Pharmacy was discussed.
f. Ms Evanson informed the claimant that she would review what next steps and/or further action was to be taken.

110. Having reviewed the matter, Ms Evanson considered the claimant had a case to answer in respect of conduct.

111. On 02 September 2020, Mr Insley wrote to the claimant to invite the claimant to a disciplinary hearing (see p.324). In this letter it explained to the claimant that:

a. The hearing was scheduled to take place on 04 September 2020.
b. Mr Insley would be chairing the hearing.
c. The claimant could be accompanied by a work colleague or a trade union representative.
d. That the question of disciplinary will be considered in relation to the following:
    i. Allegation of breach of confidence and trust, namely your work output is not aligned to the statements you have made in relation to your productivity and performance, leading to the alleged breakdown in trust and confidence, felt by your line manager Emma Evanson; which is in breach of Well's values
    ii. Allegations of demonstrating unprofessional conduct and attitude throughout the investigation process by failing to provide clarity on your specific work output since returning from Furlough leave, despite being asked on several occasions.
e. The claimant was provided copies of evidence considered by Ms Evanson in deciding that he had a case to answer.
f. The claimant was informed that he could submit and rely on a written statement.

g. The claimant would be given the opportunity to explain his case and provide any evidence and/or witnesses. He could also put forward any mitigating factors.
h. Disciplinary sanction would be considered.

112. Across 03 and 04 September 2020, the claimant made phone calls to three of his colleagues, during which he discussed details of his disciplinary case (notes of the interviews with those three individuals are at pp.326-332).

113. The disciplinary hearing due to take place on 04 September 2020 was postponed due to a further allegation of misconduct being made against the claimant. In respect of the further allegation, Ms Evanson held an investigation meeting on 04 September 2020. The allegation being investigated was whether the claimant had shared confidential information regarding his disciplinary investigation with colleagues (notes of that meeting are at pp.332A-332E). In that meeting, the following was discussed:

a. It is recorded that the parties understood that the investigation was confidential and was not to be discussed with colleagues.
b. The claimant confirmed that during the previous disciplinary investigation he understood that the contents of those discussions was confidential and that he had agreed to keep it confidential.
c. The claimant confirmed that he had discussed the contents of the investigation with three colleagues. He explained that it was because the investigation had concluded, and he wanted to understand whether any of them were in 'his corner'.
d. The claimant accepted that he shared some details about why he was being invited to a disciplinary hearing.
e. The claimant explained that he had informed the colleagues concerned that the respondent was 'monitoring phone calls'.
f. The claimant suggests that he likely told his colleagues that he was being called into a hearing to be fired.

114. On 11 September 2020, the claimant was invited to a rescheduled disciplinary hearing (see pp.337-338), to be held on 15 September 2020. This letter contained much of the same information that was in the initial invite. However, it included the following additional information:

a. An additional disciplinary matter for consideration was added, namely an:
    i. Allegation of breach of confidence and trust, namely

you shared confidential information regarding the investigation meetings held on 13th and 19th August 2020, despite being expressly asked to keep the information confidential

ii. Allegation you shared false information with colleagues to cause reputational damage and ill feeling toward management and Well.

b. That the matters were serious, and the hearing could conclude that the claimant's actions were gross misconduct, which could result in dismissal.

115. The claimant attended a disciplinary meeting chaired by Mr Insley on 15 September 2020 (notes of that meeting are at pp.345-356). In that meeting, the following matters were discussed:

a. The claimant was reminded that the investigation was into his conduct and not his performance.
b. The claimant explained that he had used his diary to answer questions raised by Ms Evanson during the investigation meetings.
c. The claimant provided an explanation that he was contacting customers by phone rather than email (see p.347).
d. When Mr Insely raised that the phone records did not support the claimant's assertion, the claimant suggested that phone calls increased from 10 July.
e. When Mr Insley put to the claimant the figures identified by Ms Evanson (19 emails sent in July, an average of 1 hour phonecalls a day, online time on teams of 16 hours), the claimant replied to query whether he had been on holiday.
f. The claimant when questioned further answered that he had been working on his IPP.
g. The claimant accepted that if his team had presented him with the same work data, he would have done exactly what Ms Evanson has done, that is investigate (p.348).
h. The claimant does not provide clear answers to questions concerning his output and work activities.
i. After being asked on 3 occasions, the claimant finally answers to explain that he had said that he had been busy contacting 50 key customers.
j. The claimant refers to on several occasions that his time was taken up with the IPP, having been on furlough, and that his previous record was exemplary.
k. Mr Insley asked the claimant about the sharing of confidential information. When asked whether he should have done this,

the claimant appears to avoid answering the question (seep.351).

l. The claimant suggests he was trying to understand whether the three individuals would advocate for him, without ever asking them to be a workplace representative.
m. The claimant then suggested that confidentiality had come to an end as the investigation itself had ended (p.352).
n. The claimant does not deny that he shared confidential information, that he raised the possibility of him being sacked or that he told his colleagues that the respondent was monitoring email and phone call records.
o. The claimant explained that he was spending time each day in July collecting the data that he thought suggested that he should not have been placed on the IPP. When put to the claimant that this was in the region of 5/6 hours per day, it was not denied (p.353).
p. When the claimant was asked for any further evidence the claimant had of his work, the claimant replied and explained 'Absolute cards on the table. No doubting looking backwards in the past and what ive been doing is getting together my file for a solicitor- £600, costs I'm paying myself. Giving them all information, from since June. Brutally honest, the company is looking at me, I'm trying to tell you in an open honest way, ive been building up a picture for the last 2 years' (p.354).
q. The claimant accepted that he was collecting data for his solicitor during work time.
r. Mr Insley adjourned for around 50 minutes, before returning with his decision.
s. The decision was handed down to the claimant whereby all the allegations have been found to have been established (p.355 and 356). The reasons provided were as follows:

> "1. Allegation of breach of confidence and trust, namely your work output is not aligned to the statements you have made in relation to your productivity and performance, leading to the alleged breakdown in trust and confidence, felt by your line manager Emma Evanson; which is in breach of Well's values:
>
> I looked through what you've talked about - new customers, 50 key customers, I'd expect you to be constantly in touch with them on return from furlough and contacted all customers. No evidence of this, hard to understand. You can explain however how you have collated information for your legal solicitor during works

time. Therefore after reviewing all your responses find this allegation to be true

2. Allegations of demonstrating unprofessional conduct and attitude throughout the investigation process by failing to provide clarity on your specific work output since returning from Furlough leave, despite being asked on several occasions:

Looking back through the evidence, your response doesn't give detail, what you've been doing, no outputs from activity that aren't customer related? How you fulfil your role as field manager is not clear. 1therefore after reviewing all your responses find this allegation to be true

3. Allegation of breach of confidence and trust, namely you shared confidential information regarding the investigation meetings held on 13th and 19th August 2020, despite being expressly asked to keep the information confidential:

I find that it was clear in the meeting and subsequent notes, you were told proceedings were confidential, there was no exception on that. You agreed to do this (keep things confidential) but on three points with the Disciplinary Hearing ahead of you, you've shared all that information
with 3 separate colleagues on 3 separate occasions - to one person you have described as an enemy. This doesn't back up what you have said. Therefore after reviewing all your responses find this allegation to be true

4. Allegation you shared false information with colleagues to cause reputational damage and ill feeling toward management and Well:

With regards to the sharing of data, explaining that the company is pulling the data of colleagues ie phonecalls and emails and this is something that happens routinely, sharing telesales gossip as fact. I find we now have 3 team members stressed and have a distrust towards management. therefore after reviewing all your responses find this allegation to be true."

116. Mr Insley considered that the conduct of the claimant amounted to gross misconduct.

117. In deciding what sanction to impose, Mr Insley considered the claimant's length of service and considered that he had a clean disciplinary record. He further considered that the claimant had not shown any remorse, in his opinion, during the process. Mr Insley considered alternatives to dismissal, including whether a final written warning would be appropriate. However, having considered that trust in the claimant had been affected, that the claimant could not be trusted to comply with further instruction, Mr Insley decided that dismissal was the appropriate sanction. The tribunal had no reason not to accept Mr Insely's evidence in respect of what was and was not considered when reaching the decision to dismiss the claimant, and therefore accepted his evidence on these points.

118. The claimant confirmed at the end of the disciplinary hearing that he had had the opportunity to put his points across during the hearing (see p.356).

119. We do make the findings that the claimant's actions did not have a financial impact on the respondent or any recognisable impact on the relationship between the respondent and its customers.

120. The claimant is sent his notice of summary dismissal on 22 September 2020 (see pp.361-363). This records the decision as explained to the claimant in the meeting of 15 September 2020.

121. The claimant appealed against his summary dismissal by letter dated 24 September 2020 (see pp.365-369). The claimant appealed on the following grounds:

t. That his work output was aligned to those statements he made to Ms Evanson on 13 and 19 August 2020.
u. That he did co-operate with Ms Evanson and provided an accurate and true account of the work he had carried out.
v. He did not share confidential information with colleagues.
w. He did not share false information with colleagues to cause damage and ill feeling as alleged.

122. In advance of the claimant's appeal being heard, the claimant provided documents on which he was wanting to rely (see pp.421-426). This included a diary summary for July 2020 (at p.425). These

were considered by Mr Stevenson.

123. Following postponement, the claimant attended an appeal hearing on 05 November 2020, chaired by Mr Stevenson (notes are contained at pp.427-433). In this hearing, the following was discussed:

a. Each of the appeal points were discussed at the hearing.
b. The claimant was given the opportunity to provide his explanation of each event.

124. The claimant sent Mr Stevenson a copy of his notes from the meeting on 06 November 2020. This included some additional detail that the claimant wanted Mr Stevenson to take into account (pp.434-435).

125. As part of the appeal process, Mr Stevenson undertook additional investigations. This included interviewing Ms Evanson (pp.443-446) and interviewing Ms Liddle (pp.447-448). Mr Stevenson also investigated whether the claimant had had a period of leave during the period in question, as he suggested in the appeal hearing.

126. The appeal outcome was sent to the claimant on 23 November 2020 (pp.542-545). This rejected the appeal, and provided the following:

a. There were four elements to the appeal.
b. The first part of the appeal was rejected, having considered the statements provided, the communications between the claimant and Ms Evanson, and the phone and email records.
c. The second part of the appeal was rejected, having considered the evidence provided through the investigation and disciplinary hearing, the submissions made by the claimant in appendix two of his appeal, evidence of work completed as provided by the claimant, and having identified that the claimant had not taken any leave in the period in question.
d. The third part of the appeal was rejected, having considered the records of the meetings between the claimant, Ms Liddle and Ms Evanson, where confidentiality was impressed on the claimant throughout, having considered the investigation meeting form which contained a tick box, the claimant's email of 10 September and following the claimant admitting that he has spoken to the three colleagues involved and shared confidential information.

e. The fourth part of the appeal was upheld, having considered the statements provided by the claimant and those by the claimant's three colleagues. Mr Stevenson concluded that although it was unclear why those conversations had taken place, given that the claimant at no point asked any of them to represent him, there was insufficient evidence that they were had with the intention of causing damage or creating ill feeling towards management.
f. Mr Stevenson concluded that the original decision to terminate the claimant's contract would not be overturned.

127. Following having reached the conclusions that he did, as part of the appeal process Mr Stevenson then reviewed whether an alternative to dismissal would be suitable. And on considering his conclusions, Mr Stevenson concluded that the claimant's conduct had impacted upon trust and confidence between him and the respondent, especially given that trust in somebody working in the field is important, such that there were not suitable alternatives. The tribunal accepted this evidence of Mr Stevenson. This was consistent evidence between his written statement and his oral evidence, and Mr Stevenson was accepted as having been an honest witness.

Claimant's grievance

128. The claimant raised a formal grievance with the respondent by email dated 16 September 2020. This was after the claimant had been dismissed but before he had appealed the dismissal. The matters raised by the claimant in his grievance did not overlap with the conduct issues that were considered during the disciplinary process outlined above.

129. The claimant attended a grievance hearing that was held on 02 October 2020, chaired by Mr Khan (see pp.377-390). Mr Khan explained to the claimant that the grievance process was being kept separate to the disciplinary appeal process, and the decision in respect the claimant's grievance would not overturn the disciplinary action. The claimant understood this at the time.

130. The claimant received an outcome to his grievance by letter dated 16 November 2020 (see pp.458-470). The claimant's grievance was rejected in its entirety.

CONCLUSIONS: UNFAIR DISMISSAL/WRONGFUL DISMISSAL

Majority Judgment

131. The majority found that the respondent had satisfied the burden of proof that rested on it in establishing that the reason for dismissal was the potentially fair reason of misconduct. And that all the evidence pointed to this being the reason for the dismissal. The respondent dismissed the claimant for misconduct reasons, which is a potentially fair reason.

132. Although accepting that Mr Insley had an honest belief that the claimant had engaged in the conduct in question, and that his investigation gave him reasonable grounds for holding that belief, the majority were not satisfied that Mr Insley had conducted all reasonable investigations as necessary, especially given the size of the organisation. The majority held that the investigation that was conducted fell outside the band of reasonable responses and that any reasonable employer would have undertaken further investigations to try to understand why the claimant, a long-serving and satisfactory employee, conducted himself the way he did, especially in circumstances where the claimant had explained that he was stressed (see the email from the claimant to Mr Insley on 10 July 2020, see pp.278-279).

133. Further, the majority decision is that the decision to dismiss in these circumstances falls outside of the band of reasonable responses. The claimant was in a position of trust, any reasonable employer would have allowed more time for improvements by the claimant, with greater specificity of what was required from the employee. This was especially in circumstances where the claimant was being faced with different targets. This change in targets is specifically seen in the move from run rates to opportunity. The alleged breaches were not so severe that they could not be remedied.

134. The pandemic and furlough were significant and relevant background factors. These caused lots of disruption to workplaces, and this no less so for the respondent.

135. The time period during which the work of the claimant was assessed was a very short period, lasting effectively from 09 July 2020 to 23 July 2020. During this period, the claimant faced changes to his job role, and changes to the regions in which he operated. A reasonable employer would have looked into the effect that these

changes had on the claimant, and identified any underlying reasons that were affecting his performance.

136. There was no evidence of serious damage to the employer as a result of the claimant's conduct.

137. The letter informing the claimant of the misconduct in question was not adequate and did not touch upon sufficiently as to why the conduct in question was being considered as gross misconduct.

138. An important consideration is the email between the claimant and Mr Insley on 10 July 2020, where the claimant, in the context of the disciplinary process, laid out that he was feeling stressed. A reasonable employer would have approached the whole process and/or the decision with that in mind, to understand the claimant's motivation.

139. Whilst concentrating on the claimant's conduct, more weight should have been placed on the claimant's long and short term past performance.

140. The respondent, although it considered alternatives to dismissal the majority do not accept that it turned its mind sufficiently to assessing those alternatives.

141. In the circumstances outlined above, the majority considered that the decision to dismiss fell outside the band of reasonable responses. And the dismissal was unfair.

142. There was no procedural unfairness present in this dismissal. The claimant has not raised any issues that go to procedural fairness. The majority conclude that the dismissal was procedurally fair. The tribunal did turn its attention to whether the decision not to pause the appeal process until after the claimant's grievance had been determined would render the dismissal to be procedurally unfair but concluded that it would not. The grievance was concerned with matters not part of the disciplinary/dismissal process. And the grievance was ultimately determined as being unfounded. In those circumstances, running them concurrently does not affect the fairness of the dismissal process.

143. The majority found that the claimant's conduct did contribute to the decision to dismiss him and make a finding that a deduction in any compensation awarded to the claimant for unfair dismissal will be subject to a 50% deduction for contributory fault.

144. Further, the majority considered that the respondent had not satisfied the burden of proof that rests on it to establish that the claimant had conducted himself in a manner that was a repudiatory breach of his contract. His claim for wrongful dismissal was also found to succeed.

Minority Judgment

145. The minority likewise found that the respondent had satisfied the burden of proof that rested on it in establishing that the reason for dismissal was the potentially fair reason of misconduct. And that all the evidence pointed to this being the reason for the dismissal. This was clear through the investigation, through the evidence considered, through the focus of the disciplinary and through the decision to dismiss the claimant. The respondent dismissed the claimant for misconduct reasons, which is a potentially fair reason.

146. The minority was satisfied that Mr Insley was the decision maker and had an honest belief that the claimant had engaged in the conduct in question, and that his investigation gave him reasonable grounds for holding that belief.

147. The minority considered that the investigation that had been undertaken in this case was a reasonable investigation and fell within the band of reasonable responses. The claimant was presented with and provided with all the necessary evidence throughout the investigation and in advance of the disciplinary hearing. He was afforded the opportunity to present any additional evidence he wanted to rely on, including any mitigating factors, and had the opportunity to respond to each of the allegations fully. The claimant was provided a further opportunity to present additional evidence, and a further opportunity to raise relevant matters and provide his explanations at the appeal. Mr Insley undertook further investigation into matters that were unclear to him and where he considered he needed further information. For example, with repsec whether the claimant had taken any annual leave during the period in question. The active involvement of the claimant, and the opportunities he was provided with to put forward his version of events and to raise any matters impeding him, led the minority to the conclusion that this satisfied the need to undertake all reasonable investigations in the circumstances.

148. The minority also concluded that based on this honest belief, Mr Insley’s decision to dismiss the claimant fell within the band of

reasonable responses. The issues investigated and found to have taken place all go to the relationship of trust and confidence between the claimant and the respondent.

149. The claimant was in a position of trust, and one which placed significant trust on the actions of the claimant. In short, he managed his own work and the only way the respondent knew what work he was doing or had undertaken was through the claimant accurately completing entries on the respondent's Sales Force system, or, failing that, through an accurate account given by the claimant. Neither of these had been found to have taken place.

150. Sales Force was also the system where the respondent could understand its relationship with clients. The need for accurate completing of records on Sales Force was of paramount importance to the respondent. Failure to do so went to the core of the claimant's role.

151. The claimant was queried on numerous occasions during the investigation meetings, during the disciplinary hearing and during the appeal hearing, and the claimant on several occasions avoided answering those direct questions and tried to focus the discussions on past performance rather than the period in question. The claimant never appeared to provide a satisfactory answer to the question of what work he had been doing during the period It was 01-23 July 2020. It was within the band of reasonable responses open to Mr Insley (and to Mr Stevenson on appeal) to conclude that the claimant had not provided the necessary clarity when asked about the work he had been doing during that period and that the claimant had demonstrated an unprofessional conduct and attitude in the circumstances, especially given the role he occupied.

152. The claimant having accepted that he had understood that the investigation was confidential and that he had contacted three colleagues about it and shared information, it was open to Mr Insley and Mr Stevenson, on appeal, to conclude that this had also damaged the trust the respondent held in the claimant.

153. Having taken into account the conduct in question and how this impacted the trust between the claimant and the respondent, the claimant's position, mitigating factors, including length of service and the clean disciplinary record of the claimant, and having considered alternatives to dismissal, the minority concluded it was within the band of reasonable responses to dismiss the claimant in the circumstances.

154. There was no procedural unfairness present in this dismissal. The claimant has not raised any issues that go to procedural fairness. The minority also concluded that the dismissal was procedurally fair. The tribunal did turn its attention to whether the decision not to pause the appeal process until after the claimant's grievance had been determined would render the dismissal to be procedurally unfair but concluded that it would not. The grievance was concerned with matters not part of the disciplinary/dismissal process. And the grievance was ultimately determined as being unfounded. In those circumstances, running them concurrently does not affect the fairness of the dismissal process.

155. If the minority had concluded that the claimant had been unfairly dismissed, then it would have found that the claimant's conduct contributed to the decision to dismiss him and would have made a finding that a deduction in any compensation awarded to the claimant for unfair dismissal would have been to an 80% deduction for contributory fault.

156. Given the above, the minority found that the respondent had satisfied the burden of proof that rests on it to establish that the claimant had conducted himself in a manner that was a repudiatory breach of his contract. The conduct went to the heart of the claimant's contract. A fundamental term of the claimant's contract was that he would not act in a manner that would seriously damage or destroy the trust between him and the respondent. In not providing accurate data in relation to his work through Sales Force, which was a fundamental requirement of his role, through not providing details of his work when asked and through not complying with the confidentiality impressed on him in relation to the investigation into his conduct, the claimant's conduct damaged that relationship. This was serious enough to justify dismissing the claimant without notice. The decision of the minority is that in these circumstances, the claim for wrongful dismissal fails.

CONCLUSIONS

157. The majority decision is that the claims of victimisation, of having been subjected to a detriment on the grounds of having made a protected disclosure and for automatic unfair dismissal do not succeed and are dismissed.

158. The majority have decided that the claimant has been unfairly

dismissed. And that any compensation awarded will be subject to a 50% deduction for contributory fault.

159. The minority decision is that all the claims presented by the claimant fail and are dismissed.

160. The minority decided that any compensation awarded for unfair dismissal will be subject to an 80% deduction for contributory fault.

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Employment Judge **Mark Butler**

Date_28 February 2024

JUDGMENT SENT TO THE PARTIES ON

Date: 11 March 2024

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FOR THE TRIBUNAL OFFICE

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https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/

Case Number: 2400650/2021

MR R SIMPSON

Claimant

and

BESTWAY PANACEA HOLDINGS LIMITED

Respondent

DRAFT LIST OF ISSUES

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1. **Time Limits**

1.1 Given the date the claim form was presented and the effect of early conciliation, were the Claimant's claims under the Equality Act and his claims of protected disclosure detriment presented in time?

1.2 In relation to the Equality Act 2010 claims, the Tribunal will decide:

(a) Was the claim made to the Tribunal within three months (allowing for any early conciliation extension) of the act to which the complaint relates?

(b) If not, was there conduct extending over a period?

(c) If so, was the claim made to the Tribunal within three months (allowing for any early conciliation extension) of the end of that period?

(d) If not, were the claims made within such further period as the Tribunal thinks is just and equitable? The Tribunal will decide:

(i) Why were the complaints not made to the Tribunal in time?

(ii) In any event, is it just and equitable in all the circumstances to extend time?

1.3 Was the protected disclosure complaint made within the time limit in section 111(2)(a) and/or section 48(3) (a) and (b) of the Employment Rights Act 1996? The Tribunal will decide:

(a) Was the claim made to the Tribunal within three months (allowing for any early conciliation extension) of the acts complained of?

(b) If not, was there a series of similar acts or failures and was the claim made to the Tribunal within three months (allowing for any early conciliation extension) of the last one?

(c) If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?

(d) If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within such further period as the Tribunal considers reasonable?

2. **Unfair Dismissal**

2.1. Was the Claimant dismissed? The parties agree that the Claimant was dismissed.

Reason

2.2. What was the reason or principal reason for the dismissal? The Respondent says it was conduct or some other substantial reason. The Claimant believes he was dismissed because he made a protected disclosure/did protected acts.

2.3. Was it a potentially fair reason under section 98 Employment Rights Act 1996?

Fairness

[Section 98 cases — general]

2.4. If so, applying the test of fairness in section 98(4), did the Respondent act reasonably in all the circumstances in treating that reason as sufficient reason to dismiss the Claimant?

[Automatically unfair dismissal]

2.5. Was the reason or principal reason for the dismissal that the claimant had made a protected disclosure? If so, the Claimant will be regarded as unfairly dismissed.

[Misconduct/SOSR dismissals]

2.6. The Respondent says the reason was conduct or some other substantial reason. The Tribunal will need to decide whether the Respondent genuinely believed the Claimant had committed the misconduct.

2.7. If the reason was misconduct/some other substantial reason, did the Respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the Claimant? The Tribunal will usually decide, in particular, whether:

(a) there were reasonable grounds for that belief;

(b) at the time the belief was formed the respondent had carried out a reasonable investigation;

(c) the Respondent otherwise acted in a procedurally fair manner;

(d) dismissal was within the band of reasonable responses.

3. **Wrongful Dismissal / Notice Pay**

3.1. What was the Claimant's notice period?

3.2. Was the Claimant paid for that notice period?

3.3. If not, was the Claimant guilty of gross misconduct?

3.4. Did the Claimant do something so serious that the Respondent was entitled to dismiss without notice?

4. **Protected Disclosures**

4.1. Did the Claimant make one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996? The Tribunal will decide:

(a) What did the Claimant say or write? When? To whom? The Claimant says he made disclosures on these occasions:

(i) on 25.02.2020, reporting alleged racist/sexist behaviour by various colleagues on WhatsApp to Ms Hare ("**PID1**");

(ii) on 15.09.2020, reporting alleged racist behaviour by Simon Jackson relating to "silverback" comments to Jacqueline Lunardi and Jeremy Harrison ("**PID2**").

(b) Did he disclose information?

(c) Did the Claimant believe the disclosure of information was made in the public interest? The Claimant believes that the disclosures of information were made in the public interest as racism and sexism should not be tolerated, especially in an industry supplying medication for an individual's mental and physical health.

(d) Was that belief reasonable?

Did the Claimant believe it tended to show one of the matters listed in sections 43B(1)(a) — (f) Employment Rights Act 1996? The Claimant say that:

(i) In respect of PID1, the disclosure tended to show a criminal offence was being committed or that the Respondent was failing to comply with any legal obligation;

(ii) In respect of PID2, the disclosure tended to show the health or safety of any individual had been, was being or was likely to be endangered.

4.2 Was that belief reasonable?

4.3 If the claimant made a qualifying disclosure, was it a protected disclosure because it was made to the claimant's employer?

5. **Detriment (Employment Rights Act 1996 section 48)**

5.1 Did the respondent do the following things:

(a) On 27 February 20201 Mr Insley acted in a hostile manner towards the Claimant;

(b) On 8 March 2020, Ms Evanson asked the Claimant to sign a recorded conversation document and asked the Claimant how he expected the team to feel about him given that he had made a report about their WhatsApp messages;

(c) On 10 March 2020, Ms Hare informed the Claimant that he had exhausted the appeals process relating to his Improving Performance Plan;

(d) On 18 March 2020, Mr Insley asked the Claimant to refrain from writing to Lord Choudrey and Mr Hobbs directly;

(e) On 24 March 2020, Ms Evanson asked the Claimant to complete work in a specified timeframe;

(f) On 25 March 2020, Ms Liddle failed to respond to the Claimant following an email received from Ms Evanson;

(g) On 1 July 2020, the Respondent created new roles without inviting the Claimant to apply for said roles;

(h) On 1 July 2020, the Respondent reallocated geographical boundaries;

(i) On 1 July 2020, the Respondent promoted employees who the Claimant had reported for acting in a discriminatory manner;

(j) On 1 July 2020, the Respondent promised Ms Kosser the opportunity to work in the Claimant's territory;

(k) On 1 July 2020, the Claimant had more Bestway Medhub customers than others;

(l) On 2 July 2020, Ms Evanson set tasks that were biased against the Claimant;

(m) On 6 July 2020, Ms Evanson placed pressure on the Claimant by setting him targets;

(n) On 6 July 2020, Ms Evanson sought to patronise and isolate the Claimant by sending an email on how to give praise to other teams;

(o) On 8 July 2020, Ms Evanson ignored a review the Claimant had shared with her;

(p) On 9 July 2020, Ms Evanson was dismissive of a suggestion made by the Claimant in relation to joint ways of working;

(q) On 10 July 2020, Mr Insley informed the Claimant that he should feel stressed on his return to work;

(r) On 10 July 2020, Ms Liddle made no attempt to intervene from a health and safety perspective following Mr Insley's comments mentioned at (t);

(s) On 13 July 2020, Ms Evanson was critical of the Claimant's company car review programme and ignored his explanation;

(t) On 22 July 2020, Ms Harker informed the Claimant that a customer of another region needed to be covered by the Claimant;

(u) On 11 August 2020, Ms McCartan informed the Claimant that he would not be getting a dedicated sales team;

(v) On 13 August 2020, Ms Evanson and Ms Liddle challenged the Claimant's work output;

(w) On 13 August 2020, Mr Insley did not return a call from the Claimant;

(x) On 19 August 2020, Ms Evanson and Ms Liddle held an investigative meeting with the Claimant;

(y) On 26 August 2020, Ms Evanson made a change to the Claimant's 2019/2020 targets;

(z) On 1 September 2020, Ms Evanson failed to provide the Claimant with feedback on his Future Journey Plan;

(aa) On 4 September 2020, Mr Insley cancelled a meeting with the Claimant and told him to sit in his car;

(bb) On 4 September 2020, Ms Liddle shared witness statements with the Claimant which the Claimant did not consider to address his key concerns;

(cc) On 9 September 2020, Ms Evanson invited the Claimant to an Improving Performance meeting;

(dd) On 10 September 2020, Ms Liddle asked the Claimant to approve the notes of a meeting;

(ee) On 11 September 2020, Mr Insley invited the Claimant to a disciplinary hearing;

(ff) On 15 September 2020, Ms Lunardi informed the Claimant that she would not intervene with the Claimant's dismissal process.

5.2 By doing so, did it subject the claimant to detriment?

5.3 If so, was it done on the ground that he had made a protected disclosure or for some other prohibited reason?

6. **Victimisation (Equality Act 2010 section 27)**

6.1. Did the claimant do a protected act as follows?

(a) on 25.02.2020, reporting alleged racist/sexist behaviour by various colleagues on WhatsApp to Ms Hare ("**PID1**");

(b) on 15.09.2020, reporting alleged racist behaviour by Simon Jackson relating to "silverback" comments to Jacqueline Lunardi and Jeremy Harrison ("**PID2**").

6.2 Did the respondent believe the claimant had done or might do a protected act?

6.3 Did the respondent do the following things which amounted to detriments?

(a) On 27 February 2020, Mr Insley acted in a hostile manner towards the Claimant;

(b) On 8 March 2020, Ms Evanson asked the Claimant to sign a recorded conversation document and asked the Claimant how he expected the team to feel about him given that he had made a report about their WhatsApp messages;

(c) On 10 March 2020, Ms Hare informed the Claimant that he had exhausted the appeals process relating to his Improving Performance Plan;

(d) On 18 March 2020, Mr Insley asked the Claimant to refrain from writing to Lord Choudrey and Mr Hobbs directly;

(e) On 24 March 2020, Ms Evanson asked the Claimant to complete work in a specified timeframe;

(f) On 25 March 2020, Ms Liddle failed to respond to the Claimant following an email received from Ms Evanson;

(g) On 1 July 2020, the Respondent created new roles without inviting the Claimant to apply for said roles;

(h) On 1 July 2020, the Respondent reallocated geographical boundaries;

(i) On 1 July 2020, the Respondent promoted employees who the Claimant had reported for acting in a discriminatory manner;

(j) On 1 July 2020, the Respondent promised Ms Kosser the opportunity to work in the Claimant's territory;

(k) On 1 July 2020, the Claimant had more Bestway Medhub customers than others;

(l) On 2 July 2020, Ms Evanson set tasks that were biased against the Claimant;

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(n) On 6 July 2020, Ms Evanson sought to patronise and isolate the Claimant by sending an email on how to give praise to other teams;

(o) On 8 July 2020, Ms Evanson ignored a review the Claimant had shared with her;

(p) On 9 July 2020, Ms Evanson was dismissive of a suggestion made by the Claimant in relation to joint ways of working;

(q) On 10 July 2020, Mr Insley informed the Claimant that he should feel stressed on his return to work;

(r) On 10 July 2020, Ms Liddle made no attempt to intervene from a health and safety perspective following Mr Insley's comments mentioned at (t);

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(x) On 19 August 2020, Ms Evanson and Ms Liddle held an investigative meeting with the Claimant;

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(z) On 1 September 2020, Ms Evanson failed to provide the Claimant with feedback on his Future Journey Plan;

(aa) On 4 September 2020, Mr Insley cancelled a meeting with the Claimant and told him to sit in his car;

(bb) On 4 September 2020, Ms Liddle shared witness statements with the Claimant which the Claimant did not consider to address his key concerns;

(cc) On 9 September 2020, Ms Evanson invited the Claimant to an Improving Performance meeting;

(dd) On 10 September 2020, Ms Liddle asked the Claimant to approve the notes of a meeting;

(ee) On 11 September 2020, Mr Insley invited the Claimant to a disciplinary hearing;

(ff) On 15 September 2020, Ms Lunardi informed the Claimant that she would not intervene with the Claimant's dismissal process.

6.4 If so, did the respondent submit the claimant to detriment because the claimant did a protected act or acts?