EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr Ian Sharp	**v**	London EV Company Limited

Heard at: Norwich

On: 18, 19, 20, 21, 22, 25 March 2024
In Chambers: 22 and 23 April 2024

Before: Employment Judge M Warren

Members: Mrs A Buck and Mr K Mizon

Appearances
For the Claimant: In person
For the Respondent: Ms H Barney, Counsel

RESERVED JUDGMENT

1. The Claimant's claims fail and are dismissed.

REASONS

Background

1. Mr Sharp was employed by the Respondent as Head of Retail After Sales from 12 August 2019 until 2 September 2021. There were two ACAS Early Conciliation Certificates; the first covering the conciliation period from 6 July to 13 August 2021 and the second from 11 October to 21 November 2021. Mr Sharp issued these proceedings, (at the time represented by Solicitors) on 30 November 2021, claiming disability discrimination, detriment and automatic unfair dismissal for having made protected disclosures, (whistleblowing), for ordinary unfair dismissal and for breach of contract. His particulars of claim were settled by counsel.

2. The disability discrimination claims have subsequently been dismissed upon having been withdrawn, Judgment dated 12 December 2022.

3. The case came before Employment Judge Shastri-Hurst for case management on 28 November 2022. This hearing was listed on that occasion. Case Management Orders were made which included disclosure on 30 January 2023, preparation of the Bundle by 13 February 2023 and exchange of witness statements on 3 April 2023.

4. EJ Shastri-Hurst set out a List of Issues in her Preliminary Hearing Summary. It is unfortunate that the alleged protected disclosures and the alleged detriments relied upon are identified simply by cross referring to paragraphs in the Particulars of Claim.

5. EJ Shastri-Hurst ordered further particulars, which were subsequently provided in an undated document.

6. Mr Sharp ceased to be represented by Solicitors in June 2023.

7. The matter came before Employment Judge Din on 28 June 2023 in order to consider applications by both parties for specific disclosure. Orders for disclosure were made by EJ Din, the date for compliance being 26 July 2023. He set out a revised timetable, in that witness statements were to be exchanged on 31 October 2023. He does not appear to have re-visited the order for preparation of the Bundle.

8. The List of Issues prepared by EJ Shastri-Hurst was replicated in an Appendix to EJ Din's Hearing Summary.

9. There was a third preliminary hearing before Employment Judge GD Davison on 15 February 2024. Both parties had made applications for strike out, both of which were dismissed upon withdrawal. Both parties were complaining about the lack of disclosure from the other.

10. Mr Sharp prepared his witness statement and provided it to the Respondent on the date ordered by EJ Din, 31 October 2023. He provided page numbers for the documents referred to by reference to those of then current draft of the hearing bundle. The Respondents had not provided their witness statements at that time EJ GD Davison ordered the Respondent to prepare and serve witness statements by 29 February 2024. He gave leave to Mr Sharp to prepare a supplemental witness statement, to be filed and served by no later than 4 March 2024. The Respondent was to prepare a final Hearing Bundle and provide a paper copy to Mr Sharp by 12 March 2024.

<u>The Issues</u>

11. As mentioned above, a List of Issues appeared in the Preliminary Hearing Summaries of Employment Judges Shastri-Hurst and Din. The Respondent's solicitors helpfully replicated the wording of Mr Sharp's pleaded case on his alleged protected disclosures and detriments, setting them out in a document entitled Draft List of Issues which was put before us. At the outset of the hearing, Mr Sharp confirmed that the List of Issues was agreed and that we could rely upon it. At the start of Day 2, after our

reading in on Day 1, I took the precaution of going through the List of Issues with Mr Sharp to make sure that it was agreed and that he understood that his cross examination of the Respondent's witnesses, as well as his own evidence, would need to focus on what was set out in the Lit of Issues.

12. I set out below, by way of cutting and pasting, what can now be described as an Agreed List of Issues.

1. Time limits

1.1. Is the second ACAS certificate effective in terms of affecting the time limits for any of the claimant's claims?

1.1.1. If so, the respondent says that any claims that pre-dates 12 July 2021 are out of time.

1.2. If the second ACAS certificate is not effective, then the respondent says that time must be taken to run three months less a day before the claim form was presented.

1.2.1. The respondent then says that any claims that pre-date 31 August 2021 are out of time.

1.3. The claimant says that both ACAS certificates have effect.

1.4. Were the claims made within the time limit in section 111 / 48 / 23 of the Employment Rights Act 1996? The Tribunal will decide:

1.4.1. Was the claim made to the Tribunal within three months (plus early conciliation extension) of the effective date of termination / act complained of / date of payment of the wages from which the deduction was made?

1.4.2. In relation to the detriment claim – if not, was there a series of similar acts or failures and was the claim made to the Tribunal within three months (plus early conciliation extension) of the last one?

1.4.3. In relation to the unauthorised deductions claims – if not, was there a series of deductions and was the claim made to the Tribunal within three months (plus early conciliation extension) of the last one?

1.4.4. If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?

1.4.5. If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?

2. Unfair dismissal

2.1. What was the reason or principal reason for dismissal? The respondent relies upon conduct or, in the alternative, some other substantial reason.

2.2. Was it a potentially fair reason?

2.3. The Tribunal will need to decide whether the respondent genuinely believed the claimant had committed misconduct.

2.4. If the reason was misconduct, 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:

2.4.1. there were reasonable grounds for that belief;

2.4.2. at the time the belief was formed the respondent had carried out a reasonable investigation;

2.4.3. the respondent otherwise acted in a procedurally fair manner;

2.4.4. dismissal was within the range of reasonable responses.

2.5. Did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant?

3. Protected disclosure

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

3.1.1. What did the claimant say or write? When? To whom? The claimant sets out the details of the alleged protected disclosures at paragraph 22 of his claim form, subject to the further and better particulars:

a. In or around August 2019 during a video ‘FIFI’ (an acronym of ‘find it fix it’) meeting in which C, Samuel Judah (“SJ”) (C’s then line manager, before DC) and other senior managers from the Ansty Site were present, C expressed concerns about the manifestation of the Faulty Roof Issue, how this was or might be a danger to customers/other road users, and which could cause a fatal accident (ss.43B(1)(b) and/or (d) ERA 1996);
Further particulars – During the C’s first video FIFI meeting, he highlighted the fact that there had been an ‘event’ in his first week of employment; that the whole glass panoramic roof had become detached from a vehicle and that it had caused distress and a potential road traffic accident. C notified all of the senior management team who were on the call, that LEVC must follow the correct procedure when a severe safety event had taken place and he understand that this was not the first event of this nature that had been recorded. Senior managers in attendance and to whom the comments were directed

were Danny Hitchin (Head of Warranty), Paul Squance (Head of Aftersales) and also Head of Quality and Head of Production whose names the C cannot recall. C suggested during the meeting that LEVC should follow the procedure and check a certain number of vehicles from the defective vehicles and notify the authorities. C stated that this failure could decapitate someone if the defect was not followed up using the correct procedures. The only response C received was silence.

b. On various dates (some known only to R at present) from August 2019 onwards until C's suspension, C expressed concern that R should be actively addressing the Faulty Roof Issue and/or that in consequence of the persisting Faulty Roof Issue not being addressed and/or being concealed, people were being endangered (ss.43B(1)(b), (d) and/or (f) ERA 1996). This was communicated by telephone, email and in 'Technical Information Exchange Reports' which were designed to highlight any defects or faults and would be discussed in the monthly FIFI meetings;
Further particulars - The protected disclosures at para. 22(b): Since the disclosure of the critical safety failure outlined above, the senior managers who conducted the FIFI meetings did not make any contact with the correct governing body that are responsible to offer guidance on a vehicle safety concern. In or around December 2020 there was another critical failure where the whole glass panoramic roof had again become detached on the motorway. During this time there were lots of telephone calls between the senior managers of LEVC and Brewery Road and again the safety incident was not reported to the DVSA. R decided to check 10 vehicles that belonged to the fleet owner of the last panoramic failure and C understood that four of the ten vehicles were discovered to have a loose, 'not detached', panoramic roof. After several emails between C and the directors and senior managers of LEVC, C was instructed by Dan Cross "Not to send any more information regarding the panoramic roof failures by email" and the Joerg Hoffman, the CEO, was personally dealing with the panoramic roof failures. [There had been 9 FIFI meetings since C first highlighted

the critical failure and 6 or 7 failures reported, so R was fully aware of the failures.]

c. On 28th January 2021 C sent an email to DC disclosing information that there had been 9 ‘FIFI’ meetings prior to the latest batch of 6 or 7 panoramic roofs becoming detached from taxis as a manifestation of the Faulty Roof Issue and/or that R had been aware of this issue in the 18 prior months (ss.43B(1)(b), (d) and/or (f) ERA 1996);

d. In an email timed at 1309hrs on 30th April 2021 C disclosed information to others (and therefore to his employer pursuant to s.43C ERA 1996) about the Faulty Roof Issue and, in particular, how the devised test which R had created in February 2021 in order to reassure itself and others/the public that the Faulty Roof Issue had been resolved, was insufficient and that the serious adverse consequences would therefore remain (ss.43B(1)(b), (d) and/or (f) ERA 1996);

e. On or around 5th May 2021 C disclosed information to two engineers (and therefore to his employer pursuant to s.43C ERA 1996, or alternatively pursuant to s.43G(2) ERA 1996) relating to the risk to users’ health and safety arising out of the Faulty Roof Issue;

f. During minuted virtual investigation meetings between C and Gareth Maguire on 26th May 2021 and 15th June 2021 C made a number of disclosures of information about the Faulty Roof Issue, R’s failure to address it and/or to conceal the same (ss.43B(1)(b), (d) and/or (f) ERA 1996);

g. In an email timed at 1620hrs on 14th July 2021 C disclosed information to others (and therefore to his employer pursuant to s.43C ERA 1996) about the faulty Roof Issue, more particularly that the number of faulty roofs on taxis on public roads and likely to be 320, rather than the publicised number of about half that (ss.43B(1)(b), (d) and/or (f) ERA 1996); and/or

h. In one, or alternatively both, emails sent by C to Laura Haines on 14th July 2021 timed at 1843hrs and 1853hrs, C conveyed information relating to the Faulty Roof Issue and/or raised the allegation that the same had been, was being or might continue to be concealed (ss.43B(1)(a), (b), (d) and/or (f) ERA 1996).

3.1.2. Did he disclose information?

3.1.3. Did he believe the disclosure of information was made in the public interest?

3.1.4. Was that belief reasonable?

3.1.5. Did he believe it tended to show that:

3.1.5.1. a criminal offence had been, was being or was likely to be committed;

3.1.5.2. a person had failed, was failing or was likely to fail to comply with any legal obligation;

3.1.5.3. the health or safety of any individual had been, was being or was likely to be endangered;

3.1.5.4. information tending to show any of these things had been, was being or was likely to be deliberately concealed.

3.1.6. Was that belief reasonable?

3.2. If the claimant made a qualifying disclosure

3.2.1. Was it made to the claimant's employer (s43C ERA)? Or

3.2.2. Was it made in line with s43G ERA?

If so, it was a protected disclosure.

4. Automatic unfair dismissal – s103A Employment Rights Act 1996

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

5. Detriment (Employment Rights Act 1996 section 48)

5.1. Did the respondent do the things set out in Part F, paragraph 27(a) -(n) of the claimant's claim form?

a. In the period September to November 2020 DC and others worked on a new structure for the Brewery Road Site however DC failed to advertise the role of General manager (which was awarded to DC's friend) when DC knew

or likely knew that C would have applied for that role, thereby denying C the opportunity of promotion;

b. On Thursday 6th May 2021 C was suspended without any stated or valid reason for doing so (where the relevant process shall be referred to as "the First Disciplinary");

c. Following C being notified of his suspension he was told (wrongly) by DC that he (DC) did know what the reasons for C's suspension were;

d. Following C being notified of his suspension in a further act of humiliation/high-handed behaviour he was escorted from the Brewery Road Site;

e. Following C's suspension he was denied access to his laptop and/or to information necessary to respond to the disciplinary allegations against him;

f. On Sunday 9th May 2021 (one clear working day after C's suspension) DC emailed all relevant staff at the Brewery Road Site detailing new aftersales structure despite not having done the same with C's (or other manager's) prior absences. This was done in an effort to marginalise C, to make him feel marginalised and/or as a result of the settled decision that, as in fact transpired, C would never return to work thereafter;

g. There was no, or no proper, investigation into C's alleged misconduct in the First Disciplinary;

h. On 19th August 2021 C was given a verbal warning as an outcome to the First Disciplinary Process, whereas no such warning or any disciplinary action was appropriate;

i. On 19th August 2021 C was suspended as a result of further (then-unspecified) disciplinary allegations ("the Second Disciplinary");

j. C was thereafter subjected to a further disciplinary process where the same was not warranted and/or properly investigated and/or where the real aim was to contrive C's dismissal as part of the Second Disciplinary;

k. C has not been treated with parity to other employees who alleged to have carried out acts of gross misconduct more particularly DC following articulated allegations of improper disclosure of R's confidential information

to a third party in or around Q4 2019 and/or DC's failure to properly account for credit notes in order to favourably (for DC) affect DC's bonus calculation;

l. R failed to investigate (properly or at all) and/or to decide upon C's grievance allegations (but instead dismissed the same on 7th July 202) that:

   a. DC had failed to agree, monitor and/or award payment of bonuses to C since on or around Q1 2020;

   b. DC had not allowed C to comment on his own 6 month performance review as provided for in company policy and further did not complete the same until 9 months after C's commencement in his role for R; and/or

   c. That DC had acted in a high-handed and bullying manner as set out in para. 23 above.

m. following C's dismissal R has precluded C from visiting its premises and/or from contact or discussions with its staff when acting in his new role for CCL in the manner described at para. 16 above; and/or

n. following C's dismissal R has sought to ensure that C cannot work in his chosen role by deliberately, unreasonably and/or without any good reason seeking to make matters sufficiently difficult for CCL that it could no longer reasonably continue to engage C in the manner described at para. 16 above.

5.2. By doing so, did it subject the claimant to detriment? The claimant alleges:

5.2.1. C was subjected to the detriment at para. 27(a) by R on the ground that he made one or both of the protected disclosures at para's 22(a) and 22(b).

5.2.2. C was subjected to the detriment at para. 27(b)- (g) by R on the ground that he made one, some or all of the protected disclosures at para's 22(a), 22(b), 22(c), 22(d) and/or 22(e).

5.2.3. C was subjected to the detriment at paragraph 27(h)-(m) by R on the ground that he made one, some or all of the protected disclosures at para's 22(a), 22(b), 22(c), 22(d) 22(e), 22(f), 22(g) and/or 22(h).

5.2.4. If so, was it done on the ground that he made a protected disclosure?

6. Unauthorised deductions

6.1. Did the respondent make unauthorised deductions from the claimant's wages and if so how much was deducted?

6.1.1. The claimant alleges that he is owed an outstanding bonus payment for every quarter of his employment, except the first two quarters (for which he received a bonus).

6.1.2. The claimant says that he was contractually entitled to quarterly bonus payments, which in his written contract, or as varied orally.

6.1.3. The respondent denies that the claimant had a contractual entitlement to any bonus payments.

6.2. Were the wages paid to the claimant on each occasion less than the wages he should have been paid?

6.3. How much is the claimant owed?

7. ***Breach of Contract***

7.1. Did this claim arise or was it outstanding when the claimant's employment ended?

7.2. Did the respondent do the following:

7.2.1. Fail to pay the claimant's bonus payment, as set out above.

7.3. Was that a breach of contract?

7.4. How much should the claimant be awarded as damages?

8. ***Remedy***

8.1. What financial losses has any proven detrimental treatment caused the claimant?

8.2. What injury to feelings has any detrimental treatment caused the claimant and how much compensation should be awarded for that?

8.3. What financial losses has the unfair dismissal caused the claimant?

8.4. Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

8.5. If not, for what period of loss should the claimant be compensated?

8.6. Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?

8.6.1. If so, should the claimant's compensation be reduced? By how much?

8.7. f the claimant was unfairly dismissed, did he cause or contribute to dismissal by blameworthy conduct?

8.8. If so, would it be just and equitable to reduce the claimant's compensatory award? By what proportion?

8.9. Does the statutory cap of fifty-two weeks' pay or £86,444 apply?

8.10. Should interest be awarded? How much?

Evidence

13. We had before us a properly paginated and indexed Bundle of documents which ran originally to page number 897. In preparing for the hearing, Ms Barney noticed that there were some obvious documents omitted from the Bundle and on Day 1, presented us with additional documents at page numbers 898 – 917 and on Day 2, 919 – 926. Although Mr Sharp understandably objected that this was not helpful, he sensibly agreed that those documents should be added to the Bundle and could be referred to in evidence. They were plainly documents that should have been included and it was not helpful for a litigant in person for them to have been omitted.

14. On Day 4, the Respondent produced a document entitled "Dealer Q & A Panoramic Roof Check". This in response to Mr Sharp's answer in cross examination the previous day, to the effect that he did not know anything about a vehicle recall. The additional document was included in the Bundle without objection, pages 933 – 935.

15. We also received from the Respondent on Day 3, a copy of a letter relating to Mr Sharp's bonus dated 17 July 2019, bearing a signature allegedly from him dated 19 July 2019. This was also added without objection to the Bundle at page 937, although Mr Sharp did say that it was not his signature on the document.

16. We had a witness statement and supplemental witness statement from Mr Sharp.

17. For the Respondent, we had witness statements from:

    17.1. Mr Paul King, former Procurement Director with the Respondent, heard Mr Sharp's appeal against dismissal, no longer employed by the Respondent;

    17.2. Miss Emma Weaver, former HR Manager for the Respondent, no longer employed by the Respondent; and

    17.3. Mr Daniel Cross, formerly Head of Retail, now National Sales Director for the Respondent, Mr Sharp's line manager.

18. During Day 1, we read the witness statements and we read or looked at in our discretion, the documents referred to in those statements. During the morning, Mr Sharp updated his witness statement so that the page references were to the latest Bundle, which had been provided to him on 27 February 2024.

19. We heard evidence on oath from each of those witnesses.

20. Mr King was recalled on day 6 after Mr Sharp's evidence was concluded. The tribunal had noticed that in oral evidence he had referred to having seen a video of the disciplinary hearing chaired by Mr Bostock and had

noticed a behavioural change in Mr Sharp, but that there had been no video recording of that hearing. He said he had been confused.

The Law

Public Interest Disclosure

Protected Disclosure

21. Lord Justice Mummery explained the purpose of the whistleblowing legislation in ALM Medical Services Ltd v Bladon [2002]IRLR 807 CA as follows:

> *The self-evident aim of the provisions is to protect employees from unfair treatment (ie victimisation and dismissal) for reasonably raising in a responsible way genuine concerns about wrongdoing in the workplace. The provisions strike an intricate balance between (a) promoting the public interest in the detection, exposure and elimination of misconduct, malpractice and potential dangers by those likely to have early knowledge of them, and (b) protecting the respective interests of employers and employees.*

22. What amounts to a protected disclosure is defined in the Employment Rights Act 1996, (ERA) at Section 43A as a qualifying disclosure. That in turn is defined at Section 43B as:

> *"… Any disclosure of information which, in the reasonable belief of the worker making the disclosure, 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*

23. In summary:

    23.1. There must be a disclosure of information;

    23.2. The worker must reasonably believe that the disclosure is in the public interest, and

23.3. The worker must reasonably believe that the disclosure tends to show one of (a) to (e).

24. The requirement is for the disclosure of information; i.e. conveying facts. It is not enough to make an allegation, see Cavendish Munro v Geduld UKEAT/0195/09. The mere expression of an opinion does not tend to show that the Respondent is likely to be in breach of any legal obligation, see Goode v Marks & Spencer Plc UKEAT/0442/09. However, there is a need for care; information can be disclosed within an allegation. The concept of "information" is capable of covering statements which might also be characterised as allegations. The correct question is to ask whether the disclosure contained information of sufficient factual content and specificity that it is capable of showing one of the matters listed in section 43B(1). This is a matter of evaluative judgment in light of the facts and the context in which it was made. See Kilraine v London Borough of Wandsworth [2018] ICR 1850 CA*.*

25. The disclosures need not be factually correct, nor amount to a breach of the law, provided that the claimant reasonably believed them to be so, see Babula v Waltham Forrest College [2007 IRLR 346. The words used in relation to breach is, "tends to show" not, "shows". A qualifying belief may be wrong but may be reasonably held.

26. The expression, "reasonable belief" must be considered having regard to the personal circumstances of the discloser, in particular their "inside knowledge", what they know about the field in which they work, about their employer, about the subject matter to which the disclosure relates. The test is subjective as to what belief the discloser had and objective, in terms of the reasonableness of that belief, in context, see Korashi v Abertawe Bro Morgannwg University Local Health Board [2012] IRLR 4.

27. The claimant must also reasonably believe that the disclosure is in the public interest; there must be genuine subjective belief at the time of the disclosure and such belief must be reasonably held. In Chesterton Global Ltd (T/A Chestertons) v Nurmohamed & Others [2017] EWCA Civ 979, the Court of Appeal held that there were no absolute rules in deciding whether a disclosure was in the public interest; the essential point was that the disclosure has to serve a wider interest than the personal or private interest of the discloser. Relevant factors are would include the numbers in the affected group, the nature of the interest affected, the extent to which they were affected, the nature of the wrongdoing and the identity of the alleged wrongdoer. That said, the number affected is not determinative; it is not a case of merely one other person being required to make it in the public interest. However, the larger the number affected, the more likely it is that it will engage public interest.

28. There is no requirement in the statute that the claimant's motive for making the alleged disclosure must be that it is in the public interest to do so, although as Underhill LJ observed in Chesterton Global Ltd, it would be rare if a disclosure was believed to be in the public interest, that did not form at least part of the motive.

29. If the question arises as to whether one of the situations listed in section 43B(1) is, "likely" to arise, the test is whether it is, "more likely than not" to arise, see Kraus v Penna Plc [2004] IRLR 260.

30. A protected disclosure must, (per section 43A) be made to one of a number of specified persons set out at sections 43C to 43H. Section 43C provides for disclosure to the claimant's employer.

31. There is no longer a requirement for disclosures to be made in good faith so as to qualify for protection. However, section 49(6A) of the ERA provides tribunals with a discretion to reduce compensation by up to 25%, if the disclosure is not made in good faith. We have not been referred to and are not aware of, any authorities on what is meant by, "good faith" in this context. However, the words were previously used as a requirement for a disclosure to acquire protected status and there is no reason to suppose that the any different interpretation of the words is intended in the new context. Under the old law, the leading authority was Street v Derbyshire Unemployed Workeers Centre [2004] IRLR 687 which held that, "good faith" required more than simply that the person making the disclosure honestly believed or reasonably believed in the truth of the information disclosed, it also required that there was no ulterior motive that was the dominant or predominant purpose behind making the disclosure. In that case, it was held that the motive behind allegations in which the Claimant honestly believed, was antagonism toward her manager and was not therefore made in good faith. A lack of good faith has also been found to exist, in a case where a disclosure was made to strengthen one's hand in negotiations, (Backnak v Emerging Markets Partnership (Europe) Ltd UKEAT/0288/05).

Detriment

32. Section 47B of the ERA provides that a worker has the right not to be subjected to any detriment because he has made a protected disclosure.

33. A detriment may be inflicted by any act, or failure to act, (Section 47B(1)).

34. The term, "detriment" is not defined in the ERA. We look to the meaning attributed to that phrase in the discrimination case law, in particular as defined in the seminal case of Shamoon v the Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285: a detriment is where by reason of the act or acts complained of, a reasonable worker would or might take the view that she has been disadvantaged in the circumstances in which she had thereafter to work. Detriment is not limited to some physical or economic consequence.

35. It is possible in some circumstances that a detriment, (or dismissal) may be inflicted not because of the disclosure itself, but because of the manner in which it has been made. Care is needed to be sure that there is a sufficient degree of separation between the two, see Kong v Gulf International Bank (UK) Ltd [2022] EWCA Civ 941.

36. A worker has the right not to be subject to detriment for making a disclosure, by a co-worker or agents of the employer. The employer is vicariously liable for the actions of its worker's in the course of their employment, (section 47B(1A) and (1B). The employer has a statutory defence if it took all reasonable steps to prevent such detriment, (section 47B(1D).

Burden of Proof

37. Section 48(2) of the ERA provides that it is for the employer to show the ground on which any act, or deliberate failure to act, was done. The claimant must still first prove on the balance of probabilities, that there has been a protected disclosure and that there was a detriment to which the claimant was subjected by the respondent. Then the burden shifts to the respondent to prove that the detriment was not because of the disclosure.

38. Thus where it is established that there has been a protected disclosure, in considering whether a worker has been subject to a detriment as a result, an Employment Tribunal must ask itself:

    38.1. Whether the worker has been subject to detriment; if so,

    38.2. Whether that detriment has arisen from an act or deliberate failure to act by the employer, and if so

    38.3. Whether that act or omission was done on the ground that the worker has made a protected disclosure.

See Harrow London Borough v Knight [2003] IRLR 140).

39. The burden of proof on the question of whether there was a legal obligation and that information provided tends to show that there may be a breach, lies with the claimant, see Boulding v Land Securities Trillium (Media Services) Ltd UEKAT/0023/06, (paragraph 24).

40. As to the link between the disclosure and the detriment, ("on the ground that") one has to analyse the mental process, (conscious or unconscious) which caused the employer to act. We should not adopt the, "but for" test sometimes utilised in discrimination cases. The Court of Appeal considered this in Fecitt v NHS Manchester [2012] IRLR 64 where it was held that there is a causal link if the protected disclosure materially influences, (in the sense of being more than a trivial influence) the employer's treatment of the whistleblower. It is not the same test as that for a causal link in respect of dismissal; in considering whether there has been an unfair dismissal by reason of a protected disclosure, the disclosure must be the sole or principal reason before it is deemed to be automatically unfair.

41. It is the mental processes of the decision maker that are relevant, (CLFIS (UK) Limited v Reynolds [2015]IRLR 562).

42. The respondent then, must prove on the balance of probabilities that the act, or deliberate failure, was not on the grounds that the claimant had done the protected act i.e. that the protected act did not materially influence, (was not more than a trivial influence on) the respondent's treatment of the claimant, see Fecitt, in particular at paragraph 41.

Time

43. Section 48 (3) of the ERA requires that any complaint of detriment for having made a protected disclosures must be brought within 3 months of the detriment complained of, or if there was a series of similar acts or failure to act, the last of them. If it was not reasonably practicable to bring the claim within that time frame, it may be allowed, if brought within such further period as the Tribunal considers reasonable.

Unfair Dismissal

44. Mr Sharp says that he was dismissed for making a protected interest disclosure. Section 103A of the ERA provides that

> *"An 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."*

45. In an ordinary case of unfair dismissal, the burden of proof as to showing a potentially fair reason for dismissal lies with the employer. If the employer is able to show that potentially fair reason, then the burden of proof as to the test of fairness is neutral. The situation is slightly different where the reason for dismissal asserted by the employee is one which is automatically unfair. The authority on this is Kuzel v Roche Products Limited [2008] IRLR 530, Mummery LJ put it thus:

> *"When an employee positively asserts that there was a different and inadmissible reason for his dismissal, he must produce some evidence supporting the positive case, such as making protected disclosures. This does not mean, however, that in order to succeed in an unfair dismissal claim, the employee has to discharge the burden of proving that the dismissal was for that reason. It is sufficient for the employee to challenge the evidence produced by the employer to show the reason advanced by him for the dismissal and to produce some evidence of a different reason."*

46. So, we look to the Claimant for some evidence that the real reason for dismissal is not that asserted by the Respondent. If he does that, we look to the Respondent to discharge the burden of proof that the reason for dismissal was the potentially fair reason contended for.

47. It will be rare for there to be direct evidence of an employer dismissing an employee because of a disclosure. A tribunal may therefore draw

inferences from findings of primary fact as to the real reason for the dismissal, (see Kuzel above).

Section 94 of the Employment Rights Act 1996 contains the right not to be unfairly dismissed. For cases where one of the automatically unfair reasons for dismissal do not apply, section 98 at subsections (1) and (2) set out five potentially fair reasons for dismissal, one of which at subsection (2)(b) is the conduct of the employee. The fifth potentially fair reason, if the reason is not one of those listed at s98(2), is, *"some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held"*, (s98(1)(b)).

48. Section 98(4) then sets out the test of fairness to be applied if the employer is able to show that the reason for dismissal was one of those potentially fair reasons. The test of fairness reads:

> "*Where the employer has fulfilled the requirement of subsection (1) the determination of the question whether the dismissal was fair or unfair (having regard to the reason shown by the employer)*
>
> *(a) depends on whether in the circumstances including the size and administrative resources of the employer's undertaking the employer acted reasonably or unreasonably in treating 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."*

49. We have guidance from the appeal courts on how to apply that test where the grounds for dismissal relied upon by the employer is misconduct. The first is the test set out in the case of British Home Stores v Burchell [1980] ICR 303. The Tribunal must be satisfied that the employer holds a genuine belief, based upon reasonable grounds and reached after a reasonable investigation. It is for the employer to show the genuine belief, the burden of proof in respect of the reasonable grounds and the investigation is neutral.

50. If the employer is able to satisfy that test, the Employment Tribunal must go on to apply the test set out in Iceland Frozen Foods Ltd v Jones [1982] IRLR 439. The function of the Tribunal is to determine whether in the particular circumstances a decision to dismiss fell within the band of reasonable responses which a reasonable employer might have adopted. If a dismissal falls within the band the dismissal is fair, if the dismissal falls outside the band it is unfair. In judging the reasonableness of the employer's conduct, the Tribunal must not substitute its decision as to what was the right course to adopt for that of the employer.

51. The band of reasonable responses test also applies to the question of whether or not the employer's investigation into the alleged misconduct

was reasonable in all the circumstances. See Sainsbury v Hitt [2003] IRLR 23.

52. "Some Other Substantial Reason" is a, "catch all provision", recognising that the list at s98(2) cannot capture every situation in which a decision to dismiss is potentially fair. From the very wording, of s98(1)(b) it is self-evident that the reason must be:

    52.1. Not the same reason as one of the other potentially fair reasons, although it may contain elements of the other reasons;

    52.2. "Substantial", which means that it must not be frivolous or trivial, and

    52.3. A reason that potentially justified dismissing an employee holding the position the claimant held.

53. The test of fairness set out at s98(4) must of course be applied, if the reason for dismissal is, "Some Other Substantial Reason".

54. We should look at the overall fairness of the process together with the reason for dismissal. It might well be that despite some procedural imperfections, the employer acted reasonably in treating the misconduct as sufficient reason for dismissal. We should not be distracted by questions such as whether an appeal is a rehearing or a review, see Taylor v OCS [2006] IRLR 613.

55. In this case, the Respondents say that Mr Sharp was guilty of gross misconduct justifying dismissal without warning. The test for gross misconduct, or repudiation, is that the conduct must so undermine the trust and confidence which is inherent in the particular contract of employment that the employer should no longer be required to retain the employee in its employment, see Neary v Dean of Westminster Special Commissions [1999] IRLR 288.

56. Section 207(2) of the Trade Union & Labour Relations Act 1992 provides that any Code of Practice produced by ACAS under that Act which appears to an Employment Tribunal to be relevant shall be admissible in evidence and shall be taken into account. One such code of practice is the ACAS Code of Practice 1: Disciplinary and Grievance Procedures (2015) which includes the following in respect of disciplinary proceedings relating to misconduct, to which we have had regard.

Findings of Fact

57. The Respondent manufactures the iconic London Black Cab Taxis. It operates its own dealership network. Mr Sharp was employed by the Respondent as Head of Retail After Sales from 12 August 2019.

58. Mr Sharp's Contract of Employment dated 17 July 2019, signed and dated by him, his signature dated 19 July 2019, is in the Bundle starting at page 927. Clause 6 relating to bonus reads as follows:

> "The bonus potential is 15% of your basic salary based on agreed targets over a 12 month period and paid quarterly. The first quarterly payment is guaranteed during which period the object is for the remaining nine months will be agreed. The bonus scheme and bonus payable are discretionary and do not constitute a contractual commitment. The company reserves the right to modify and / or remove any bonus arrangement at its absolute discretion. Any bonus due is conditional on being employed with LEVC at the time of payment and not having indicated an intent to resign."

59. The terms of the bonus arrangements were the subject of negotiations. Those negotiations culminated in Mr Sharp signing a side letter dated 17 July 2019, his signature dated 19 July 2019, which was inserted into the Bundle during the course of the hearing and appears on the final page at page 937. We accept that it is Mr Sharp's signature, although he denied it. It did not appear to differ greatly from other examples of his signature and if he had not signed it, one might have expected ongoing correspondence chasing him for it. The relevant content of that side agreement reads as follows:-

> "The bonus potential is 15% of your basic salary based on agreed targets over a 12 month period and paid quarterly. The first quarterly payment is guaranteed during which period the objectives for the remaining nine months will be agreed. In addition there will be an opportunity to achieve additional bonus subject to over achievement of targets and further discussion.
>
> The Bonus Scheme and bonus payable are discretionary and do not constitute a contractual commitment. The company reserves the right to modify and / or remove any bonus arrangement at its absolute discretion. Any bonus is conditional on being employed with LEVC at the time of payment…"

60. When Mr Sharp started his employment he was line managed by the person who had recruited him, Mr Samuel Judah. The Respondent had in place processes for identifying and resolving common technical issues for the vehicles they had manufactured. Technicians at the dealership would regularly submit information on technical issues encountered, via a system called 'Technical Information Exchange', (TIE for short). An after sales team at the Respondent's manufacturing Head Office would give instructions on the next steps as appropriate. Where common issues were identified, the issues would be considered by what the Respondents called a 'Find It, Fix It' process, (FIFI for short).

61. Mr Sharp says that in the first week of his employment he attended a FIFI meeting online, accompanying Mr Judah. He says that he disclosed in that FIFI meeting in August 2019, (the only FIFI meeting he attended during his employment) that there had been an incident in which a glass panoramic roof of a vehicle had become detached. He says that other

people in attendance were a Danny Hitchin, (Head of Warranty) Paul Squance, (Head of After Sales) and also the Head of Quality and the Head of Production, whose names he cannot recall. Those individuals were not called to give evidence. There is no documentary record of what was discussed at that FIFI meeting. Reference is made below to a screen sheet of a data base subsequently referred to by Mr Sharp a number of times, (page 312) which records on 30 August 2019 in respect of a particular vehicle, "Roof glass loose FLAG FOR FIF REVIEW". At 225 is a spread sheet of recorded panoramic roof incidents which has an entry dated 23 August 2019, "panoramic roof cracked". The list of issues is very clear as to what Mr Sharp says that he disclosed. There were a number of people present at the FIFI meeting. The Respondent has chosen not to call any witnesses who were present. That something was raised is corroborated by the documents. We find that Mr Sharp raised that there had been a recent incident of a panoramic roof becoming detached from a taxi on the highway.

62. Mr Judah ceased to be Mr Sharp's line manager and was replaced by Mr Cross as Head of Retail, in November 2019.

63. On 21 November 2019, Mr Cross wrote of Mr Sharp in a Probationary Review Meeting, (at the end of his first three months) on 21 November 2019, (starting at page 240 of the Bundle) as follows:

> "In the brief time I have been here it is clear that Ian is making huge strides in moving the aftersales business forward and putting it on a more sustainable and professional footing. Whilst there is still a lot to do it is really positive to see the improvements already made. …
>
> No concerns per se albeit for 2020 we need to ensure that we are balancing the demands of requirements of all stake holders (customers, teams, LEVC) against the need to generate profit.
>
> Ian is making a huge difference in a short period of time which is outstanding but going forward important to ensure that the entire needs of the business are aligned. To do this it is important that the decisions are not made unilaterally but in consultation with Head of Retail."

64. However, relations between Mr Sharp and Mr Cross deteriorated. Thus at a further Probationary Review Meeting on 13 May 2020 Mr Cross wrote:

> "Whilst having no concerns about Ian's technical ability to run the aftersales operations and drive a result, some real work is required around his judgement and managerial style. This has been apparent for a while and has been amplified during the current Covid-19 crisis. Ian has a propensity to create drama and crisis where none is required, and furthermore the exact opposite is needed. Also concerned about the messaging when furlough was announced, his decision to come into work when patently unwell causing major unrest amongst the team, along with telling them their jobs were at risk. There is a tendency to create an air of negativity in the team regarding both Ansty and our customers and this propagates within the team, which is neither useful nor constructive from a manager.

> As discussed in previous meetings, and in the three month review, Ian has a tendency to discard information if not involving or effecting him, and / or revert to alternative channels of communication. Most recently regarding social distancing. In the current climate it is absolutely imperative that Ian demonstrates the ability to understand, and cascade, the correct information in a calm and professional manner."

65. In evidence, Mr Sharp said this meeting did not take place. However, he prepared a note which is at page 248 which has the title, "Employee comments in relation to six month probationary period" and includes a reference to the six month probationary meeting having taken place. Mr Sharp explained that he did not regard what had taken place as amounting to a meeting. The precise content of the note are not important, suffice to say it takes issue with what Mr Cross wrote about him.

66. On 24 July 2020, a Technician submitted a TIE report which included, "panoramic roof loose / adrift for FIFI review" the letter 'N' has been typed next to the title "Urgent". Mr Sharp emailed that report separately to the Respondent's After Sales Technical Team Manager Mr Sebastian Clarke, who replied to query why it had been emailed to him. Mr Sharp replied,

> "Please read the TIE, as it has been closed asking if there are any signs of water ingress, however the roof is loose a massive concern to our product liability and the consequences could be extremely damaging".

67. Mr Clarke replied,

> "This case has only been closed as there is no response from yourselves for three days. The TIE was marked by After Sales for engineering review within eight minutes of it being opened. This is currently being investigated (the TIE doesn't need to stay open for this to happen).

See pages 248 and 249.

68. This would be a convenient point to set out the Code of Practice published by the Driver and Vehicle Standards Agency (DVSA) on vehicle safety defects and recalls. This begins at page 107 in the Bundle. It includes an explanation that the DVSA's key responsibilities include:

- investigating or commissioning producers or distributors to investigate vehicle defects,
- to determine whether potential safety defects should be considered,
- to agree with producers rectification, action and plans to deal with safety defects,
- to monitor producers actions in respect of the same,
- to publish information in relation to the same for the consumer and help producers make the right decisions.

69. Producers' key responsibilities are listed as including monitoring the safety of their products, investigating problems reported to them, whether that be by the DVSA, by users or others, to analyse potential risks, to determine whether there is a safety defect and notify the DVSA, to propose and agree with DVSA a course of action and deliver such agreed course of action.

70. The responsibilities of distributors include passing on information on any potential safety defect to the producer in the first instance, (or to DVSA where appropriate).

71. A safety defect is defined as a failure in design or construction likely to affect safe operation which might pose a significant risk to driver, occupants and others. In order to be defined as a safety defect an investigation must have been carried out and the Code of Practice comes into play when a safety defect has been defined in an investigation.

72. What is required in an investigation is set out including obtaining an understanding of the root cause of a particular problem, whether that is a problem of maintenance, product modification or design fault, followed by assessment as to whether there is a defect.

73. There is a system in place whereby safety defects may be reported to the DVSA by users.

74. Once an investigation has concluded, the DVSA will advise what the next steps should be. Where information is commercially sensitive, it will not be released. A safety defect must be reported as soon as it is confirmed. It is expected that a risk assessment will have been carried out. The responsibility for remedial action lies with the producer and the distributor must co-operate. There are various options which include a safety recall where,

> "the definition of a safety defect is met, but the threat is not immediate or can be mitigated with *"reasonable"* consumer action."

75. On 26 August 2020, Mr Sharp sent an email to himself, (page 254) which reads,

> "At 15.38… Dan Cross started [sic] that if I didn't change I would not be working here tomorrow".

Mr Sharp submits this as contemporaneous evidence that Mr Cross said to him this day that if he did not toe the line, he would be dismissed.

76. On 15 January 2021, somebody called Mr Stanton, Head of Quality Assurance, emailed the DVSA in what was called a, "recall pre-notification form" relating to the issue with regard to panoramic roofs becoming detached, (page 267). We do not know what information was provided.

77. On 22 January 2021, Transport For London, (TFL) wrote to the Respondent, (page 305) acknowledging that the Respondent had met with them to discuss an incident in which a panoramic roof had become detached whilst a vehicle was on a motorway and noting that the Respondent was taking the incident seriously and had reported the matter to the DVSA. Mr Sharp draws to our attention the letter refers to the Respondent as having informed TFL that there was only the one known incident. On the evidence before us, there had been just the one incident with a roof coming off on the highway at this point, but there was a known problem with the panoramic roof having a tendency to become detached.

78. Mr Sharp refers the Tribunal to a spreadsheet which begins at page 223. It clearly records known problems with the panoramic roof becoming loose on a number of vehicles, we count 3, "loose" or "loose/adrift" between August 2019 and November 2020, (none between November 2020 and February 2021).

79. Letters went out to customers who had purchased vehicles manufactured after January 2018, although there are sample letters in the Bundle they are templates. From follow up letters we do have copied in the bundle, pages 234 and 335, we can see they were sent out in February 2021.

80. Mr Sharp denied knowledge of the recall. In light of that evidence during cross examination, (for the first time) the Respondent produced what it referred to as a 'Dealership Q & A' which is in the Bundle at page 934. It refers to the vehicle recall and sets out answers to anticipated questions. It does not bear a date and we were not provided any evidence as to the provenance of this document, when it was sent out and to whom. Regardless of that, we found his denying knowledge of the recall, incredible.

81. On 28 January 2021, Mr Sharp wrote in an email to Mr Cross, (page 311)

> "As you can see there have been nine fifi meetings prior to the last six or seven panoramic roofs coming detached from the body. So everyone was aware of the failure 18 months ago."

We note that corroborates there was an incident in August 2019, (page 311) the letter attaches a screen shot of the Respondent's system which appears to list seven incidents of loose panoramic roofs being discovered. These are not incidents of the roof coming off whilst the vehicle was on the highway. We note that the earliest is 30 August 2019, the entry reads,

> "Roof glass loose flag for FIFI review"

82. An article appeared in a trade magazine on 3 February 2021, (page 313) reporting that the Respondent had identified bonding issues with regard to the panoramic roof and that vehicles were therefore being recalled.

83. On 15 February 2021, the DVSA wrote to the Respondent approving the Respondent's proposed course of action, (page 315)

> "… it is also clear you have assessed the risk based on a level of vehicles inspected and a number of incidents, and have instigated an action that should address the concerns without the need for a DVSA safety recall. It is considered that due to only one vehicle having experienced the extremity of panoroof detachment, the level of action currently being taken is sufficient".

84. On 10 March 2021, Mr Sharp emailed Mr Clarke copying in others, including Mr Cross, attaching a TIE report from a technician, who found a panoramic roof cracked and a Screen Fitter having reported that the seal was weak and would have come away at a later date, (318). Mr Sharp wrote,

> "We have previously raised concerns that the current panoramic roof check is only fit for purpose at the time of test. … AS you can see from the information below, the vehicle was onsite when your engineering team came to Brewery Road to check all of our stock, so this vehicle passed. The vehicle was delivered at the end of February and now the roof has failed on 9 March 2021. … We highlighted this concern in the attached TIE report February and are awaiting directions."

85. The Respondent had devised a test for the panoramic roofs which it called a "push test", designed to check the strength of their adhesion.

86. Mr Sharp sent email to Mr Cross and to a Louise Kennedy in Human Resources with regard to his bonus on 16 April 2021, (page 327). He complains that in the last 18 months, he had only received three payments and that he has not been set targets since 2020. He writes,

> "In October 2020 I received a bonus payment of £1,000 based on Dan fighting tooth and nail for this payment, however in my calculations based on historical facts it should have been £4,400 however as there has not been any bonus plans in place this is impossible to ascertain.
>
> I have not been set any targets for Quarter 1 as Dan is still waiting for someone to agree these…"

87. On 30 April 2021, (page 467) Mr Sharp emailed Mr Clarke attaching some photographs and writing,

> "Further to our quick call, can you please review the panoramic roof failures and FIFI as this is the third one we have recorded that is not completely sealed but would pass the push test".

88. A serious incident occurred on 4 May 2021. A panoramic roof on a taxi became detached on the M25 whilst the vehicle was travelling at 60 – 70 miles per hour. Fortunately, an accident did not ensue and nobody was hurt. The vehicle was recovered and taken into the Respondent's Brewery Road premises, (page 349).

89. On 5 May 2021, two Senior Quality Engineers from the Respondent's manufacturing base at Ansty Business Park, Coventry visited the Brewery Road Dealership and had an interaction with Mr Sharp that one of those

Engineers, Mr Bodnauruk, described to the Respondent in an email of 6 May 2021, (page 356) as follows:

> "We came to the service office / waiting area, Ian sat at the front desk facing the waiting area. Also there was one person in the waiting area and four other members of staff at their desks. When we stated the purpose of our visit (brake harness routing and potentially reviewing the bonding issue on the panoroof area) Ian immediately mentioned that the bonding issue might be a court case and somebody would go to jail. It was loudly implied that this will result to a death of someone [sic]. He mentioned some of the specifics – M25 incident, push check not been effective, bonding process issue at Ansty, several cases already recorded with similar symptoms. … Later on during the day there were several comments made about LEVC Ansty incapability of tracking the car with no panoroof again with different external people (presumably customers) in the office."

90. This email was sent to Mr Alex Hinchliffe, following a telephone call in which Mr Hinchliffe had asked Mr Bodnauruk t put it in writing.

91. Mr Hinchliffe contacted Mr Cross and Senior HR Business Partner Louise Kennedy. A decision was made to suspend Mr Sharp.

92. On 6 May 2021, Mr Cross told Mr Sharp that he was suspended. He said that he did not know the reason why. He arranged for Mr Sharp to be escorted from the premises. He initially informed Mr Sharp that he would not be able to take and use his work laptop, although upon Mr Sharp telephoning Ms Kennedy, the instruction was rescinded and Mr Sharp was allowed to take his laptop with him.

93. Mr Sharp's suspension was confirmed in a letter dated 6 May 2021, (page 357) which informed him that the reasons for his suspension were:-

    - "Acting in any way that might reasonably bring the employer's name into serious disrepute;
    - Trust and confidence in your ability to carry out your duties."

94. The letter informing Mr Sharp that he was suspended told him that he would not be permitted access to the Respondent's systems during the investigation and that he was not to attend the premises or contact members of staff, customers, clients or agents without permission.

95. On 9 May 2021, Mr Cross emailed the After Sales Team which begins,

> "In light of recent events, and whilst we await the outcome of these, I would like to outline the temporary reporting lines in the interim".

The email proceeds to do exactly that, using the expression,

> "in the short term…".

96. Somebody called Gareth Maguire was appointed to investigate the events of 5 May 2021.

97. Mr Maguire met with one of the two visiting engineers on 12 May 2021. Notes of that meeting begin at page 365. The identity of that engineer is anonymised as ‘Person 1’. We note the following from this set of minutes:

    97.1. P1 said there was one customer present, approximately five metres from where they and Mr Sharp were standing;

    97.2. He said that Mr Sharp had said,

    “there is a panoroof on the M25 and that Police were called to the incident, he said it won’t be him who would go to jail and that someone would get killed by the issue”;

    97.3. He said that Mr Sharp was talking to them in normal volume;

    97.4. He said that he and his colleague remained quiet, not wanting to fuel the conversation as they were aware of their surroundings;

    97.5. He quoted Mr Sharp as having made reference to somebody ending up in prison, someone would get killed;

    97.6. P1 is quoted as saying,

    “In the office when the customers were present, Ian said that the bonding wasn’t cured. I remember this part, as this was not correct, as the bonding cure was completed.”

    We note those notes record P1 as referring to customers in the plural.

    97.7. Asked about his demeanour, P1 said that Mr Sharp was not aggressive.

    97.8. P1 said that they, he and his colleague, felt they should not be having that conversation in that location.

    97.9. In terms of reporting, P1 said that he had reported to Mr Hinchliffe the following morning verbally and Mr Hinchliffe had asked him to put it in writing.

98. Mr Maguire also interviewed the second Engineer on 12 May 2021, the notes are at page 369 and the individual is described as ‘Person 2’. We note the following:-

    98.1. P2 describes two customers in the Customer Area.

    98.2. P2’s explanation of the conversation was,

> *"We sat down and had a coffee; his phone had gone off. Either before or after coffee, he said that they couldn't find the vehicle, the panoroof had come off, the Traffic Police were unable to locate the roof and the RAC had taken the vehicle, and Brewery Road couldn't locate it. He had spoken negatively about Ansty, as he had in my previous visits. He said the issues were ongoing for four years"*.

98.3. P2 described the incident as having happened on 4 May, he had thought it was the second incident but Mr Sharp had informed him that it was the fourth that had happened since he'd started with the Respondent. He said the conversation was in front of the customers and that Mr Sharp was speaking quite loudly, which is normal for him.

98.4. P2 quoted Mr Sharp as saying,

> *"Ian then said it would kill someone what it the roof hit a car or someone on a bike… The first time he said this is going to kill someone, I looked about to see who was around. I felt even in front of me and P1 it was inappropriate"*.

98.5. P2 went on to say that he felt uncomfortable and that P1 was trying to close the conversation.

98.6. P2 describes a further conversation in the afternoon,

> *"There was another conversation at this point, about losing the cab, Ian had started to say that* "Ansty can't plan anything, we never get any answers, I need to give the customers answers" *and this conversation was in the hearing of customers"*.

99. On 14 May 2021, eighteen members of Mr Sharp's Team signed a petition expressing their support and admiration for him.

100. On 17 May 2021, (page 374) Mr Sharp submitted a grievance against Mr Cross, suggesting that he should be investigated for acting in a way that might reasonably bring the employer's name into serious disrepute, which he suggests is linked to the investigation concerning his conduct. He made the following allegations against Mr Cross:-

100.1. That in the fourth quarter of 2019, Mr Cross had disclosed confidential information but that he had not been suspended or escorted from the premises and made to feel like a common thief;

100.2. Mr Cross had restricted him financially and emotionally bullied him; and

100.3. He invited the Respondent to take the same action against Mr Cross as had been taken against him, namely immediate suspension from duties and that he be escorted from the site.

101. A further version of that grievance was submitted by Mr Sharp on 18 May 2021, (page 386). The information alleged to have been disclosed by Mr Cross was to a fleet customer about a software update.

102. Mr Cross, (anonymously described as 'Person 3') was interviewed by Mr Maguire on 17 April 2021, the meeting notes are at page 384. From these notes we note the following:-

    102.1. Mr Cross told Mr Maguire that he had spoken to Mr Sharp in the past about his being indiscreet in front of clients. He said that a couple of people, both employees and customers, had spoken to him about Mr Sharp's inappropriate comments recently.

    102.2. He said that Mr Sharp's ability had never been in question.

103. On 23 May 2021, Mr Sharp emailed the Human Resources person appointed to deal with these matters, Miss Weaver and Mr Boyce, who had been appointed to deal with the grievance, (page 395). He begins with,

> "I have started to collate the evidence of Mr Dan Cross bullying me and as you can see there is a lot of evidence to review, however the intimidation started in Fourth Quarter of 2019".

He further states,

> "I currently have no faith in the company operating to their own policies as this has been demonstrated on several occasions already".

He referred to the above mentioned email of 9 May 2021 from Mr Cross to the After Sales Team as evidence that the Respondent has already reached its conclusions. He complains of Mr Cross obstructing his bonus. He complains that on 26 August 2020 Mr Cross had stated,

> *"That if I didn't toe his line, I would be instantly sacked"*

He said that when he asked Mr Cross to repeat that for the record, he had replied,

> *"I don't give a fuck about the record I will sack you tomorrow if you don't agree to toe my line"*

104. Mr Sharp suggests that he recorded this exchange on his mobile telephone, although no such recording has ever been produced.

105. Attached to that email was a document entitled, "Grievance Notes" which begins at page 396. It is a narrative that recites bullying by Mr Cross, reiterating his allegations of breach of confidentiality, suggesting Mr Cross has obstructed his setting of targets and achievement of bonus, complaining about the content of the Six Month Probationary Review document, making reference to the "toe the line" comment, Mr Cross

suspending him without explanation and escorting him from the premises and his reconstruction of the team, suggesting that Mr Sharp will not be returning. A new allegation appears here, that Mr Cross delayed processing some credit notes so as to enhance his achievement of target and therefore bonus during the quarter in question.

106. On 26 May 2021, Mr Maguire interviewed Mr Sharp. The meeting notes are at page 399. We note the following:-

106.1. At the beginning, Mr Sharp insists that the meeting is recorded because,

"this is going to end up in litigation".

106.2. Mr Sharp tells Mr Maguire that he has already made his decision and he is going to be dismissed.

106.3. He states,

"It is a conspiracy. Let's move on, I am not happy and I have taken legal advice and they've said I can request for the meeting to be recorded, due to the conspiracy".

During evidence Mr Sharp told us that on this and every other occasion when he refers to taking legal advice, he had not in fact taken legal advice.

106.4. Mr Sharp expressed remorse. He said,

"If I have made a judgement error it was not with intent".

106.5. He insisted he was politically correct at all times, did not tarnish the brand that paid his salary and that he was protective of the brand.

106.6. Mr Sharp insisted that he had not discussed those,

"in the public domain".

106.7. He could not recall if there was a customer present when he spoke to the engineers and said he did not dispute it. He said the conversation would not have been within ear shot of others. When asked whether he would understand that the engineers had been surprised by the discussion he replied,

"They shouldn't have been surprised, as the company had a duty of care to report issues, the panoramic roof had come off on the motorway, and the company had concluded not to act previously, everyone in the FIFI meeting Engineering Team should be concerned about their future. When we talk about the disrepute of the company, those in the FIFI meeting should be spoken to. Factually for 18 months we have allowed and continued to produce a vehicle

that goes against the legislation to ensure safety of the driver and fellow passengers in the vehicle. The roof became detached at 75mph. The company have failed to act in compliance with legislation… Our team are knowingly producing vehicles with faults, we are testing them, and they are coming detached again. Maybe the two gentlemen are concerned and maybe that's why they have raised the concern… The FIFI meetings that go back twenty months talk about similar issues and they have done nothing about the first incident. I haven't been in the business for two or three weeks, we are having roofs becoming detached, we are failing to resolve the issue. I feel that someone wants to make a counter accusation against me to save his own bacon. … When we are talking about bringing the company into disrepute, clearly if I have identified something over twenty months ago and has brought it in disrepute, why are these guys not being investigated for not bonding roofs correctly and the issue is reoccurring, this is damaging to the brand, engineering have not fixed the issue. They say it is all over social media. Why are the engineering team not being charged with the same allegation, the people who are being paid to resolve issues are not, their actions have brought the company into disrepute? All our customers are talking about this on Taxi Talk, they have brought the company into disrepute. Do I get an answer?"

106.8. When asked how he was informed he was suspended he replied,

"Typical Dan Cross, pack of lies, he's a compulsive liar. Typical Dan and his lying, he doesn't look at people, he said he had a call from HR and said he had to suspend me with immediate effect. I asked why and he said he didn't know..."

106.9. Mr Sharp complained about Mr Cross reorganising his team with haste, (contrasting not doing so when he, Mr Sharp, was absent for a long period of time with Covid) and referred to him in disparaging terms his denying to his team any knowledge of why he had been suspended. He was also critical of the way Mr Cross had managed his team in his absence.

106.10. He raised the fact that he had submitted a grievance against Mr Cross, which he insists must be investigated.

106.11. He describes a witch hunt to try and remove him.

106.12. He links the action being taken against him as retaliation by the company to the problem of the detaching panoramic roofs.

106.13. With regard to the allegations against him, Mr Sharp said that Mr Cross had seen an opportunity, he had simply spoken to fellow employees but not in the ear shot of a

customer. He links Mr Cross' perceived actions with the problem of detaching panoramic roofs.

106.14. The meeting lasted just over three hours.

107. Mr Sharp's grievance in relation to Mr Cross and allegations of financial irregularities was investigated by a Chris Allen, (Legal Director and Company Secretary). The report is in the Bundle beginning at page 410. It is undated. The report finds that there were no irregularities with regard to credit notes or inappropriate sharing of confidential information and there is a recommendation that no further action is required.

108. Mr Maguire interviewed a member of Mr Sharp's team identified as 'Person 4' on 9 June 2021. The notes begin at page 428. P4 is complimentary of Mr Sharp. He does not appear to provide any useful information with regard to the incident under investigation, although he does confirm that Mr Sharp speaks at a normal volume. .

109. Mr Maguire interviewed Mr Sharp again on 15 June 2021. The notes are at page 431. We note the following:-

109.1. Early on in the meeting Mr Sharp says,

"What is the point in doing the meeting when we know what the outcome is, you're not doing a fair and balanced investigation".

109.2. He says that his evidence goes back to 2020 and that his only other option is to go to DVLA and VOSA.

109.3. He criticises the investigation, stating that he had provided the company with facts that show Mr Cross has brought the company into disrepute and was bullying him.

109.4. When the alleged conversation with the Engineer is put to him the reply is,

"My counter claim is that the witness is called Paul Squance, and Dan has seen this is an opportunity to get rid of me. I am going to make a counter allegation to the FIFI team, two years ago I told the FIFI team that a roof had become detached, LEVC's FIFI team failed to comply to the DVLA requirements by not completing a recall. Two years later we are doing a recall, LEVC are trying to twist this against me. … You have a duty of care; we have failed to notify the DVLA of the roof issue".

We note that corroborates that Mr Sharp knew of the recall.

109.5. Mr Sharp does not deny the gist of what he is alleged to have said to the two engineers.

109.6. Mr Sharp stated,

"This will go to court… I have spoken to my lawyer… Bringing the company into disrepute is not talking to a colleague about an issue when no one is around".

109.7. Mr Sharp does acknowledge,

"Maybe I should have chosen my words differently".

109.8. Mr Sharp made reference to his mental health being impacted by this process and the delay.

109.9. Mr Sharp asserted that he had been discriminated against, escorted off site and treated like a thief because somebody wanted him out of the business.

109.10. Mr Sharp asserted that those people present in FIFI meetings that have not taken action with regard to the detaching roof issue have brought the company into disrepute. He referred to it being a criminal offence not to follow guidelines. He said he was going to email information, but,

"I am not going to disclose all the information as we can share this at litigation".

110. Later that day, Mr Sharp emailed Mr Maguire suggesting he should interview somebody in connection with the problem with the detached roofs, stating that they were identifying about twenty each week. In a separate email he refers to attaching evidence of FIFI members having brought the company into disrepute. His evidence was the above mentioned email to Mr Dan Cross of 28 January 2021 attaching a screen shot from the Respondent's system, (pages 311 and 312) listing nine vehicles with a faulty panoramic roof between 5 August 2018 and 13 January 2021.

111. Also on 15 June 2021, (page 437) the Investigating Officer Mr Boyce interviewed the Senior HR Business Partner Miss Louise Kennedy in relation to Mr Sharp's grievance about alleged bullying by Mr Cross. She acknowledged that historically, there were issues between Mr Sharp and Mr Cross. She described Mr Cross as regarding Mr Sharp as excellent at what he did, but of having created a cult in his department and that he needed to get in line and be more respectful. She also told Mr Boyce that there had been no bonuses during Covid. She said that she had repeatedly told Mr Sharp that nobody was getting a bonus, that Mr Sharp insisted this was Mr Cross' fault rather than accepting that the decision was in the hands of others.

112. On 16 June 2021, Mr Sharp sent an email to Mr Maguire attaching a note of a case in the United States regarding Toyota concealing information about defects and criminal proceedings. In his email Mr Sharp wrote,

> "… the lack of actions of the FIFI team have actually brought the company LEVC into disrepute, as they have not acted in accordance with the law, thus bringing the company into disrepute".

The situation of Toyota and the Respondent were not comparable, based on excerpt provided. Toyota had hidden a defect from the public and avoided a recall. The Respondent reported the issue, instigated a recall and the problem was in the public domain.

113. On 17 June 2021, Mr Maguire interviewed somebody else who was part of Mr Sharp's team, described as 'Person 5'. He is complimentary of Mr Sharp. He confirmed that Mr Sharp and Mr Cross did not have a good relationship. He confirmed that Mr Cross had told him he did not know why Mr Sharp had been suspended. He did not appear to have heard the conversation relating to the vehicle roof.

114. Another member of the team known as 'Person 6' was also interviewed on 17 June 2021. He was also complimentary of Mr Sharp and acknowledged that there was a difficult relationship between Mr Sharp and Mr Cross. He declined to comment when asked, whether Mr Sharp had undermined Mr Cross.

115. Another member of the team described as 'Person 7' was also interviewed on 17 June 2021. He is also complimentary of Mr Sharp. He confirmed overhearing a conversation between Mr Sharp and the two engineers, saying he had heard the words, *"don't take this personally"* and seeing Mr Sharp look over both shoulders.

116. On 21 June 2021, Mr Sharp wrote to Mr Maguire:

> "As I have not yet received any response to my email, offering you my full assistance, I will assume that you are now carrying out your assigned duties as Investigating Officer for bringing the company into disrepute.
>
> As detailed in my email from last week it is a matter of fact that the FIFI team at LEVC failed in their legal obligation to act in accordance to the legislation listed by the DVSA.
>
> To assist you in the investigation I have attached a correspondence relating to the first instance of a panoramic roof becoming detached on a major road.
>
> Chris Stoneham is the Legal Engineer for LTDA and would be a key witness in any litigation."

117. The attachments include an email of 30 April 2021 Seb Clerk, copied to Mr Cross as referred to above, (page 467).

118. Also on 21 June 2021, Mr Boyce interviewed Mr Cross with regard to Mr Sharp's complaint that he had not received a bonus. Mr Cross told Mr Boyce that he had explained to Mr Sharp that in view of the Covid situation and the lack of sales, there were no bonuses for anybody in Quarter 1 and that somebody called Leighton had decided that there would be no

bonuses for Quarter 2, which applied to everybody. He said he had no recollection or conversation with Mr Sharp along the lines alleged by Mr Sharp claiming to have recorded on his telephone.

119. It is fair to say that there are a considerable number of emails from Mr Sharp to a number of people during this time, complaining that Mr Cross was not receiving the same treatment as he was, of discrimination, (unspecified) with the Respondent not fulfilling its obligations with regard to the roof defect and so on. In some of these emails, Mr Sharp refers to mental health illness. For example, in an email of 26 June 2021, he put in the subject heading, "Death Row" and referred to being reliant on medication and an, "ever-increasing amount of alcohol". He repeatedly refers to litigation. He repeatedly refers to the FIFI Management Team bringing the company into disrepute.

120. On 7 July 2021, Mr Sharp received a letter from Miss Weaver providing an outcome to his grievance as to bullying by Mr Cross, (page 494) following investigation by Mr Boyce, which was not upheld. It was explained to him that decisions about bonus' was by the Commercial Director not Mr Cross and none were awarded during the period of COVID due to the precarious financial circumstances of the Respondent. He was told that Mr Cross had been re-educated in the process of a Probationary Period Review and the extension of time frames. He found that were known concerns about their relationship and explained that Mr Sharp had not released his alleged recordings of Mr Cross' comments to him about toeing the line and she recommends mediation. Mr Boyce had interviewed Mr Sharp, Mr Cross and Louise Kennedy, (see pages 486, 437, 481).

121. On 7 July 2021, Mr Allen wrote to Mr Sharp, (page 512) to inform him that the outcome of his whistleblowing in relation to Mr Cross' alleged misconduct was that there was no case to answer.

122. Mr Sharp also wrote to Mr Maguire on 14 July 2021, at 16:20, copied to Ms Haines, (page 516) (PID g):

> "I will again have to assume that you are still investigating the FIFI Senior managers.
>
> I have now found some additional information that further supports my claim that the FIFI management team have brought the company LEVC into disrepute as currently LEVC, Brewery Road, have noted 167 panoramic roofs detached and as we do 50% of all the warranty claims within the dealer network, I am confident that the current number of detached panoramic roof would be 320 defective and unsafe vehicles on the public highways in total. I have access to all of the chassis' numbers if you need any additional information to assist you in your investigation into the FIFI management team."

123. Ms Haines replied, (page 516) reiterating a response she said she had previously given on 29 June 2021:

> "Regarding your statements asserting that the FIFI management team has brought the company into disrepute over a known warranty issue this has been closely managed by LEVC involving the relevant authorities and suppliers. The product issue that triggered this sequence of events has been investigated, the root cause established, a solution established and the re-work program is nearing completion."

She now adds,

> "The re-work is now complete. There is no further action to take on this."

124. Later that day at 18:43, (page 424) (PID h part 1) Mr Sharp wrote to Laura Haines:

> "I will refer you to the guidelines and the legal requirements required by DVSA and VOSA and the fact that this critical failure I reported to the FIFI team in August 2019 was not acted on and the lack of action could have caused the loss of life or serious injury".

125. Again later on 14 July 2021, Mr Sharp wrote to Ms Haines at 18:53, (page 514) (PID h part 2):

> "Further to your email from today, I am not sure if you are aware of the company's legal requirements on safety recalls with the DVSA and VOSA and as the failures were evident in August 2019, I am sure that you will now agree that indeed the FIFI management team brought the company into disrepute".

126. On 19 July 2021 the Respondent's Legal Director Mr Chris Allen wrote an email to Claire Wise and Laura Haines of HR, (page 497) in which he refers to his recent whistleblowing investigation, in which he says,

> "During my investigation I have found no immediate grounds to believe the disclosures were made other than genuinely in the interests of the company. The latest emails from Ian indicate a possibility that these were made maliciously to force an outcome of suspension or disciplinary measures being taken against an individual where he was seeking equality."
>
> "Malicious whistle blowing itself is a disciplinary matter. Please have the Investigator assess materials on this subject as well to see if there is any basis for action to be taken."

127. Miss Weaver met with Mr Sharp to discuss the grievance on 19 July 2021, along with Mr Boyce (the Grievance Investigator, Head of Manufacturing and Engineering). We note at page 522 Mr Sharp is recorded, (the meeting was video recorded) as reading out a passage which he says was provided to him by his lawyer. He told the Tribunal in evidence he had not instructed a lawyer. In this meeting, Mr Sharp complained that he had raised five points and the Respondent had only dealt with three of them. He complained they had not dealt with the STP and the allegation that Mr Cross had recruited a friend of his to the exclusion of Mr Sharp which he said, *"killed"* his career. STP is a reference to the Respondent's system of

monitoring probation. Miss Weaver assures Mr Sharp that she has received all of his emails, he sent so many, she cannot acknowledge or reply to all of them. Mr Boyce and Miss Weaver tried to explain the outcome to the Grievance Investigation. He accuses them of not carrying out an honest review of the facts. It is fair to say the transcript records a lot of cross talking. It is clearly difficult for them to put over what they want to say without being talked over by Mr Sharp. For example, at one point, (page 524) Mr Boyce is recorded as saying,

> *"Ian, is it okay for I speak for a short minute?"*

Mr Sharp states at one point,

> *"Let's move forward. I am going to appeal. I will go to litigation…"*

128. On 21 July 2021, Miss Weaver wrote to Mr Sharp to propose mediation between him and Mr Cross, (page 534).

129. On 29 July 2021 at 3:23pm, Mr Sharp wrote to Louise Kennedy,

> "I have not been paid today?"

130. She replied that they do not get paid until tomorrow. Mr Sharp replied,

> "I have just understood that it is not Friday today… Mental health is confusing me…"

131. Ms Kennedy replied a few minutes later with seven laughing, crying emojis. Mr Sharp told us in evidence that he had a close relationship with Ms Kennedy. Fifteen days later Mr Sharp complained to Laura Haines, attaching that email from Louise Kennedy,

> "As disclosed in my previous email, LEVC have no care or consideration towards my mental health, you have kept me hanging for over three months and shown no consideration to my mental health or welfare.
>
> You seem to find it extremely funny!!
>
> Maybe its time to have an undisclosed conversation."

132. Miss Haines replied to assure Mr Sharp that the Respondent takes the mental health of its employees very seriously and that she would be speaking to Louise Kennedy about her email, writing,

> "I suspect that as your working relationship has always been amicable she has responded in a "familiar" way".

133. Mr Maguire produced an Investigation Report in relation to the incident on 5 May 2021, it starts in the Bundle at page 337 and, as with many of the Respondent's documents, is undated and unsigned. He finds that there were two customers in the vicinity of the conversation. One of whom was known to have a hearing impairment, the other to be elderly and

apparently dozing. The customers were approximately five metres from the conversation and it would have been audible to them if the visitors were paying attention. Both customers had been in receipt of recall notices in respect of the panoramic roof. The staff spoken to within Mr Sharp's reporting line speak of him in glowing terms. He perceived a siege mentality within the after sales team and that Mr Sharp demonstrated a personal distrust of Mr Cross. He suggested that whilst Mr Sharp was passionate and knowledgeable in respect of his duties, his judgement in the handling of sensitive information on this occasion was flawed. He wrote,

> "The theatre of looking over his shoulder, talking in a voice loud enough that those in close proximity could overhear him, seemingly to convey a message that this is a picture of him, Head of Service, standing up to, and pointing out the flaws in the manufacture and inspection process to people of the parent company, would be my reading of this interchange. It appears to be an opportunity to demonstrate his seniority and knowledge, and cement the tight knit management style he has nurtured. His vanity has back fired, and started a chain of events that led to this investigation."

134. Mr Maguire recommended further assessment from the disciplinary perspective to consider the degree with which Mr Sharp drove division by undermining the role of Mr Cross and whether he had in the manner that brought the company into disrepute by discussing serious safety concerns within the hearing of external parties, undermining the engagement of fellow staff, demonstrating misjudgement in the use of hyperbolic language.

135. On 12 August 2021, Mr Sharp was invited to attend a disciplinary hearing on 16 August 2021.

136. On 13 August 2021, Mr Sharp emailed Laura Haines to complain that the investigations were flawed and full of institutionalised corruption and discrimination. He complained he was still awaiting the outcome of his appeal against the investigation carried out by Mr Boyce as that too was full of discrimination and corruption. Ms Haines replied to say that whilst they had sorted out the disciplinary hearing, they would move forward with other areas of concern raised by Mr Sharp.

137. The disciplinary hearing proceeded on 18 August 2021. Mr Sharp began the meeting stating that he anticipated it would take seven hours and that he had 17 pages of discrepancies in the notes and challenges on discrimination to go through and stating to those present that they would have to swear on oath in litigation about these matters.

138. We note that Mr Sharp wanted the hearing recorded, but it was not recorded. This was because somebody present did not consent, we do not know who. From the notes of this hearing, which are at page 552, we note the following:-

138.1. The disciplinary officer was Paul Bostock, Senior Engineering Manager.

138.2. Mr Sharp said,

> *"I need some reassurance from you about the pre-determined outcomes here because I am going to disclose information about the institutionalised corruption in this business and the pre-determined outcomes from the investigations. … I honestly believe that you have sat there being told by the higher levels to pull the gun and I need you to swear that when this is going to litigation that you know that I will ask you to swear under oath…"*

138.3. Mr Sharp spoke of the flagrant lack of adherence to the ACAS Guide and the role of an independent adjudicator.

138.4. He protests that none of the statements are valid because they had not been signed by the witnesses. By statements, he is referring to the minutes of the meetings during the investigation and it is true, none of them are signed. It was explained to him that this was to preserve anonymity.

138.5. During the hearing, he telephoned one of his members of staff with the telephone on loud speaker, apparently to identify whether they were a witness, in a demonstration of what he saw as a farce in the process.

138.6. Mr Sharp raised the emoji email that he had received and the outburst by Mr Cross he claims to have recorded.

138.7. Mr Bostock had to ask Mr Sharp to calm down. He tried very hard to keep Mr Sharp focused on the issues at hand.

138.8. Mr Sharp apologised and said that it was never his intention to upset anybody.

138.9. The outcome was that Mr Sharp was issued with a Verbal Warning.

139. The Verbal Warning is confirmed in writing by a letter dated 19 August 2021, (page 561) acknowledging Mr Sharp's remorse and stating,

> "You have behaved in an inappropriate manner in the presence of colleagues and external customers which could have brought the company's name into disrepute".

140. Unfortunately, that was not an end to the matter. On 19 August 2021, Ms Haines telephoned Mr Sharp to inform him that he was suspended yet again. In an email of that day, (page 558) she wrote that there was a further disciplinary matter to be dealt with concerning his conduct during the disciplinary process, his grievance and his disclosure. She wrote,

"To be investigated:

1. Your potentially derogatory statements regarding the competence and integrity of the investigating team made directly and also stated publicly to employees not involved in the above procedures.

2. Your potentially aggressive and intimidating behaviour towards the investigating team.

3. Potential breach of confidentiality regarding these company matters involving yourself."

141. On 20 August 2021, Ms Haines had cause to write to Mr Sharp because he had been repeating to employees of the Respondent, matters which had been discussed in confidence in relation to potential settlement of his case.

142. In an email of 23 August 2021, Mr Sharp wrote to Ms Haines that he intended to bring evidence of LEVC corruption to the employment courts and a separate criminal case to VOSA and DVSA.

143. By email dated 24 August 2021, Mr Sharp appealed the verbal warning.

144. Also on 24 August 2021, in an email to Ms Haines, he purported to raise a grievance against Mr Cross for, "aggravated damages".

145. In a separate email, he also purported to raise a grievance against Mr Cross for failing to follow company procedure in recruitment to the post of "General Manager, Potters Bar" by recruiting a friend and excluding Mr Sharp thereby, from having the opportunity to apply.

146. By letter dated 25 August 2021, Mr Sharp was invited to attend a further disciplinary hearing on 31 August 2021, (page 571). Allegations against him were as follows:-

- "Trust and confidence in your ability to carry out your role.
- Overall concerns with your conduct, more notably throughout more recent events and associated processes namely, but not limited to the following:

    - Frequent and continued claims of procedural fairness and adherence by LEVC;
    - Lack of trust in senior management, and the directorship of the business including but not limited to frequent derogatory comments on their capability and ability to lead;
    - Lack of confidence in business operations, and the integrity of these operations by use of the words "institutionalised" and "corrupt" on more than one occasion;
    - Breach of confidentiality and mutual trust on more than one occasion;
    - Aggressive and intimidating behaviour towards all levels of staff, management and junior colleagues;
    - Numerous, and continued vexatious claims;

- Assumed intentional delay to process to enable length of service to extend past two years; and
- Continued frayed relationships within the business amounting to irreconcilable differences."

147. By an email dated 25 August 2021 the invite to the disciplinary hearing was sent to Mr Sharp, with it attached what were regarded as all relevant documents, including meeting notes and the previous disciplinary and grievance investigations, (page 919).

148. On 25 August 2021, Mr Sharp wrote that all outstanding appeals should be dealt with before the disciplinary hearing. Miss Weaver replied that the appeals would be incorporated and reviewed as part of the disciplinary hearing. Miss Weaver offered support through the Respondent's Wellbeing teams. Mr Sharp replied suggesting that this proposal was contrary to the Respondent's policies and procedures, contrary to ACAS procedures and employment law. Miss Weaver replied that the process was in compliance with ACAS Guidance. See pages 568 to 570.

149. On 1 September 2021, Ms Haines wrote to Mr Sharp with an outcome to his complaint about the email Ms Kennedy had written. Ms Kennedy had said that she thought that Mr Sharp in his response referencing his mental health was being, "light hearted" which is why she responded in the way that she did. She said she had had no knowledge of Mr Sharp's mental health issues and had she had such knowledge, she would not have responded in that way. Ms Haines' conclusion is that there was no malicious intent on the part of Ms Kennedy and that an apology would be appropriate. Ms Kennedy wrote an email on 2 September 2021 to say that she was sorry and she had genuinely not meant to cause distress. Mr Sharp replied, (page 577) to state that he did not accept this outcome, there were no witness statements attached and he appealed.

150. The second disciplinary hearing on 2 September 2021 was chaired by Mr Alex Hinchliffe, Head of Product Quality. The notes of the disciplinary hearing are in two parts within the Bundle, the first at page 589 and the second at page 898. We note the following:-

    150.1. There appears to have been no consideration of Mr Sharp's appeal against the verbal warning or in relation to his grievance outcomes.

    150.2. Mr Sharp spoke of his mental health problems, at one point saying,

    > "My mental health is so bad I have had to move my youngest son back to look after me because I am wandering the streets at night in my underpants, I have been arrested by the police because I have had no support for 16 weeks."

150.3. Mr Sharp complains that there is no separate investigation so that the investigation and disciplinary action are being undertaken by the same person.

150.4. Mr Sharp complains about the laughing emojis email he had received.

150.5. Mr Sharp protests that Mr Hinchliffe would be part of the FIFI management team and suggested he therefore should not be involved in this process.

150.6. It is explained to Mr Sharp that there were issues of trust and confidence arising out of the previous disciplinary matter, that there were concerns about his ability to complete his job role because he did not believe the business was doing its upmost, his referring to the business as being institutionally corrupt and that he had made a number of claims which were without merit.

150.7. Mr Sharp complains that the Respondent had left him at home for sixteen weeks on medication whilst he was suspended.

150.8. It was suggested to Mr Sharp that some of the claims that he had made were vexatious. It becomes apparent there are difficulties in conducting the meeting because Mr Sharp interrupts and talks over the speaker, whether that be Miss Weaver or Mr Hinchliffe.

150.9. It is pointed out to Mr Sharp that he had made frequent direct derogatory comments on the capabilities of the directors of the business and their ability to lead, that he appears to have no trust in senior management and directors. Mr Sharp responds simply that he has been cocooned for sixteen weeks.

150.10. Mr Hinchliffe suggests that Mr Sharp has demonstrated he has no trust or confidence in the management of the business.

150.11. At page 900, Mr Hinchliffe refers to evidence of gross misconduct for which Mr Sharp received a verbal warning.

150.12. It was suggested that Mr Sharp had behaved aggressively. He responded by making references to Miss Marple, (the fictional character) (page 901).

150.13. It was put to him that he had made numerous and continued vexatious claims. Mr Sharp responds that they are facts not claims and they are numerous because the Respondent does not answer them.

150.14. It is evident from this recorded transcript that there are difficulties in keeping Mr Sharp focused and in his talking over Mr Hinchliffe and Miss Weaver.

150.15. There are no timings provided, but it was evidently a very long meeting.

151. Mr Sharp's dismissal was confirmed in the letter dated 2 September 2021, (page 585). Dismissal was with immediate effect on the grounds of gross misconduct. The conclusions of the disciplinary hearing are spelt out by Mr Hinchliffe as follows:-

151.1. Mr Hinchliffe took into account the earlier verbal warning and concluded that this together with Mr Sharp's perceived wider relationship with the business, led him to conclude that in terms of his ability to work with senior management, the Respondent had no trust and confidence in his ability to carry out his role.

151.2. Mr Sharp was said to have continued to make claims of procedural unfairness.

151.3. Mr Sharp had himself declared a lack of trust in senior management, including in particular the HR Team, the HR Director, the Legal Director and Mr Cross.

151.4. Mr Sharp had demonstrated he had no confidence in the Respondent's business operation, demonstrated by his repeated use of "institutionalised" and "corrupt".

151.5. Breach of confidentiality.

151.6. His conduct throughout the disciplinary hearing had been inappropriate.

151.7. The claims and grievances that he had raised were without merit and were vexatious. The numerous emails were regarded as harassment.

151.8. He had deliberately delayed the process to extend his length of service beyond two years.

151.9. Mr Sharp's allegations and comments directed at Mr Cross and other members of the senior team gave rise to irreconcilable relationships.

151.10. In addition, his language throughout the meeting was felt to be inconsistent with his role and outside the LEVC Code of Conduct, (to which we were not referred).

152. Although Mr Sharp was dismissed for gross misconduct, he was paid the equivalent of the notice pay he would otherwise be entitled to.

153. Mr Sharp was not given an outcome on his appeal against the verbal warning or his appeals against the grievance outcomes.

154. Mr Sharp appealed the decision to dismiss on 7 September 2021. His email doing so is at page 599. In his appeal, Mr Sharp makes the following points:-

154.1. During his sixteen week suspension he had no access to information which would have assisted or shortened the investigation.

154.2. Mr Cross very shortly after suspension, restructuring his team, had made him paranoid.

154.3. His isolation had made him paranoid and depressed and he was convinced that there was no evidence of his bringing the company into disrepute.

154.4. His relationship with Mr Cross had broken down because of Mr Cross' comments on the six monthly probation review.

154.5. Mr Cross had behaved inappropriately towards him on 26 August 2020.

154.6. Mr Cross had not set him targets for his bonus.

154.7. He claimed that the outcome on 19 August 2021 was that there was no evidence of his bringing the company into disrepute and complains that immediately thereafter, suspending him again had damaged his paranoia, anxiety and mental health.

154.8. He blamed his use of the expression "institutionalised corruption" as resulting from his having undertaken research in the Stephen Lawrence case.

154.9. He had attended a funeral of a friend on the day before the disciplinary meeting at which he was dismissed.

154.10. The meeting had taken too long. He regrets some of his dialogue. Had his grievances had been dealt with properly and the offer of mediation taken up, other grievances and appeals would not have happened.

155. On 7 October 2021 at 15:54, Mr Glassman wrote to the Respondent to inform it that he had appointed Mr Sharp as Commercial Director of his business and that Mr Sharp will be attending Brewery Lane to ensure that his fleet is maintained to the highest levels of service and will be the Respondent's first point of contact with his business, (page 611).

156. On the same day at 16:26, (the Respondent says by coincidence) Mr Sharp was emailed an invitation to attend an appeal hearing on 13 October 2021.

157. On 8 October 2021, a Mr Hudson on behalf of the Respondent, replied to Mr Glassman setting out the Respondent's position that due to the nature of Mr Sharp's departure and, "some legacy issues" he will not be able to attend LEVC premises or interact with his former team. There is correspondence between the Respondents and Mr Glassman, arguing about whether or not Mr Sharp should be permitted to attend Brewery Road and interact with the After Sales Team on behalf of Mr Glassman's business.

158. Mr Paul King was appointed to hear Mr Sharp's appeal against dismissal. Mr King was Procurement Director. He no longer works for the Respondent.

159. A transcript of the appeal hearing on 11 October 2021 appears at page 633 of the Bundle. We note the following:-

    159.1. Mr King told Mr Sharp that the timing of the notice of the appeal hearing was pure coincidence.

    159.2. Mr Sharp explained that things spiralled in his mind after he had been suspended, with Mr Cross telling him he did not know what it was for and his being frog marched from the premises, leading him to believe that there was an orchestrated conspiracy.

    159.3. He said that his behaviour would not have been vexatious if the company had followed correct procedures. He said there were no grounds to suspend him and there has never been any evidence.

    159.4. Mr Sharp explained how he was under a great deal of pressure on 5 May 2021 with the owner of the taxi that had lost its roof constantly calling him, angry and exasperated by the fact that the Respondent's had lost the whereabouts of his taxi.

    159.5. Mr Cross had almost straight away reorganised the after sales department.

    159.6. He made reference to the Stephen Lawrence enquiry and the Stephen Lawrence family.

    159.7. He said that he had asked for assistance with regard to his mental health and had received a reply from HR with hysterically laughing emojis.

159.8. He suggests there was a vendetta against him or a witch hunt.

159.9. He explains that he does not have a history of vexatious behaviour, referring to his 43 years' experience in the industry.

159.10. He agrees he probably did send over sixty emails.

159.11. He explained his working relationship with Mr Cross was poor and that Mr Cross did not want to work with him.

159.12. He said that two years earlier he had blown the whistle to the FIFI team and they did not take the necessary action laid out in the DVSA requirements.

159.13. He also referred to whistleblowing in the context of reporting Mr Cross' financial reporting.

159.14. He said that the failure of the FIFI team to take appropriate action was the root cause of it all.

160. Mr King told us that before the appeal hearing, he had reviewed the transcripts and videos of interviews involving Mr Sharp. He did not mention that to Mr Sharp during the appeal hearing and he did not put to him any observations he may have made.

161. After the appeal hearing, Mr King met with Louise Kennedy, a note of his conversation with her is at page 654. She confirmed that Mr Sharp's relationship with Mr Cross was strained. She said that Mr Sharp did not like Mr Cross and had made that known. She confirmed that there had been no disclosure of mental health issues from Mr Sharp prior to these events. She confirmed there had been no bonuses for 2020 across the company. There was no formal communication with Mr Sharp about that, nor was there with anybody else. Mr King did not discuss this conversation with Mr Sharp subsequently.

162. Mr King provided a written outcome to the appeal by letter dated 27 October 2021 which begins at page 669. The letter is brief. Mr King pronounces that he is satisfied that due process was followed, there was no evidence of an alleged FIFI whistle blowing claim being raised and that whistleblowing claims which were formally raised had been investigated. He said that support had been offered to Mr Sharp throughout the process and suitable allowances made, ("albeit not utilised"). He said that Mr Sharp had contributed to the delays, although he does not explain in what way. He said the company had not paid discretionary bonuses during the period 2020 – 2021. He upheld the decision to dismiss.

Conclusions

Did Mr Sharp Make Protected Disclosures?

Alleged Disclosure a. August 2019 at FIFI meeting

163. We found that Mr Sharp did tell those present at the FIFI meeting in August 2019 that there had been an incident with a panoramic roof becoming detached on the highway. That is provision of information. Mr Sharp believed that what he disclosed was in the public interest. He also reasonably believed that the information tended to show a breach of a legal obligation to manufacture and supply a safe product and that the health and safety of others would be at risk, if the apparent manufacturing defect was not investigated. It was a protected disclosure.

Alleged Disclosure b. Various dates expressing concerns about faulty roof issue

164. We have found that Mr Sharp raised concerns about the faulty roof issue and the lack of action: in his email to Mr Clark on 24 July 2020, to Mr Cross on 28 January 2021, to Mr Clark, Mr Cross and others on 15 February 2021 and to Mr Clark and others on 30 April 2021. Do those emails amount to disclosure of information? In July 2020 his disclosure is information that a TIE relating to a faulty roof has been closed. The email to Mr Cross of 28 January 2021 does not give any information that Mr Cross does not already know, nothing is, “disclosed”. The email of 10 March 2021 tells the recipients, gives them information, that a vehicle which had passed the push test had subsequently sustained a roof detachment. The email of 30 April 2021 gives information about a roof with an incomplete seal but which would pass the push test. So three of those emails amount to the provision of information, which Mr Sharp we find, reasonably believed to be in the public interest and that it tended to show a potential breach of a legal obligation to supply a safe product and that the health and safety of others might be endangered. Three of those emails were therefore protected disclosures.

Alleged Disclosure c. 28 January 2021 email to Mr Cross

165. We have already found, as above, that this email was not a protected disclosure because it did not disclose information.

Alleged Disclosure d. 30 April 2021 email timed at 13:09

166. We have already found that this email did amount to a protected disclosure.

Alleged Disclosure e. 5 May 2021 to two engineers

167. Mr Sharp did not tell the two engineers anything that they did not already know. He was not disclosing information to them. This does not amount to a protected disclosure.

Alleged Disclosure f. 26 May 2021 and 15 June 2021 to Mr Maguire

168. At paragraph 106.7 we set out what Mr Sharp said to Mr Maguire about the roof issue on 26 May 2021. It is all information he has provided before to the Respondent, but it may have been new to Mr Maguire and therefore amounted to a disclosure of information to Mr Maguire that amounts to a protected disclosure for the same reasons cited above. He does not tell Mr Maguire anything new on 15 June 2021; what he said on that occasion did not amount to a protected disclosure.

Alleged Disclosure g. 14 July 2021 email timed at 16:20

169. This email is to Mr Maguire and Ms Haines. It is set out at paragraph 126 above. Mr Maguire discloses information on the statistics of roof issues. He reasonably believed that information to be in the public interest and that there is a breach of the legal obligation to supply a safe product and that the health and safety of others is at risk. It was a protected disclosure.

Alleged Disclosure h. emails to Ms Haines on 14 July 2021 timed at 18:43 and 18:53

170. In these two emails, set out at paragraphs 124 and 125 above, Mr Sharp does not provide any new information, he does not make a disclosure. They do not amount to protected disclosures.

Disclosures to the employer

171. Those disclosures that were made, were made to the employer.

Was Mr Sharp Unfairly Dismissed, Either Because he had Made a Protected Disclosure or Otherwise Contrary to the Test of Fairness at ERA s98?

172. We have found that some protected disclosures were made.

173. The person who made the decision to dismiss was Mr Alex Hinchliffe. He did not give evidence and we received no explanation as to why. It is open for us to infer from this that he and/or the Respondent did not want him to give evidence on the motive for his decision making. That might be because his motive was the above mentioned protected disclosures.

174. However, the weight of evidence is that the reason for the second disciplinary action which led to his dismissal, was the way Mr Sharp behaved after he was suspended on 6 May 2021.

175. His behaviour was evidenced in the documents, in the minutes and transcripts of meetings and the emails he sent. He admitted to sending over 600 emails between his suspension on 6 May and his dismissal on 2 September 2021. That is excessive. It amounts to harassment, (in the colloquial, non-legal sense) of those caught up in the process. None exhaustive examples are:

175.1. On 17 May and again on 18 May 2021, he submitted a grievance against Mr Cross and called for him to be suspended and escorted from the premises.

175.2. On 23 May 2021, he wrote that he was collating evidence against Mr Cross and that he had no faith in the company operating its own procedures. He set out more allegations against Mr Cross.

175.3. In the investigation meeting with Mr Maguire on 26 May 2021, he referred, (falsely) to having consulting lawyers, accused Mr Maguire, (with no good reason) of already having made up his mind, of there being a conspiracy and a witch hunt, he threatened that this matter would culminate in litigation, he alleged the company had failed to comply with legislation in relation the roof issue, (wrongly, the DVSA code of practice appears to have been followed), he called for the engineering team to be investigated for bringing the company into disrepute, he called Mr Cross a compulsive liar.

175.4. In the second interview with Mr Maguire on 15 June 2021, Mr Sharp again referred to consulting his lawyer, to the case going to court, he said, (without proper cause) that this was not a fair and balanced investigation and the outcome was predetermined.

175.5. In an email on 15 June 2021 he accused those on the FIFI committee of having brought the company into disrepute. He sought to make an inappropriate comparison to a scandal involving Toyota in the United States

175.6. In his meeting with Ms Weaver and Mr Boyce to discuss his grievance, he repeatedly talked over them, he accuses them of not being honest, he says he will go to litigation.

175.7. He raised a grievance against someone he had a good relationship with because they had made what was clearly a silly error, in replying to an email with laughing emojis. With the benefit of an explanation, it was clearly not malicious, yet he appealed the grievance outcome.

175.8. In an email of 13 August 2021, he complained, (without any reasonable justification) of institutionalised corruption and discrimination.

175.9. His approach to his first disciplinary hearing was aggressive, imbalanced and disproportionate, referencing the litigation and the need to swear an oath. He referred to a pre-determined outcome and to institutionalised corruption. He said that Mr Cross was fraudulent. He said the process was a, “complete farce”. He tried inappropriately to involve junior staff in the hearing. He had to be asked to calm down.

175.10. On 20 August 2021, the Respondent had to warn him about discussing with other employees, confidential settlement discussions he was having with the Respondent.

175.11. On 23 August 2021, he threatened the Respondent with criminal and corruption proceedings.

175.12. He threatened Mr Cross with a claim for "aggravated damages" which was without any legal basis.

175.13. His previous behaviour was repeated in the second disciplinary hearing that led to his dismissal.

176. It is clear that the reason for dismissed was the break down in working relationships, Mr Sharp's unjustified loss of trust and confidence in the Respondent and the Respondent's loss of trust and confidence in Mr Sharp. Bearing in mind Mr Sharp's senior managerial position, he really ought not to have reacted and behaved in the way that he did and his doing so, meant that the Respondent could understandably, have no faith in Mr Sharp working with either Mr Cross, or other members of the Respondent's senior management team. The Respondent characterises the reason for dismissal in the dismissal letter as, "gross misconduct" although it proceeds to pay Mr Sharp his notice pay, which it could have lawfully declined to pay in a case of gross misconduct. The reason for dismissal could be characterised as conduct, but in our judgment, the correct label is, "some other substantial reason", having regard to the position that he held.

177. Mr Sharp's complaint that he was automatically unfairly dismissed for making protected disclosures fails: that he made protected disclosures was not the reason for his dismissal.

178. Having found that the reason for dismissal was the potentially fair reason of some other substantial reason, we go on to apply the test of fairness set out at s98(4) of the ERA.

179. Mr Sharp complains that there was no investigation. There was, in the form of collating evidence. There was no need to interview anybody and Mr Sharp has his opportunity to set out his response in the disciplinary hearing. The ACAS code at paragraph 5 reads:

> *"It is important to carry out necessary investigations of potential disciplinary matters without unreasonable delay to establish the facts of the case. In some cases this will require the holding of an investigatory meeting with the employee before proceeding to any disciplinary hearing. In others, the investigatory stage will be the collation of evidence by the employer for use at any disciplinary hearing."*

180. The evidence collated was sent to Mr Sharp, attached to the email of 25 August 2021.

181. We considered whether it was appropriate for Mr Hinchliffe to be the dismissing officer. He was the person the two engineers reported to on 5 May 2021 and he was a member of the FIFI committee. He was not making a decision about the 5 May incident and in any event, all he did was ask the engineers to put what had happened in writing so that he could refer it on. Mr Sharp's interactions with the FIFI committee were not at issue. Whilst a belt and braces approach might have excluded Mr Hincliffe and it might have been preferrable that someone else was appointed decision maker, we find that the appointment of Mr Hinchliffe did not render the dismissal unfair.

182. It seemed to us apparent that Mr Sharp was not well at the time. However, it was not part of Mr Sharps pleaded case nor as presented in the agreed list of issues, that his behaviour was explained by his ill health or that allowances should have been made for his ill health. There was no evidence before us to that effect.

183. We find that the dismissal was fair and Mr Sharp's claim of unfair dismissal contrary to s98 of the ERA also fails.

Was Mr Sharp Subjected to a Detriment Because he had Made a Protected Disclosure?

Detriment a. September to November 2020 not advertising General Manager vacancy

184. This allegation was withdrawn by Mr Sharp during his evidence.

Detriment b. Suspension on 6 May 2021

185. Mr Sharp was suspended. That was because of his exchange with the engineers, not because of his protected disclosures.

Detriment c. Mr Cross telling Mr Sharp that he did not know why he was suspended

186. Mr Cross did tell Mr Sharp that he did not know why he was being suspended and that was untrue. That is a detriment. The reason Mr Cross did so was because he was concerned about the effect that information might have on Mr Sharp's team. Such lack of candour is not good industrial relations practice and is disrespectful to Mr Sharp and his team. However, we are satisfied that the reason for Mr Cross's lack of judgment was his timidity and not because of the protected disclosures.

Detriment d. Being escorted from the premises on 6 May 2021

187. Mr Sharp was escorted from the premises. That is not a nice experience and could properly be described as a detriment, but it is also unfortunately, normal. It is done to ensure that a disaffected employee does not cause disruption. That was the reason, not because of the disclosures.

Detriment e. Denied access to lap top and/or information

188. Mr Sharp was not denied access to his laptop; he was initially, but that promptly changed on his protest at the time. He was denied access to elements of the respondents IT systems, which is normal practice too. The list of issues recites that he needed information to respond to the allegations against him; the allegations against him were in relation to what he said to the two visiting engineers, how he said it and whether that was in front of customers. It is difficult to conceive what information he needed from the Respondent's systems to respond to that. It was not a detriment. Nor were the Respondent's actions because of the protected disclosures.

Detriment f. Mr Cross reorganising structure of aftersales team on 9 May 2021

189. Mr Cross did reorganise the aftersales team. That was a necessary and prudent step to take. The language of the email on 9 May 2021 is clear, that it was a provisional temporary measure. It did not amount to a detriment and it was not because of the protected disclosures

Detriment g. No proper investigation into allegations against Mr Sharp in relation to the first disciplinary process

190. A reasonable and thorough investigation was carried out, with everyone who could have given relevant evidence interviewed. There was a proper investigation and the way it was conducted had nothing to do with the protected disclosures

Detriment h. A verbal warning on 19 August 2021

191. Mr Sharp was given a verbal warning and that is a detriment. The reason he was given the warning was what he had said to the two engineers on 5 May in front of two customers, supported by the evidence gathered, not because he had made protected disclosures.

Detriment i. Suspension on 19 August 2021

192. Mr Sharp was suspended on 19 August 2021. That is a detriment. The reason he was suspended was the behaviour he manifested during the previous disciplinary process, examples of which we have listed above, not the protected disclosures.

Detriment j. Subjecting Mr Sharp to a second disciplinary process

193. Mr Sharp was subjected to a second disciplinary process and that was a detriment. He was subjected to that process because of his behaviour, examples of which we set out above, not because of protected disclosures.

Detriment k. Inconsistency of treatment of Mr Sharp in the disciplinary action taken against him

194. The allegation is that Mr Cross was not suspended after Mr Sharp had made allegations against him, that he had disclosed confidential information to a third party and had failed to account for credit notes to enhance his own bonus. The allegations were investigated by Mr Allen. In relation to the confidentiality issue, Mr Sharp's point is that Mr Cross actions were discovered in 2019, but he was not suspended. That there was inconsistency does not mean that the reason for suspension of Mr Sharp was the disclosures. Nor that, if there was inconsistency, it was because of the disclosures. It is logical that in light of the allegations being made by Mr Sharp as a response, or in retaliation, to the action being taken against him, that naturally raises questions about the *bona fides* of the allegations he makes. It makes sense to check first, whether there appears to be anything in the allegations. Mr Allen decided there were not. Any inconsistency was not because of the protected disclosures.

Detriment l. Not properly investigating Mr Sharps grievances in respect of:

> ***a. Mr Cross' failure to agree bonus' in Q1 2020***
>
> ***b. Mr Cross not allowing Mr Sharp to comment on his 6 month probation review***
>
> ***c. That Mr Cross had acted toward Mr Sharp in a high handed and bullying manner***

195. As we set out at paragraph 120, there does appear to have been a proper investigation into Mr Sharp's grievances. We are satisfied in any event, the way that the Respondent handled Mr Sharp's grievances was not motivated in anyway, by his protected disclosures.

Detriment m. Excluding Mr Sharp from the premises post dismissal

196. Mr Sharp was excluded from the Respondent's premises and that was a detriment. In particular, it obstructed his performance of his role in his new employment. However, the reason for that exclusion was the break down in the relationship between the Respondent's management and Mr Sharp and its vulnerability to disruption by him. The reason was not his protected disclosures

Detriment n. Obstructing Mr Sharp's ability to perform in his new employment post dismissal

197. Mr Sharp's performance in his new employment was obstructed, as noted above. That is a detriment. The reason is also as noted above, the break down in his relationship between the Respondent's management and its vulnerability to disruption by him. It was not because of his protected disclosures.

Detriment claims fail

198. Mr Sharp's complaint of having been subjected to detriment for having made protected disclosures fails.

Did the Respondent Make an Unauthorised Deduction from Mr Sharp's Wages?

199. The contractual term for payment of a bonus was that it was entirely discretionary. There is an implied term in contracts of employment that where there is discretion, that will not be exercised capriciously. However, on the facts, the exercise of discretion, that is to not set targets nor pay any bonus' to anyone, was in the extraordinary circumstances of COVID. It was not a capricious exercise of discretion, it was not a breach of contract, there was no deduction of wages.

200. Mr Sharps complaint of unlawful deduction from his wages also therefore fails.

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Employment Judge M Warren

Date: 24 April 2024

Sent to the parties on: 2 May 2024

For the Tribunal Office.

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