EMPLOYMENT TRIBUNALS

Claimant	**Respondent**
Mr D Mihai	**HPI UK Holding Ltd**

Heard at: London Central (CCTV)

On: 20 - 24 January 2025
In chambers: 17 and 24 February 2025

Before: Employment Judge Lewis
Mr T Cook
Ms H Craik

Interpreter: Ms D Crisan

Representation

For the Claimant: Represented himself

For the Respondent: Ms A Greenley, Counsel

RESERVED JUDGMENT ON LIABILITY

The unanimous decision of the tribunal is that:

1. The claim for unpaid share of service charge in the period 21 – 31 August 2023 inclusive is upheld.

2. A 1-day remedy hearing has been set for **3 June 2025** at 10 am on CVP. The parties must inform the tribunal as soon as possible and by 30 April 2025 at the latest if they have been able to agree how much Mr Mihai's share is for this period so that it is unnecessary to hold the remedy hearing.

3. The other claims were unsuccessful –

4. The claims for direct age discrimination and age-related harassment are out of time and are not in any event upheld.

5. The claims for whistleblowing detriment and constructive dismissal are out of time and are not in any event upheld.

6. The holiday pay claim is not upheld.

REASONS

Claims and issues

1. Mr Mihai has brought claims for holiday pay, service charge payments owing, direct age discrimination, detriments because of whistleblowing, and unfair constructive dismissal because of whistleblowing. He does not have sufficient length of service to claim ordinary unfair dismissal.

2. The issues were confirmed at the start of the hearing as follows:

Time-limits

2.1. Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 2 September 2023 may not have been brought in time.

2.2. Were the age discrimination complaints made within the time limit in section 123 of the Equality Act 2010? The tribunal will decide:
- 2.2.1. Was the claim made to the tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?
- 2.2.2. If not, was there conduct extending over a period?
- 2.2.3. If so, was the claim made to the tribunal within three months (plus early conciliation extension) of the end of that period?
- 2.2.4. If not, were the claims made within a further period that the tribunal thinks is just and equitable? The tribunal will decide:
- 2.2.5. Why were the complaints not made to the tribunal in time?
- 2.2.6. In any event, is it just and equitable in all the circumstances to extend time?

Automatic unfair dismissal

2.3. The claimant resigned on 10 August 2023 and left on 6 September 2023 - was the claimant dismissed?

2.4. Did the respondent fail to provide an adequate answer to the matters raised in his grievance appeal (outcome 9 August 2023)?

2.5. Did that failure breach the implied term of trust and confidence? The Tribunal will need to decide:

2.5.1. whether the respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent; and

2.5.2. whether it had reasonable and proper cause for doing so.

2.6. Was the breach a fundamental one? The Tribunal will need to decide whether the breach was so serious that the claimant was entitled to treat the contract as being at an end.

2.7. Did the claimant resign in response to the breach? The Tribunal will need to decide whether the breach of contract was a reason for the claimant's resignation.

2.8. Was the reason or principal reason for the breach of contract (outcome to grievance appeal) that the claimant made one or more a protected disclosures (see below)?

2.9. If so, the claimant will be regarded as unfairly dismissed.

Remedy for unfair dismissal

Protected disclosure

2.10. Did the claimant make one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996? The tribunal will decide what Mr Mihai said or wrote, when and to whom. Mr Mihai says he made disclosures on these occasions:

2.10.1. PID 1: Orally, to his supervisor Mihaila Filip-Elesei in January 2023 that the carpet was dirty and that she should ask the manager to buy a larger machine as the existing one was too old and small, or bring in a professional cleaning firm.

2.10.2. PID 2: On 1 March reporting to Mihaila Filip-Elisei that he had seen insects on the carpet. He was asked to email pictures and a video to hotel security (and he did)

2.10.3. PID 3: Orally to the Oxana Lozovskaya Housekeeping Director, on 6 March 2023:

(1) PID 3.1: that she needed to buy a new and larger carpet cleaning machine

(2) PID 3.2: that he had heard rumours that managers were cutting costs and saving money in order to increase their bonuses

2.10.4. PID 4:By email on 6 April 2023 at a meeting in the office about complaints made by the supervisor about him, asking if the respondent had bought a new carpet cleaning machine.

2.10.5. PID 5: On 10 April asking HR (in the context of complaints about him not answering the phone, not helping the team, and damaging carpets with a scraper) when the carpets had last been professionally cleaned.

2.10.6. PID 6: On 14 April 2023 asking Oxana Losovskaya by email for the reasons why a new machine had no been bought.

2.10.7. PID 7: On 19 April 2023 emailing Emmanuele Selvaggi, Patrick Graham and Michael Bonsor to buy new carpet cleaning machines

2.10.8. PID 8: At a grievance hearing on 21 April 2023, saying that there were rumours in the hotel that managers save money for their bonuses

2.10.9. PID 9: On 24 April 2023, asking Lukas Vodak by email (in the context of complaints about him not answering the phone, not helping the team, and damaging carpets with a scraper) when the carpets had last been professionally cleaned.

2.10.10. PID10: In an appeal on 5th July 2023 against the grievance outcome, asking when the carpets were professionally cleaned last, and asking for it to be done again.

2.11. In respect of each of these disclosures:

2.11.1. Did he disclose information?

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

2.11.3. Was that belief reasonable?

2.11.4. Did he believe that the disclosure of information tended to show that:

1. a criminal offence had been, was being or was likely to be committed (the bonuses) or
2. the health or safety of any individual had been, was being or was likely to be endangered (hazard to health of dirty carpets)

2.11.5. Was that belief reasonable?

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<u>Detriments</u>

2.12. Did the respondent do the following things:

2.12.1. After 6 March 2023, managers not greeting Mr Mihai in the corridors.

2.12.2. Forbidding Mr Mihai to complain to HR about carpet machines or bonus rumours.

2.12.3. Not replying to Mr Mihai's questions about buying new machines.

2.12.4. Not replying to Mr Mihai's questions about when the carpets had last been cleaned by a professional firm.

2.12.5. Nikol Dancheva, housekeeping manager, complaining on 21 April 2023 about Mr Mihai's attitude in not working overtime.

2.12.6. Marking Mr Mihai's June 2023 performance review at 2, so he would not be promoted.

2.12.7. Turning down Mr Mihai's grievance (28 June 2023).

2.12.8. Turning down Mr Mihai's grievance appeal (9 August 2023) with the result that he decided to resign.

2.12.9. Asking Mr Mihai to work with two supervisors on 14 August 2023.

2.12.10. Not inviting Mr Mihai to an event on 25 August 2023.

Remedy for protected disclosure detriment

Direct age discrimination

2.13. The claimant's age was 53 and he compares himself with younger people.

2.14. Did the respondent do the following things:

2.14.1. Assign the claimant to work as a linen porter between 24 May 2022 and October 2022.

2.14.2. The claimant's supervisor, Mihaela Filip-Elisei, calling the claimant 'Nea Dan' ('Uncle Dan') from October 2022 until the meeting on 6 March 2023 when she stopped?

2.15. Was that a detriment and less favourable treatment because of age?

Age-related harassment

2.16. Did Ms Filip-Elisei call the claimant 'Nea Dan' ('Uncle Dan') from October 2022 until the meeting on 6 March 2023 when she stopped?

2.17. Was this unwanted conduct?

2.18. Did it relate to age?

2.19. Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for him?

2.20. If not, did it have that effect? The tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

Remedy for discrimination / harassment

Holiday pay

2.21. Has the claimant been underpaid holiday pay? (It is agreed that the claimant was entitled to 29 days in the relevant year and that he had taken 10 days. He was paid £1,018.89 on termination. The dispute is about the calculation of the pro rata amount due. The claimant calculates that he has been underpaid by 1.2017 days. The respondent calculates that he has been overpaid.)

Unauthorised deductions

2.22. Did the respondent make unauthorised deductions from the claimant's wages in respect of unpaid service charge in his final pay packet?

2.23. How much was properly payable in respect of September 2023?

(The respondent says service charge payment was discretionary, not contractual, and that the policy allows payment for a month's share to those who leave after the 20th in any month but not those who leave before the 20th.)

2.24. Was the claimant underpaid?

Procedure

3. The tribunal heard from the claimant and from his witness, Mr Celmare. For the respondent, the tribunal heard from Mihaela Filip-Elisei, Oxana Lozovskaya and Emmanuele Selvaggi. There was an agreed trial bundle of 472 pages, a supplementary bundle of 19 pages; a photo file of an annual leave report card; and a statement taken from Mr Tanasuc. There were also a witness statement bundle containing the witness statements of all the witnesses and written closing submissions from the respondent.

4. The claimant's witness statement was only 3 pages and did not give the necessary detail of his case. There was more detail in his claim form, and Mr Mihai confirmed that should be taken as part of his witness statement. We still had to spend some time during the hearing working out exactly what he meant by many of the alleged protected disclosures and detriments set out in the List of Issues.

5. The claimant had only been provided with documents 1 – 6 on the Friday before our start on the Monday. He had previously seen the email chain at document 7 apart from Mr Selvaggi's final reply which Mr Selvaggi had found over the weekend. The annual leave report card had been created at Ms Greenley's request over the weekend to help clarify matters for the tribunal hearing.

6. Mr Mihai said at the beginning of the case that the evidence should be excluded because it was provided late. We suggested that Mr Mihai read the documents while the tribunal took time out to read the witness statements. If there was any major problem with going ahead because he was caught by surprise, Mr Mihai could then let us know. However, it is not unusual for some documents to be found at the last minute. It is not ideal, but if they are relevant and cause no major problem, we would usually include them.

7. A Romanian interpreter was present throughout. Mr Mihai understands and speaks some English, but he was told he could use the interpreter at any time he did not understand or to help him explain what he wanted to say. Mr Mihai did so. Sometimes we had to encourage him to seek the interpreter's help. Although Mr Mihai speaks good English, he was representing himself on a difficult legal case in a court of law. It was important that we understood exactly what he wanted to say.

8. It emerged during Mr Mihai's evidence at the end of the first day, that he was in fact giving evidence from Romania. Unfortunately Romania has not given general permission for evidence to be given over a video link from Romania. It is necessary to ask Romania on a case by case basis, and Mr Mihai had not done that.

9. We discussed what to do. No one wanted to postpone the case again, especially as we had started. Another possibility was to stop immediately and continue when everyone was available, not before April. Mr Mihai's preference was to fly back to the UK on the evening of the third day (Wednesday). We agreed that we would therefore listen to evidence from all the other witnesses first. Mr Mihai could still ask them questions. He would fly over on Wednesday night and be ready to give evidence from Thursday morning. As his flight would be late, we offered on numerous occasions to have a late start on Thursday. He insisted he did not need this, but we arranged an 11 am start in any event.

10. The tribunal had some difficulty understanding Mr Mihai's case because he did not systematically go through the alleged disclosures or the alleged detriments in his short witness statement. It did not help that we had to swap

the order of witnesses so we did not hear Mr Mihai's evidence first on the whistleblowing. The tribunal worked very hard to elicit the necessary details from Mr Mihai. It was very helpful that the hotel's witnesses had structured their witness statements by reference to the alleged disclosures and detriments.

Fact findings

11. Mr Mihai was employed to work in a five star hotel in Central London called the Rosewood Hotel. It is owned by the respondent.

Linen porter

12. Mr Mihai worked for the hotel as an agency worker from 23 May 2022 until he became a permanent employee on 5 December 2022. The agency sent Mr Mihai to work as a floor porter, but on his second day, he was asked to work as a linen porter. After that, he worked mainly as a linen porter, although he did work occasional days as a floor porter or corridor cleaner when needed.

13. Mr Mihai says that he was made to work as a linen porter rather than a floor porter (also known as a general porter) until October 2022 because of his age. The reason Mr Mihai believes he was required to work as a linen porter because of his age is because he believes the hotel wanted younger people to be floor porters as they were more guest-facing.

14. The hotel says that the point about having agency staff is that they can be used flexibly and fill gaps. We do not have any documentation about the number and nature of vacancies or absences in the hotel at the time. However, it makes sense to us that a hotel would want to be able to use agency staff flexibly. We therefore accept the hotel's evidence on this point.

15. Mr Mihai was aged 53 at the time. While he was working as a linen porter, there was only one other, Zoltan, who was aged 45. He saw a few younger linen porters, but only for short periods, whereas he would say that the average age of floor porters was 30 – 35. Ms Lozovska says that the age of the hotel's linen porters currently is 22, 25, 40 and 45, and the floor porters are in the age range of 22 – 46 or 47. We accept this evidence, but we have no more precise statistics.

16. Mr Mihai started working in Mihaela Filip-Elisei's team from October 2022, when he moved from linen porter to carpet cleaner. He applied for the permanent post when the previous carpet cleaner left and he was taken on in December 2022. Ms Filip-Elisei was his supervisor. He worked in the Public Area ('PA') team.

17. Mr Mihai was required to clean the public areas, eg meeting rooms, the foyer and corridors. He would also have to clean the carpet of a bedroom if notified that there was a stain.

‘Nea Dan’

18. In Romania, ‘Nea’ is often used with a person’s first name. There seems to be a general agreement that it is a dialect term used predominantly in rural areas to an older person, generally as a term of respect. There is no exact English equivalent in usage, but it translates as ‘Mr’ or ‘Uncle’.

19. The other porters, who were all younger, used to call Mr Mihai, ‘Nea Dan’ when he worked with them. Mr Mihai did not mind.

20. Ms Filip-Elisei also used to call Mr Mihai ‘Nea Dan’ sometimes. Mr Mihai said in his claim form that this made him feel old and uncomfortable. He told the tribunal that he did not like her doing so, as she was his supervisor and also because her age was quite close to his. During her evidence, it was clear that Ms Filip-Elisei did not see herself as close in age to Mr Mihai. She emphasised that she was 11 years younger.

21. Ms Filip-Elisei called Mr Mihai ‘Nea Dan’ in the presence of the younger porters, and possibly at other times too (although we were not given specific examples). She stopped calling Mr Mihai ‘Nea Dan’ after the office meeting on 6 March 2023. She stopped because she felt their working relationship needed to become more ‘serious’, which we understood to mean formal, with him questioning her management style and her having to take up work issues with him.

22. Mr Celmare said that Ms Filip-Elisei said it in a way to make fun of Mr Mihai. However, Mr Mihai had never asked Ms Filip-Elisei to stop calling him ‘Nea Dan’. He never told her he did not like it. He never complained about it at all during his employment, although he complained about many other aspects of Ms Filip-Elisei’s management style, as set out below. He did not complain about being called ‘Nea Dan’ during his grievance or grievance appeal. He gave the tribunal no convincing reason for why he had not complained about it. He said he did not realise until after he had left that age discrimination was against the law. However, that would not stop him simply saying, ‘Stop calling me that, I don’t like it’ or ‘It makes me feel old’. He said that by the time he got to the grievance, Ms Filip-Elisei was no longer calling him ‘Nea Dan’ and there were other issues which he felt were more important.

Whistleblowing

23. Mr Mihai says he made several protected disclosures. These were listed in the List of Issues. We will now go through each of these.

PID 1: January 2023 – carpet cleaning machine

24. Mr Mihai’s job was to spot clean stains or any dirty areas or patches identified by his supervisor or other managers, and any which he noticed himself. This was in the public areas, eg foyer and conference rooms, or if a stain was noticed in a bedroom. His job was not to perform a regular clean of the entire carpet across any of these public areas.

25. In January 2023, his supervisor, Mihaela Filip-Elisei, asked him to vacuum the large spaces, eg the conference and meeting rooms, with the 'Rainbow' vacuum cleaner. Mr Mihai felt this was only a superficial job and did not deep clean the carpets as required.

26. Mr Mihai took a pride in his job. He believed that the whole carpet area should regularly be cleaned. He told Ms Filip-Elisei that the carpet cleaning machine was too old and too small and that the carpet was dirty. He said she should ask the manager to buy a new machine or bring in a professional cleaning firm to do the large spaces. This is the alleged protected disclosure 'PID 1'.

27. Ms Filip-Elisei agreed the hotel's two machines were old, but she did not feel it was necessary to buy a new machine as they still worked. She told Mr Milai this. She had occasionally used the machines herself and also inspected the carpets as part of her job. She felt they did a very good job of removing dust and hair out of the carpets. Ms Filip-Elisei told Mr Mihai that the hotel had a contract with an external contractor, which checked the machines every month and mended them if there was a problem. As far as Ms Filip-Elisei was aware, they had not broken down for about two years.

28. We saw a photograph of the carpet cleaning machine. Various edges were coming away and there was a large amount of brown tape wrapped around one end. We agree with Mr Mihai that it does not look very smart if seen by guests. However, Mr Mihai agrees with the hotel that the machine did work.

29. Mr Mihai believed that a larger and newer carpet cleaning machine would enable larger areas to be regularly cleaned, would look smarter in front of guests and would be more efficient. He also believed that the failure to regularly clean the whole public areas was a danger to health and safety because bacteria and germs can build up. He believed that the fact that carpets looked clean was only a superficial guide to whether they were in fact free of germs and allergens. He thought an alternative was to have an external company come in and clean the carpets professionally from time to time, but as far as he was aware, that had not been done for some time.

30. Mr Mihai did not show the tribunal that in fact there was any such build up in the hotel carpets.

<u>PID 2: Insect on carpet</u>

31. The usual procedure if a member of staff sees an insect in the hotel is to call security and pest control immediately

32. On 30 January 2023, Mr Mihai saw an insect on the carpet and told Ms Filip-Elisei. She told him to email security with pictures. Mr Mihai did so in an email of the same date. He said he had found the insect in front of salon 1, 2,

on the corridor and he had seen the same insect a few times in the salons. An external pest control company was called out in the usual way.

33. This appears to be the occasion which Mr Mihai thought had taken place on 1 March 2023 in the List of Issues.

34. Informing Ms Filip-Elisei and security that he had seen the insect is the alleged disclosure 'PID 2'.

35. Mr Mihai did not consider that the presence of the insect was a one-off random occasion because he had seen other insects of the same kind previously. For the same reason, he did not believe they had been brought in on someone's shoes. He thought that they must be breeding.

36. The pest control report recorded that no signs of pest activity on the salon and basement corridor areas had been found on that night's inspection.

PID 3: 6 March 2023, conversation with Ms Lozovskaya

37. Mr Mihai was given his third review by Ludmilla ('Lucy') Spassova, an Assistant Director of Housekeeping, on 5 March 2023. She scored him 2 on four topics and 3 on one, ie time management and attendance. She gave him 2 overall. She noted, with approval, that he was transparent and spoke his mind. She said he was accountable for the work he did and a valued member of the team.

38. Mr Mihai wrote in the comments section that he felt good in his work, but some things could be improved.

39. Ms Spassova called Mr Mihai a few minutes later. She said that HR always asked her what is meant by such comments in appraisals. She asked him what he meant. Mr Mihai said it was about the attitude of Ms Filip-Elisei and he explained why it was necessary to buy a new carpet cleaning machine.

40. The next day, 6 March 2023, Oxana Lozovskaya, the Director of Housekeeping, called Mr Mihai to the office to explain what he had meant. Mr Mihai said that the hotel needed to buy a new and larger carpet cleaning machine. He also said he had heard rumours about managers cutting costs so they could save money and increase their own bonuses. This was the alleged disclosure 'PID 3'.

41. Ms Lozovskaya said she would need to speak to Ms Filip-Elisei as she was not aware of the need to buy a new carpet cleaner.

42. Ms Lozovska also told Mr Mihai that the allegation about managers cutting costs for bonuses was very serious. She said it was not a true or nice thing to say.

The bonus system

43. The bonus system was this. Permanent employees ('associates') all received the same bonus once a year in January. This was decided at higher levels of the hotel.

44. Ms Filip-Elisei was not given any financial target and she did not have any budget.

45. The position for heads of department, including Ms Lozovskaya, was different. They were given a bonus based on the performance of their own department and the hotel generally at the end of the year.

46. Ms Lozovskaya had a budget. However, large expenditure such as, for example, £25,000 on new carpet cleaning machines, would not be decided by her. It would have to be authorised by the Capital Expenditure department.

47. Ms Lozovskaya's bonus was in part dependent on the performance of her department, but not on its financial performance. This is because housekeeping is an operational department, compared with sales, for example. The performance of housekeeping is based on quality, eg mystery inspectors, and meeting KPIs.

48. Mr Mihai wanted to prove to the tribunal that the respondent was keen to save money. If that is true, we would not find it surprising. Since the pandemic, it is widely known that hospitality in general has had to cut costs. Ms Filip-Elisei told us that there were two people carrying out carpet cleaning prior to the pandemic, but only one since then because there had been fewer customers. She accepted the proposition that hospitality was generally saving money where it could.

<u>After the meeting</u>

49. Mr Mihai says that the attitude of all the managers changed after this meeting.

50. Mr Mihai says Ms Lozovskaya and other managers stopped greeting him after this. (This is the alleged 'detriment 1'.) He says that when he said 'hello' in his usual way to Ms Spassova, she did not reply. He says that when he said 'hello' to Ms Lozovskaya, she sometimes did not reply. Ms Lozovskaya says that she did not change her behaviour at all in this respect. She says that if she did not greet Mr Mihai on occasion, it would simply have been because she was very busy.

51. It is impossible for us to conclude on the evidence given to us that Ms Spassova or Ms Lozovskaya stopped greeting the claimant following this meeting. As far as we can tell, communications with the management team continued in the normal way, even if they disagreed over the carpet cleaning machine.

52. Mr Mihai says Ms Filip-Elisei stopped calling him 'Nea Dan' at this point. Ms Filip-Elisei agrees that she stopped calling Mr Mihai 'Nea Dan' at some point, though she does not remember exactly when. We accept Mr Mihai's evidence that it was at this point.

'Accusation' in relation to answering the phone

53. On an unknown date in early 2023, there was an occasion when Mr Mihai did not answer his phone for two hours. Ms Filip-Elisei spoke to Mr Mihai about it later in the day. We are not clear whether Mr Mihai told her he had not answered because he could not hear the phone because of the noise of the carpet cleaning machine or because the phone was broken and he had switched it off. What upset Mr Mihai was Ms Filip-Elisei's reaction. She took his phone and looked at it. She pointed out that she could see there were many missed calls. Mr Mihai feels she was suggesting that she did not believe him.

The carpet scraper

54. Mr Mihai's predecessor, Alex Marica, had used a hand scraper to help clean the carpet. It was useful for removing things like chewing gum. Ms Filip-Elisei had allowed Mr Marica to do so because he used it gently. At the start of April 2023, Ms Filip-Elisei asked Mr Mihai to stop using the hand scraper because it was damaging the carpet. She had noticed this in two places, the lift and then in one of the corridors. Mr Mihai had been removing gum from the lift and Ms Filip-Elisei believed he must have damaged the carpet at that point. Mr Mihai said the carpet in the lift was already damaged. Ms Filip-Elisei disagreed. She said the carpet had not been damaged in that place the previous day.

55. The scraper then disappeared from Mr Mihai's tool bag. Ms Filip-Elisei had removed it without telling Mr Mihai.

56. Mr Mihai was very upset by the suggestion that he had damaged the carpet. He took it as an accusation. He kept saying internally, in his later grievance and grievance appeal, and to the employment tribunal, that Ms Filip-Elisei had not proved that it was him who had damaged the carpet.

'Accusation' of not helping with delivery

57. On or about 6 April 2023, an incident occurred during Mr Mihai's lunch break. In the corridor, he passed Ms Filip-Elisei and Jasmina taking in a delivery. He did not offer to help. About 10 minutes later, Ms Filip-Elisei came to the changing room to ask Mr Mihai why he had not offered to help. Mr Mihai says Ms Filip-Elisei was shouting at him and this was in front of the manager from engineering, Lucian Tanasuk.

Office meeting and PID 4: 6 April 2023

58. There was no email on 6 April 2023. This is an error in the List of Issues.

59. Shortly after the argument over helping with the delivery, Mr Mihai was called to a meeting in the office with Ms Filip-Elisei, Ms Lozovskaya and Ms Spassova.

60. They discussed the delivery issue and Ms Lozovskaya told Mr Mihai that he should have helped.

61. They also discussed the hand scraper. Ms Filip-Elisei demonstrated by scratching a piece of paper how she said Mr Mihai had damaged the carpet with the hand scraper. Mr Mihai took the scraper, demonstrated how it was not harmful, and put it in his bag. No one stopped him.

62. During this meeting, Mr Mihai asked again whether the hotel would buy a new carpet cleaning machine. This is the alleged disclosure 'PID 4'. (In the List of Issues, it is wrongly put in the past tense, but the claim form makes it clear he was asking about the future, which makes more sense.) Ms Lozovskaya said no.

63. The claimant says that during this meeting, Ms Spassova told him he did not have to go to HR about the various problems. She said that if he had an issue, Mr Mihai should come to her and discuss it. (This is the alleged 'detriment 2'.) The claimant says that Ms Spassova had in fact said the same thing to him during his third review on 5 March 2023.

64. Ms Spassova had not been called as a witness by the respondent, because it did not realise that Mr Mihai was saying it was her who had told him this, or that he was saying she had also done so on 5 March 2023 when no one else was present. As for the 6 April 2023 meeting, Ms Lozovskaya and Ms Filip-Elisei, who were there, said they did not hear Ms Spassova make any such comment.

65. We think it is unlikely that Ms Spassova, in front of two other managers, told Mr Mihai at this meeting that he was forbidden from contacting HR. Mr Mihai had not at that point ever contacted HR. However, Mr Mihai clearly remembers something and we found him a truthful witness, even if we did not always agree with his perception. The conversation took place in English. The words which Mr Mihai quotes Ms Spassova as saying are inherently ambiguous. He says she told him 'You don't have to go to HR', 'If you have an issue, come to me and discuss it'. Every time Mr Mihai told us what Ms Spassova said, he used those words. We believe she said words to that effect, but she was not forbidding him to go. She was saying, in effect, 'You don't need to go to HR; come to me, I am your manager, I am the one to sort things out'. We think the words 'don't <u>have</u> to' meant 'don't <u>need</u> to' as opposed to '<u>must</u> not'. We think that Mr Mihai believed she was forbidding him from going to HR, but she was not in fact doing that.

<u>Grievance: 10 April 2023</u>

66. On 10 April 2023, Mr Mihai emailed a grievance letter to HR. His complaint was that he had been wrongly accused by his supervisor on many occasions. He said the accusations were:
    66.1. That he did not answer the phone
    66.2. That he destroyed carpets
    66.3. That he did not help with the delivery. Mr Mihai felt Ms Filip-Elisei had deliberately not asked for his help so that she could complain about him afterwards.

67. Mr Mihai said that his supervisor had shouted at him and harassed him unfairly, and now his blood pressure was high. He said the behaviour and methods of the supervisor were aimed at all those who worked in the Public Area, but others were afraid to say anything for fear of losing their job. Therefore on behalf of himself and his colleagues, he asked that the supervisor be required to prove her malicious statements; be sanctioned and removed if she could not do so; and be forced to change her behaviour towards himself and his colleagues to create an atmosphere of collegiality and peace. Mr Mihai said he wanted to stop being part of the Public Area team.

68. A member of the hotel's Talent and Culture Team (the hotel's name for Human Resources) asked Ms Lozovskaya to look into the grievance. She had experience in hearing grievances.

69. There is no mention of age discrimination in the grievance letter or of being called 'Nea Dan'.

<u>PID 5</u>

70. Mr Mihai says 'PID 5' is when he asked HR on 10 April 2023 when the carpets had last been professionally cleaned.

71. Mr Mihai was asked in the tribunal how and when he asked this question to HR on 10 April 2023. He was unable to remember.

<u>PID 6: 14 April 2023 asking Ms Lozovskaya why no new machine had been bought</u>

72. On 14 April 2023, Mr Mihai emailed Ms Lozovskaya as follows: 'I am sending you this email as a result of the negative response to renew, buy the carpet cleaning machines. But you didn't give me any motivation for this decision. Please give me the answer in writing by email and the reasons that led to this decision. Your answer will help me in the next steps that I will take. I don't give up on the first no. These machines are not for me, they are for a better cleaning of all carpets in the hotel. I am working in this position now, maybe not tomorrow. This investment is for a long period of time, maybe even 10 years.' This is the alleged protected disclosure 'PID 6'.

73. Ms Losovskaya replied two hours later by email. She said that, as previously discussed, Ms Filip-Elisei had advised her that the carpet machine they had was sufficient for the tasks.

PID 7: 19 April 2023 emailing Mr Selvaggi and others

74. On 19 April 2023, Mr Mihai emailed Emmanuele Selvaggi, Michael Bonsor (the hotel's general manager) and Patrick Graham (Mr Selvaggi's superior) to say he had had a negative response from the Director of Housekeeping (Ms Lozovskaya) to his request to purchase two new carpet cleaning machines, a small one for small spaces, and one for large spaces such as corridors, meeting rooms and the foyer. He said the refusal was based on the advice of the supervisor. He said that as an alternative, he had asked periodically to hire a company to clean the carpet in large spaces, but the supervisor had laughed in his face and said it would never happen. Mr Mihai said he was using a machine which looked very old, made an infernal noise, and had very low cleaning capacity in terms of the number of square metres per hour. He estimated £25,000 to buy two new machines. Mr Mihai referred in the email to health issues. He said carpet cleaning prevents the build up of allergens and bacteria; damp soiling of carpets can lead to the accumulation of several unhealthy contaminants. He said customers and employees would benefit from better carpet cleaning.

75. This email contains the alleged 'PID 7'.

76. Mr Selvaggi was the Director of Rooms and was responsible for housekeeping and other teams. Ms Lozovskaya reported to him.

77. Mr Selvaggi replied to Mr Mihai later that day. He said he understood the matter had already been discussed with Mr Mihai's direct line manager, but he would follow up tomorrow and they would get back to Mr Mihai with an outcome.

78. Mr Selvaggi did go to speak to Ms Lozovskaya. She said she had discussed the matter with Mr Mihai's supervisor who had said that the hotel's existing carpet cleaning machines were in perfect working order.

79. When Mr Mihai says that 'detriment 3' was not replying to his question about buying new carpet cleaning machines, he means the failure of any of the directors he had written to getting back to him by email with an answer.

Detriment 5: complaints by Nikol Dancheva

80. On 16 April 2023, an Assistant Director of Housekeeping, Nikol Dancheva, asked Mr Mihai to clean some stains in a room. She asked Mr Mihai to work until 10 pm because someone had called in sick. Mr Mihai agreed. Mr Mihai took his hand scraper out of his bag. Ms Dancheva took it away from him. Mr Mihai told Ms Dancheva that he would no longer work the overtime because she had taken the hand scraper away from him which showed she was

teaming up with those who had accused him of damaging the carpet. He said he did not like her attitude.

81. On 17 April 2023, Ms Dancheva emailed the Director of Talent and Culture for advice, copying in Ms Lozovskaya. She described the incident and said she was very surprised by Mr Mihai's attitude. The Director of Talent and Culture emailed back saying that if this issue had not come up before, Ms Dancheva should have a conversation with Mr Mihai and tell him that his comments were inappropriate and not in line with the hotel's values. If there was a repeat, Ms Dancheva should take it further with a file note or disciplinary.

82. Mr Mihai was due to attend his grievance hearing with Ms Lozovskaya on 21 April 2023. Half an hour before, Ms Dancheva called Mr Mihai into the office and told him she was his manager and she did not like how he had spoken to her on 16 April 2023.

83. Mr Mihai apologised for the way he had spoken to Ms Dancheva but he did not apologise for saying that her actions showed she was supporting the accusation that he had damaged the carpet.

Grievance hearing and PID 8: 21 April 2023.

84. Ms Lozovskaya met Mr Mihai on 21 April 2023 to hear his grievance. It was a two hour hearing and Lukas Vodak, a member of the Talent and Culture Team, was present.

85. Mr Mihai says he said during the grievance hearing that there were rumours in the hotel that managers save money for their bonuses. He says this was a protected disclosure ('PID 8'). We have checked the minutes of the grievance meeting. Mr Mihai does not make any statement to this effect. There is one line which says 'It was rumours' but, even if he was cut off by Ms Lozovskaya, he did not complete any intelligible sentence about rumours. Also, the context of those three words does not appear to link to the buying of a new carpet cleaner. Therefore we find that PID 8 did not take place.

86. One of the things which Mr Mihai mentioned during the grievance meeting was that he felt Ms Lozovskaya had changed since his 3 month review and he felt no good vibes after the review. Ms Lozovskaya said his review had been good. She said that if he did not feel the vibe from her, it was because she had a lot on her plate; she had one of the biggest departments in the hotel. She said 'Be assured that this is not the case that I would change.'

87. After the hearing, Ms Lozovskaya conducted investigation meetings with Ms Filip-Elisei on 4 May 2023 and Ms Dancheva on 23 May 2023. She also asked the Security Team, who help undertake investigations, to interview Mr Tanasuk. Mr Tanasuk was interviewed on 4 May 2023 and a short witness statement produced. He said he had not noticed raised voices or anything unusual on the relevant day.

88. Ms Lozovskaya did not provide an outcome to Mr Mihai until her letter of 28 June 2023. She was not able to explain the delay. She assumes it was because further investigations had to be carried out and the process completed. However, she did not give any detail on what happened between her last interview on 23 May 2023 and the outcome letter.

PID 9: 24 April 2023 email to Mr Vodak

89. Following his grievance hearing, Mr Mihai emailed Mr Vodak on 24 April 2023 with some extra comments he had forgotten to make at the hearing. This included, 'Please ask the Public Area supervisor and the HSK manager when the carpets in the Ballrooms, meeting rooms, corridors were last time cleaned, but a professional cleaning, by machine, deep clean .. not a cleaning by the surface with a vacuum cleaner. The answer is lost somewhere in time'.

90. This is essentially the alleged disclosure at 'PID 9'.

91. Mr Mihai added that his union representative had been informed of his problems at work and he was on his way to contact a lawyer.

Detriment 6: June appraisal rating

92. In June 2023, Ms Filip-Elisei conducted Mr Mihai's 6-month review. There were 3 ratings – 3 for high performance (consistently exceeds business goals/requirements; always demonstrates the hotel values and a role-model; always builds constructive working relationships; is usually given the toughest assignments); 2 for medium performance (consistently meets business goals/requirements; usually demonstrates hotel values; usually builds constructive working arrangements; is occasionally assigned extra work; and 1 – low performance (below standard in most tasks; does not always demonstrate hotel values; does not always build constructive working relationships; requires a lot of supervision).

93. Ms Filip-Elisei rated Mr Mihai 2 for each topic and 2 overall. She gave everyone in her 8 person team an overall score of 2. She gave about half of those people a score of 3 on a few of the topics.

94. We would say that the comments on the appraisal were generally very positive, with only a few minor suggestions for improvement.

95. The alleged detriment is marking Mr Mihai '2' so that he would not be promoted. In fact, an appraisal score of 2 would not have prevented someone getting promotion. Ms Lozovskaya considered it was a very good rating and it was the most common score for employees across the business.

96. Mr Mihai says that he should at least have had some 3 scores and that where positive comments were made on a particular topic, logically he should have been scored 3 at least on that topic.

97. Mr Mihai believes Ms Filip-Elisei had a conflict of interest because he had taken out a grievance against her and that he should have been scored 3.

98. The reason Ms Lozovskaya felt it was acceptable for Ms Filip-Elisei still to do Mr Mihai's appraisal was because, as his supervisor, she was the person who was in the best position to assess his performance.

Detriments 7 – 8 and PID 10 – grievance and grievance appeal outcomes

99. As we have said, Mr Mihai received the letter rejecting his grievance on 28 June 2023. He says the rejection of his grievance was because of his protected disclosures ('detriment 7').

100. On the hand scraper, Ms Lozovskaya said that she could not work out exactly what had happened with the damaged carpet as there were no witnesses. However, Ms Filip-Elisei was entitled to follow-up her concerns about the cause of the damage with Mr Mihai. The grievance was not upheld because Ms Lozovskaya felt there was no specific evidence that Mr Mihai had been accused of damaging the carpet.

101. Ms Lozovskaya said it was not inappropriate to ask Mr Mihai not to use the hand scraper. Mr Mihai had been trained on how to use it properly; he had been shown alternative ways of removing chewing gum; but Mr Mihai kept using the scraper after being asked not to. Ms Filip-Elisei had shown Mr Mihai areas where the carpet was damaged after he had used the scraper.

102. Regarding the incident around the delivery, Mr Tanasuk had been interviewed and he could not remember anything out the ordinary.

103. Regarding Mr Mihai not answering the phone, Ms Lozovskaya did not find any evidence that it was due to Ms Filip-Elisei not trusting him. She said Ms Filip-Elisei had the right in her role as supervisor to check the phone (which was hotel property) was working correctly when Mr Mihai was not answering it,

104. Ms Lozovskaya said her team had been unaware that Mr Mihai had any blood pressure problems. She appreciated that high blood pressure could be very stressful. She recommended that Mr Mihai get a GP appointment so he could get appropriate medical care and once he told her that had been done, she would arrange a welfare meeting to support him.

105. Not unreasonable for Ms Filip-Elisei to ask Mr Mihai for help with the delivery as Jasmina finds loads heavy. She had seen Mr Mihai in the hallway and expected him to offer to help, but he had not. So after the delivery she had looked for Mr Mihai to talk about this and the value of collaboration.

106. Regarding the carpet machine, Ms Lozovskaya said that Ms Filip-Elisei made the decision that a new machine was not necessary based on her experience. She felt the existing machines were efficient and functional. Ms

Lozovskaya said there was no evidence that Ms Filip-Elisei was against the cleanliness of the hotel or that she was incompetent.

107. Ms Lozovskaya summarised that she did not find Ms Filip-Elisei had intended to accuse Mr Mihai without evidence and act with hatred in a nervous manner and shouting. However, it was clear that there could be improvements in Mr Mihai's working relationship with Ms Filip-Elisei. She proposed to arrange a meeting for Mr Mihai and Ms Filip-Elisei to meet and to run through the expectations of the role to ensure both sides were aligned.

108. She concluded by thanking Mr Mihai for bringing the allegations to her attention and for his patience and assistance through the process. She hoped that the points had answered his concerns. If he was unhappy with the outcome, he could appeal.

109. On 5 July 2023, Mr Mihai appealed the outcome of his grievance. He felt that Ms Lozovskaya was giving the same answers she had given before. He said that the complaints had been made against him in a hurry and without analysing the situation.

110. In his appeal letter, Mr Mihai said 'I asked when the carpets in the hotel were professionally cleaned. No reply'. This is the alleged 'PID 10'.

111. Mr Mihai also said in his appeal letter that he had asked for his supervisor to prove her allegations against him and he had received no reply on this. He said this was harassment and was affecting his health.

112. Mr Mihai's email said that he was also told not to talk to any of his colleagues about his problems at work. He said this was an attempt to isolate him and exclude him from the team. However, he did not agree to this.

113. There is no mention of age discrimination in the letter or of being called 'Nea Dan'.

114. Mr Mihai told the tribunal that he did not complain about age discrimination or being called 'Nea Dan' in his grievance or grievance appeal because he did not then know about age discrimination law. He said that he did not even say 'Nea Dan' made him uncomfortable because Ms Filip-Elisei had stopped doing so after 6 March 2023 so it was not at the forefront of his mind, given all the other issues he was raising.

115. Mr Selvaggi was appointed to hear Mr Mihai's grievance appeal.

116. The appeal hearing took place on 13 July 2023. Someone was present from HR to take notes. Ms Paduret was present at Mr Mihai's request in the role of translator. The meeting took over one and a half hours. A further investigation meeting was held with Mr Mihai on 1 August 2023.

117. Before the appeal hearing, Mr Selvaggi read the documents given to him by HR including Mr Mihai's original grievance letter, the letter rejecting the

grievance, the notes of the original grievance hearing and the investigation meetings with Ms Filip-Elisei and Ms Dancheva.

118. In the meeting, Mr Mihai clarified that his complaint was about harassment by his supervisor in relation to her allegations of (1) damaging the carpet, (2) not helping when he was on a break, and (3) not answering the phone.

119. Mr Selvaggi wrote to Mr Mihai on 8 August 2024 with the appeal outcome. Mr Selvaggi started by thanking Mr Mihai for his cooperation and patience. He said they pride themselves at the hotel in having an inclusive working environment and he was saddened to hear that Mr Mihai felt disappointed, discouraged, unsupported and intimidated further to the grievance outcome. He wanted to reassure Mr Mihai that he had thoroughly investigated all the points he had raised regarding his concerns about Ms Filip-Elisei which Mr Mihai believed amounted to harassment. The letter was 7 full pages,

120. Regarding the accusation of damaging the carpet, Mr Mihai's concern was that there was no proof to indicate that he was responsible for damage to the carpet in the lift area. Mr Selvaggi set out what Mr Mihai and Ms Filip-Elisei said on the point. He said that as there were no other witnesses and as there was no CCTV, he could not decide what had happened. He did feel that Ms Filip-Elisei should not have removed the hand scraper without talking to Mr Mihai first. Moving forward, Mr Selvaggi would ensure that Ms Filip-Elisei had coaching in her 1 – 1s on how to communicate more effectively. Nevertheless, there was no evidence of any harassment and Mr Selvaggi could not uphold the grievance appeal on this point.

121. Regarding the accusation of not helping on his break, Mr Selvaggi agreed that Mr Mihai was on his break at the time and could sympathise that he may have felt upset with Ms Filip-Elisei's approach. However, Ms Filip-Elisei had assumed Mr Mihai would help because he had always been very collaborative in the past. Ms Filip-Elisei could have avoided the incident if she had explained the situation to Mr Mihai and given him the option to help with the time back for his break. This would be discussed separately with Ms Filip-Elisei. Nevertheless, there was no evidence that her behaviour was harassment or intending to intimidate Mr Mihai.

122. Regarding the accusation of not answering the phone, Mr Mihai had failed to tell Ms Filip-Elisei on the day that his phone was not working correctly. If he had done so, the incident would not have happened. It was therefore not unreasonable for Ms Filip-Elisei in her role as supervisor to ask to check the phone and ask why calls were not answered. There was no evidence of harassment. Mr Selvaggi said it was clear that communication needed to be improved between Mr Mihai and Ms Filip-Elisei.

123. Mr Selvaggi said that the company was keen on a positive working environment. He had found no substantial evidence that Ms Filip-Elisei had harassed Mr Mihai in the workplace. The hotel would therefore not remove her from her position as Mr Mihai had asked. Mr Selvaggi would ensure she received coaching on how to better support her team. To continue to support

Mr Mihai and his relationship with Ms Filip-Elisei, they could look at arranging a medication meeting.

124. Mr Selvaggi apologised for the long time it had taken to get the grievance outcome from Ms Lozovskaya which had caused Mr Mihai blood pressure problems. He would feedback to Ms Lozovskaya and the Talent and Culture Team on this and they would take it as a learning point. He understood that Mr Mihai was now signed up with a GP and Mr Mihai should keep him and Ms Lozovskaya updated if he had any further health concerns.

125. As an added point, Mr Selvaggi said that Mr Mihai had mentioned in the meeting that he was unhappy that he had not received an answer with regards to the carpet cleaning machine being replaced. Mr Selvaggi said he had explained to Mr Mihai that an email had been sent telling him that the machine would not be replaced. Mr Selvaggi said he trusted that this matter was now closed.

126. Mr Selvaggi concluded that he was truly sorry that Mr Mihai felt unhappy. He was keen to improve communication between Mr Mihai and Ms Filip-Elisei as they were misunderstanding each other's intentions. He asked if Mr Mihai would like him to set a date for medication with Ms Filip-Elisei if she also agreed to it.

127. Mr Mihai says that rejecting his grievance appeal was a further detriment because he had made protected disclosures ('detriment 8').

Resignation

128. On 10 August 2023, Mr Mihai gave Ms Lozovskaya his resignation and with 1 month's notice under his contract, so his last working day would be 6 September 2023.

129. Mr Mihai says the reason he resigned was that after he received the grievance outcome, he felt no one in the hotel wanted him anymore; no one appreciated his ideas and no one understood him. He felt he needed to disconnect from the situation to recover his mental and physical health and self-esteem.

Detriment 9: working for two supervisors

130. Mr Mihai says that as a result of his protected disclosures, he was made to work for two supervisors on 14 August 2023. In fact, he says this happened on many other occasions too.

131. By this, Mr Mihai meant that as well as reporting to his own supervisor, Ms Filip-Elisei, he was also told to report to the floor supervisor.

132. Floor supervisors check guest bedrooms and it would be them who would call Mr Mihai to clean a bedroom carpet if necessary. This was part of his job.

133. On 14 August 2023, Ms Spassova told Mr Mihai that the corridor cleaner had called in sick and he would have to work as a carpet cleaner and corridor cleaner that day. This was a lot of work for Mr Mihai. He was still reporting to Ms Filip-Elisei.

134. Being asked to carry out a task by another supervisor did not mean Mr Mihai was reporting to another supervisor.

Detriment 10 – event invitation

135. Mr Mihai was not invited to an event on 25 August 2023. He says this was because he had made protected disclosures. He says this is 'detriment 10'.

136. The event was the launch of the group-wide Diversity, Equity and Inclusion strategy. The invitation was in an email dated 21 August 2023 from the managing director, Mr Bonsor. The Talent and Culture Team sent out the invitations. They followed their usual procedure for such events, which is to invite all existing members of staff, but not anyone who is working under notice to leave. That is because the events are forward looking.

137. On Mr Mihai's last day, 6 September 2023, Ms Spassova invited him to an event taking place that day. Mr Mihai was not clear what the event was, but it is likely that it was part of Housekeeping Appreciation week, which was open to everyone who wanted to say thankyou to housekeeping.

Service charge

138. The service charge policy at the time was set out in a document. It states that the service charge scheme was entirely discretionary and did not form any part of a worker's contractual terms. It says that 85% of the service charge and cash tips would be distributed monthly to all permanent associates. Service charge is paid out one month in arrears and the reporting dates were from 21st of a month to 20th of the next month.

139. Mr Selvaggi confirmed that, for example, service charge for the period 21 May – 20 June would be paid out in the June pay packet, ie on 30 June if it was a working day. Salary is paid on the last working day of a month for that month.

140. Point 4 under Process says that associates leaving the hotel after the 20th of the month receive the full month's distribution within the month of their final salary. So to take the previous example, if an employee left on 24 June, they would receive their full share of service charge for the 21 May – 20 June period.

141. Although it does not explicitly say so in the document, HR took it to mean that if an employee left before the 20th of a month, they would not get any share of that month's service charge. This is the practice which the hotel applied. So, for example, if an employee left on 18 June, they would not get any share of the service charge for the 21 May – 20 June period.

142. Mr Mihai's last day was 6 September 2023, so he would not get any share of service charge for the period 21 August – 20 September 2023. This is why there is no share of service charge on his last pay slip.

143. Mr Mihai says he is owed service charge for 6 days in September 2023. That is because he could see there was no amount for service charge in his last payslip, whereas there usually was such an item. Mr Mihai had not understood that the service charge month ran from 21st of one month to the 20th of the following month. When he usually received an amount, eg on the last day of August, he had understood that amount to be for the whole of August.

Holiday pay

144. The claimant was paid £1,018.89 for untaken holiday in his final payslip. He says this is an underpayment. We deal with this in our conclusions.

Dates of starting the claim

145. Mr Mihai notified ACAS under the early conciliation procedure on 1 December 2023. ACAS issued its certificate by email on 4 December 2023. Mr Mihai presented his claim form to the tribunal on 6 December 2023.

Law

Constructive dismissal

146. It can be constructive dismissal if an employee resigns because of an employer's a breach of the implied term of trust and confidence. An employer must not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee.'

147. In employment relationships both employer and employee may from time to time behave unreasonably without being in breach of the implied term. Constructive dismissal involves more than that. The fundamental question is whether the employer's conduct, even if unreasonable, is calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee.

148. There is no breach of trust and confidence simply because the employee subjectively feels that such a breach has occurred no matter how genuinely this view is held. If, on an objective approach, there has been no breach then the employee's claim will fail (see Omilaju v Waltham Forest London Borough Council [2005] EWCA Civ 1493, [2005] ICR 481, CA). The legal test entails looking at the circumstances objectively, ie from the perspective of a

reasonable person in the claimant's position. (Tullett Prebon PLC v BGC Brokers LP [2011] IRLR 420, CA.)

149. The repudiatory breach or breaches need not be the sole cause of the claimant's resignation. The question is whether the claimant resigned, at least in part, in response to that breach. (Nottinghamshire County Council v Meikle [2004] IRLR 703, CA; Wright v North Ayrshire Council UKEATS/0017/13.)

150. The duty not to undermine trust and confidence is capable of applying to a series of actions by the employer which individually can be justified as being within the four corners of the contract.(United Bank Ltd v Akhtar [1989] IRLR 507, EAT). A claimant may also resign because of a 'final straw'.

Whistleblowing

151. Under the Employment Rights Act 1996, s103A, it is automatic unfair dismissal if the reason or principal reason for dismissal is that the employee made a protected disclosure. Under s47B a worker has a right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure. Under s43B(1), a 'qualifying disclosure' means any disclosure of information which, in the claimant's reasonable belief was made in the public interest and tended to show, (amongst other things)

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

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

152. In Kraus v Penna plc and another [2004] IRLR 260, the EAT said that 'likely to occur' Is more than a 'possibility' or a 'risk'. It means 'probable' or 'more probable than not'.

153. It is not necessary for there to be an actual criminal offence. It is sufficient if the worker reasonably believed that such a criminal offence existed. Babula v Waltham Forest College [2007] ICR 1026, CA.

154. 'The concept of 'information' as used in s 43B(1) is capable of covering statements which might also be characterised as allegations. Section 43B(1) should not be glossed to introduce into it a rigid dichotomy between 'information' on the one hand and 'allegations' on the other. In order for a statement or disclosure to be a qualifying disclosure according to this language, it has to have a sufficient factual content and specificity such as is capable of tending to show one of the matters listed in subsection (1). (Kilraine v LB Wandsworth [2018] IRLR 846, CA)

155. An earlier communication can be read together with a later one so that they jointly amount to a protected disclosure, even if each of the communications does not amount to a disclosure on its own. It will depend on the facts whether this should be done. (Norbrook Laboratories (GB) Ltd v Shaw [2014] ICR 540, EAT)

156. In some cases, it will be obvious that aggregation is appropriate eg where just two communications are relied on, the second of which refers back to the first (as in Norbrook). If it is less obvious, the claimant needs to identify the combination of communications relied on. (Dray Simpson v Cantor Fitzgerald Europe UKEAT/0016/18.)

Age discrimination and harassment

157. Under s13(1) of the Equality Act 2010 read with s5, direct discrimination takes place where, because of age, a person treats the claimant less favourably than that person treats or would treat others.. Under s23(1), when a comparison is made, there must be no material difference between the circumstances relating to each case. There is a defence to direct age discrimination under s13(2), if the respondent can show its treatment of the claimant was a proportionate means of achieving a legitimate aim.

158. Under s26, EqA 2010, a person harasses the claimant if he engages in unwanted conduct related to age, and the conduct has the purpose or effect of (i) violating the claimant's dignity, or (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. In deciding whether conduct has such an effect, each of the following must be taken into account: (a) the claimant's perception; (b) the other circumstances of the case; and (c) whether it is reasonable for the conduct to have that effect.

159. In order for a disadvantage to qualify as a 'detriment', a tribunal must find that by reason of the act or acts complained of a reasonable worker would or might take the view that he had thereby been disadvantaged in the circumstances in which he had thereafter to work. An unjustified sense of grievance cannot amount to 'detriment', but there need not be any physical or economic consequence. The test that a detriment exists if a reasonable worker would or might take the view that the treatment was in all the circumstances to his detriment must be applied by considering the issue from the point of view of the victim. If the victim's opinion that the treatment was to his detriment is a reasonable one to hold, that ought to suffice. (Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] UKHL 11; [2003] IRLR 285.) It is also sufficient that a reasonable worker might take the view that the employer's actions were to his detriment, even if other reasonable workers might not. (Warburton v Chief Constable of Northamptonshire Police *[2022] EAT 42.*

160. Section 136 of the Equality Act 2010 sets out the burden of proof. The burden of proof provisions require careful attention where there is room for doubt as to the facts necessary to establish discrimination, but have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or another. (Hewage v Grampian Health Board [2012] IRLR 870, SC.)

161. Under s136, if there are facts from which a tribunal could decide, in the absence of any other explanation, that a person has contravened the

provision concerned, the tribunal must hold that the contravention occurred, unless that person can show that he or she did not contravene the provision. Guidelines were set out by the Court of Appeal in Igen Ltd v Wong [2005] EWCA Civ 142; [2005] IRLR 258 regarding the burden of proof.

Time-limits for whistleblowing claims

162. Under S48(3) of the Employment Rights Act 1996, a claim that a worker has been subjected to a detriment for whistleblowing must be made within 3 months of the act or failure to act complained of or, where that act or failure is part of a series of similar acts or failures, the last of them. A claim can be made within such further period as the tribunal thinks reasonable where it is satisfied it was not reasonably practicable for the complaint to be presented within 3 months.

163. These time-limits are modified where ACAS early conciliation applies. ERA 1996 s207B (2) states that In working out when a time limit expires the period beginning with the day after Day A and ending with Day B is not to be counted. Day A is the day on which the claimant complies with the requirement in subsection (1) of section 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and Day B is the day on which the claimant receives or, if earlier, is treated as receiving the certificate. If the time limit would (if not extended by s207B(2) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period

164. In Revenue and Customs Commissioners v Serra Garau, UKEAT/348/16, the EAT said that it is the first ACAS certificate which is valid and potentially extends the tribunal deadline to add on time taken for conciliation. A second certificate has no validity and cannot have that effect. In Garau, the claimant had both notified ACAS and received his certificate within his notice period. The same happened in Mr Mihai's case. The EAT in Garau said that the limitation clock could not stop under the first certificate because it had never started. We are surprised, because that does not accord with the actual wording of the legislation and we are unclear of the basis for that statement. However, we can see that no substantive injustice is done because the full 3 month time-limit was available to the claimant after the termination date and the days used on ACAS conciliation had not eaten into that.

165. The onus of proving it was not reasonably practicable to present the claim in time is on a claimant. A claimant's ignorance of his right to claim unfair dismissal may make it not reasonably practicable, but that ignorance must itself be reasonable. It is relevant to consider what opportunities the claimant had to find out his rights.

Discrimination time-limits

166. The relevant time-limit is at section 123(1) Equality Act 2010. Under section 123(1)(a), the tribunal has jurisdiction if the claim is presented within three

months of the act of which complaint is made. By subsection (3), conduct extending over a period is to be treated as done at the end of the period. A series of different acts, especially where done by different people, does not (without some assertion of link or connection), constitute conduct extending over a period. In Hendricks v Commissioner of Police for the Metropolis [2003] IRLR 96, the CA held that 'an act extending over a period' can comprise a 'continuing state of affairs' as opposed to a succession of isolated or unconnected acts

167. Under s123(1)(b), if the claim is presented outside the primary limitation period, ie the relevant three months, the tribunal may still have jurisdiction if the claim was brought within such other period as the employment tribunal thinks just and equitable.

Conclusions

Protected disclosures (Issue 3.10)

168. Did Mr Mihai make protected disclosures as defined by the law?

PID 1

169. Mr Mihai told his supervisor Mihaila Filip-Elesei in January 2023 that the carpet was dirty and that she should ask the manager to buy a larger machine as the existing one was too old and small, or to bring in a professional cleaning firm.

170. This was a disclosure of information, ie that the carpet was dirty and that the carpet cleaning machine was too old and too small.

171. Mr Mihai believed that the disclosure of information tended to show that the health and safety of any individual had been, was being or was likely to be endangered, ie that the carpet was dirty and the carpet cleaning machine was unable to clean it properly. The claimant believed this could lead to a dangerous build up of bacteria and pathogens. Having said that, Mr Mihai's main concern was that the old carpet cleaning machine looked bad to guests and was not as efficient as it could be.

172. We do not think the belief that the information tended to show a danger to health and safety was reasonable. Although the carpet cleaning machine was old and held together by tape, Mr Mihai did not have any evidence that it was not working to clean the carpet. In particular, he did not have any evidence that there was or might be any danger to health and safety apart from a theoretical idea that if public carpets are not cleaned properly, potentially pathogens might build up. There was not a scrap of evidence on which Mr Mihai could reasonably have relied to believe there was any actual danger to health and safety. For this reason, PID 1 was not a protected disclosure.

173. Mr Mihai believed that disclosure of this information was made in the public interest. Had we thought that he reasonably believed that the information tended to show a danger to health and safety, then it would have been reasonable to believe such disclosure was in the public interest.

PID 2

174. Mr Mihai reported to Ms Filip-Elisei on 30 January 2023 that he had seen an insect on the carpet. He then emailed hotel security with a photograph and told them he had found the insect in front of salon 1, 2, on the corridor and he had seen the same insect a few times in the salons.

175. This was a disclosure of information to Ms Filip-Elisei and again to security on 30 January 2023, ie that Mr Mihai had seen an insect in front of salon 1, 2, on the corridor and that he had seen the same insect a few times in the salons before.

176. Mr Mihai mentioned in his email that he had seen such an insect a few times before in that area, but he did not give any further details. He did not say that he thought there might be an infestation. Although he correctly reported the matter and thought it should be dealt with, we do not believe he thought that the disclosure of information tended to show that the health and safety of any individual had been, was being or was likely to be endangered

177. Even if Mr Mihai did think disclosure of the information tended to show that the health and safety of any individual had been, was being or was likely to be endangered, that belief would not have been reasonable. There was no evidence on which he could have reasonably concluded that the information tended to show there was such a danger or that it was likely in the future. It was an insect which he had seen once or twice on the carpet. In a hotel with people coming in and out all the time, insects are always likely to be brought in. There was nothing in the information that he could reasonably believe tended to show any danger to health and safety. For this reason, PID 2 was not a protected disclosure.

178. Mr Mihai believed that disclosure of this information was made in the public interest. Had we thought he reasonably believed that the information tended to show a danger to health and safety, such disclosure would have been in the public interest.

PID 3

179. On 6 March 2023, Mr Mihai told Ms Lozovskaya in the office (1) that the hotel needed to buy a new and large carpet machine and (2) that he had heard rumours that managers were cutting costs and saving money in order to increase their bonuses.

180. This was a disclosure of information, (1) that there was a need to buy a new and large carpet cleaning machine. Implicit in that was also the information that the hotel did not have a large carpet cleaning machine and

the matters raised in PID 1; and (2) that Mr Mihai had heard rumours that managers were cutting costs and saving money in order to increase their bonuses.

181. In relation to PID 3(1), Mr Mihai believed that the disclosure of information tended to show that the health and safety of any individual had been, was being or was likely to be endangered. See our findings above in relation to PID 1.

182. That belief was not reasonable. See our findings above in relation to PID 1. PID 3(1) was therefore not a protected disclosure.

183. Mr Mihai believed that disclosure of this information was made in the public interest. Had we thought he reasonably believed that the information tended to show a danger to health and safety, then it would have been reasonable to believe such disclosure was in the public interest.

184. In relation to PID 3(2), Mr Mihai believed that the disclosure of information tended to show a criminal offence had been and was being committed. He believed that avoiding health and safety measures for cost cutting reasons or to acquire bonuses was a criminal offence. He was unable to identify any specific criminal offence which this entailed.

185. We find that his belief that the disclosure of this information tended to show a criminal offence had been or was being committed was not reasonable. We accept that it is not necessary for there to be any such criminal offence. It is reasonable in the abstract to believe that it would be a criminal offence to avoid appropriate health and safety measures for cost-cutting reasons or for personal gain such as receiving bonuses.

186. However, on the facts it was not reasonable to believe the information tended to show that such a criminal offence had been or was being committed. The hotel was not obviously skipping health and safety measures. The existing machine was working. There was a company contracted to regularly inspect and maintain the machines, and deal with repairs. There was a contract with a pest control company to make regular inspections as well as call-outs on request. We accept there may have been evidence that the hotel wanted to keep costs down. But £25,000 is a big expense when the machine seemed to be working and systems were in place; when Mr Mihai considered managers' motives in refusing to buy a new machine, avoiding unnecessary expenditure in that context would not reasonably suggest a criminal offence.

187. Moreover, Mr Mihai's belief was based on rumours not concrete information. Mr Mihai did not even know how the bonus system worked for various managers and whether expenditure on new carpet cleaners would potentially affect bonuses.

188. Therefore PID3(2) was not a protected disclosure.

PID 4

189. During a meeting with Ms Filip-Elisei, Ms Lozovska and Ms Spassova on 6 April 2023, Mr Mihai asked whether the hotel was going to buy a new carpet cleaning machine.

190. This is purely a question. It does not in itself contain any information. However, the listeners were aware of the previous conversations about how the existing machines were too old and small and the carpet was dirty as a result. It was clearly a back reference to that. The necessary information was therefore embedded within the question.

191. Regarding whether Mr Mihai reasonably believed that the disclosure of this information (if it was a disclosure) was in the public interest and tended to show a danger to health and safety, see our comments in relation to PID 1.

192. In conclusion, we do not believe PID 4 was a protected disclosure.

PID 5

193. During the tribunal hearing, Mr Mihai was unable to identify when or how he made this alleged disclosure. It may be that it is in the List of Issues by mistake. In any event, as we have no details, we find that no such protected disclosure was made.

PID 6

194. The alleged protected disclosure is that on 14 April 2023, Mr Mihai emailed Ms Lozovskaya asking her to give written reasons why she would not buy new carpet machines. The full wording of the email is set out above in the fact section.

195. There is very little information conveyed in this email. It is more in the nature of a request for reasons for the refusal, At most, the conveyed information is that he was asking for new machines to clean carpets better and that it would be an investment for up to 10 years.

196. Regarding whether Mr Mihai reasonably believed that the disclosure of this information (if it was a disclosure) was in the public interest and tended to show a danger to health and safety, see our comments in relation to PID 1.

197. In conclusion, we do not believe PID 6 was a protected disclosure.

PID 7

198. On 19 April 2023, Mr Mihai emailed Mr Selvaggi, Mr Bonsor and Mr Grahan, essentially asking them to buy two new carpet machines. The wider content of the email is set out above in the section on facts.

199. This was a disclosure of information, ie that Mr Mihai was using a very old machine with very low cleaning capacity; that carpet cleaning prevents the build up of allergens; damp soiling of carpets can lead to accumulation of unhealthy contaminants and that Ms Lozovskaya had refused his request to buy two new carpet cleaning machines.

200. Regarding whether Mr Mihai reasonably believed that the disclosure of this information (if it was a disclosure) was in the public interest and tended to show a danger to health and safety, see our comments in relation to PID 1.

201. Mr Mihai in this letter does emphasise that clean carpets mean health for everyone and that carpet cleaning prevents the build up of allergens and bacteria. His main point appears to be that the carpet cleaning machine is old, looks bad, is noisy and inefficient in the number of metres it can do per hour. It is not reasonable to believe that the fact that his request for a new machines has been continually refused tends to show a danger to health and safety. It was not reasonable to think there was such a danger in the first place, as we explained in relation to PID 1. The information that carpet cleaning is good for everyone and prevents build up of allergens and bacteria is very abstract. There is no information here which could tend to show the health and safety of any individual had been, was being or was likely to be endangered.

202. PID 7 was therefore not a protected disclosure.

PID 8

203. Mr Mihai did not say during his grievance hearing that there were rumours in the hotel that managers save money for their bonuses.

204. PID 8 was therefore not a protected disclosure.

PID 9

205. In an email to Mr Vodak on 24 April 2023 as a follow up to what he said in his grievance hearing, Mr Mihai said 'Please ask the Public Area supervisor and the HSK manager when the carpets in the Ballrooms, meeting rooms, corridors were last time cleaned, but a professional cleaning, by machine, deep clean .. not a cleaning by the surface with a vacuum cleaner. The answer is lost somewhere in time'.

206. This is a question. It does not disclose information.

207. In conclusion, we do not believe PID 9 was a protected disclosure.

PID 10

208. In his letter of appeal against the grievance outcome dated 5 July 2023, Mr Mihai said 'I asked when the carpets in the hotel were professionally cleaned. No reply'.

209. This was a disclosure of information, ie that he had asked when the hotel carpets were professionally cleaned and that he had received no reply.

210. Mr Mihai believed that the disclosure of information tended to show a danger to health and safety, ie that the failure to answer his questions meant professional cleaning had not been done when it should have been done, and there was therefore a danger to health and safety because the in-house carpet cleaning was not adequate in his opinion.

211. This belief was not reasonable for reasons we have already explained essentially in relation to PID 1. Indeed, there was nothing on which a reasonable belief could be formed that the lack of external cleaning was in itself a danger to health and safety. Indeed, when external cleaning last took place was unknown to Mr Mihai.

212. In conclusion, we do not believe PID 10 was a protected disclosure.

The alleged detriments

213. We have found no protected disclosures. The whistleblowing claims therefore fail.

214. However, since we heard all the evidence, we have considered anyway whether Mr Mihai was subjected to any detriments because of any of the things which he (wrongly) believes were protected disclosures.

Detriment 1

215. At this point, the alleged PIDs 1 – 3 had taken place.

216. As explained above, we decided that Ms Lozovskaya and Ms Spassova and other managers did not stop greeting Mr Mihai from 6 March 2023 onwards.

217. If Ms Lozovskaya did not return Mr Mihai's greeting every time, that was because she was extremely busy. Ms Lozovskaya's manner in the grievance hearing was friendly and she explained that she had a lot on her plate, but would not change towards Mr Mihai.

218. The claim that detriment 1 was a whistleblowing detriment therefore fails for three separate reasons:
    218.1. No protected disclosures were made.
    218.2. Detriment 1 did not happen.
    218.3. As we explain below, the detriment 1 claim is out of time anyway.

Detriment 2

219. The alleged detriment 2 is Ms Spassova forbidding Mr Mihai to complain to HR about carpet machines or bonus rumours. As we explained above, Mr

Mihai was not told that he was not allowed to complain to HR. This was a misunderstanding. Ms Spassova was simply saying that Mr Mihai did not need to go to HR.

220. The claim that detriment 2 was a whistleblowing detriment therefore fails for three separate reasons:
   220.1. No protected disclosures were made.
   220.2. Detriment 2 did not happen.
   220.3. As we explain below, the detriment 2 claim is out of time anyway.

Detriment 3

221. This alleged detriment is not replying Mr Mihai's questions about buying new machines. Mr Mihai means that he did not get an answer to his email of 19 April 2023 to Mr Selvaggi, Mr Bonsor and Mr Graham.

222. Mr Selvaggi spoke to Ms Lozovskaya and asked her to respond. Given the nature of the query, we do not consider it a detriment for him to have asked her, as the manager with the first-hand knowledge of the situation, to respond. In fact, Ms Lozovskaya had already responded by email a few days earlier.

223. Overall Mr Mihai did receive a reply to his constant questions about buying a new machine. It is just that he did not agree with the replies. Ms Filip-Elisei told him from the outset that it was unnecessary. Ms Lozovskaya told him the same by email dated 14 April 2023. Mr Selvaggi replied on 19 April 2023 to Mr Mihai's email of the same day, saying he would follow up with Mr Mihai's line manager and she would get back to him. That was a perfectly normal response from a senior manager on this kind of issue. Mr Selvaggi's failure to write again himself was not because there had been any protected disclosures.

224. There is no evidence that the failure of the even more senior directors, Mr Bonsor and Mr Graham was anything to do with the alleged protected disclosures. Mr Selvaggi had answered. It would be very unusual for directors of that seniority to become involved with this kind of issue. They would expect managers with responsibility for the relevant department to deal with matters – in this case, Mr Selvaggi. Otherwise they would be completely overloaded.

225. The claim that detriment 3 was a whistleblowing detriment therefore fails for four separate reasons:
   225.1. No protected disclosures were made.
   225.2. Detriment 3 was not a detriment.
   225.3. The matter was not handled the way it was because of the whistleblowing. It was handled for the reasons we have set out
   225.4. As we explain below, the detriment 3 claim is out of time anyway.

Detriment 4

226. The alleged detriment 4 is not replying to Mr Mihai's questions about when the carpets had last been cleaned by a professional firm.

227. Mr Mihai says the occasion when he asked when the carpets were last professionally cleaned was when he spoke to Ms Filip-Elisei in January 2023 (ie during PID 1) and that he received no reply. In his grievance appeal letter, Mr Mihai referred to the fact that he had received no reply to this question. Also, in his email to Mr Vodak on 24 April 2023 following up the grievance hearing, he said to please ask the supervisor and housekeeping manager when the rooms were last professionally cleaned. Mr Mihai did not receive any answer to this question.

228. We do not consider that it was a detriment not to have received an answer to his questions about when the carpets were last professionally cleaned. Mr Mihai's requests to buy new carpet cleaning machines were responded to. He was told his machine was doing a good enough job. His grievance and grievance appeal were answered very thoroughly. We cannot see how any reasonable person in Mr Mihai's position might feel they were put under a disadvantage by not being told when the carpets were last professionally cleaned.

229. Also, the failure to answer this question was not because Mr Mihai had said the things which he believes were protected disclosures. It was because the hotel believed it had repeatedly answered his concerns about whether the existing machine was doing a good enough job. The grievance appeal outcome letter was already extremely long and had numerous detailed issues of more direct relevance to Mr Mihai. Mr Selvaggi addressed the issue of getting a new carpet cleaning machine, so he was not shying away from the issue of whether the carpets were getting adequately cleaned. He thought he had closed the conversation by saying the existing carpet machine was adequate.

230. The claim that detriment 4 was a whistleblowing detriment therefore fails for these separate reasons:
    230.1. No protected disclosures were made.
    230.2. It was not a detriment
    230.3. Even if it was a detriment, it was not carried out in any way because of any of the alleged disclosures
    230.4. As we explain below, the detriment 4 claim is out of time anyway.

Detriment 5

231. This alleged detriment is Ms Dancheva, housekeeping manager, complaining on 21 April 2023 about Mr Mihai's attitude in not working overtime.

232. On 17 April 2023, Ms Dancheva emailed the Director of Talent and Culture for advice, copying in Ms Lozovskaya.

233. That email would be a detriment. She was raising concerns about his behaviour to the Director of Housekeeping and HR.

234. The reason why Ms Dancheva complained to HR and Ms Lozovskaya on 17 April 2023 was not because Mr Mihai had made any protected disclosures. Ms Dancheva did it because of his attitude towards her. He had agreed to do overtime and then changed his mind after she took the hand scraper from him. He had told her he did not like her attitude and that she was teaming up with those who had accused him of damaging the carpet. This was a difficult situation for a manager and she wanted advice on how to handle it. Indeed, Mr Mihai recognised that his attitude had been unacceptable in part, because he later apologised for the way he put it.

235. The problem was not that Mr Mihai had raised issues about getting a new carpet cleaning machine. The problem was that he was getting extremely upset and defensive about what he saw as an accusation about damaging the carpet.

236. The claim that detriment 5 was a whistleblowing detriment therefore fails for three separate reasons:
    236.1. No protected disclosures were made.
    236.2. Detriment 5 was not carried out in any way because of any of the alleged disclosures
    236.3. As we explain below, the detriment 5 claim is out of time anyway.

Detriment 6

237. This alleged detriment is marking Mr Mihai's June 2023 performance review at 2, so he would not be promoted.

238. In June 2023, Ms Filip-Elisei marked Mr Mihai overall 2 on his 6-month appraisal. The individual topics were also all scored 2. She gave everyone in her team an overall score of 2. She gave about half of her team a score of 3 on a few of the individual topics. We did not see the appraisals of others in the team, so we cannot compare the comments supporting the grades.

239. Being marked 2 as opposed to 3, even on individual scores, is potentially a detriment if Mr Mihai was marked down because of his whistleblowing.

240. In any event, we do not consider that the reason Ms Filip-Elisei marked Mr Mihai 2 was because he had said any of the things in his alleged disclosures. 2 was a good overall score. Everyone in the department was given an overall 2. We accept that about half of them had a few 3s on individual topics, but half did not. Mr Mihai says that where the comments were positive, he should have been given a 3 mark. The hotel says that 3 marks were for doing something notable. We did not see any obvious evidence that Mr Mihai had done anything exceptional which should have led to a 3 mark.

241. If Ms Filip-Elisei wanted to punish Mr Mihai because of his alleged protected disclosures, she could have given him some 1 scores. She could have written a less complimentary appraisal. She could even have taken her concerns about not helping with the delivery, not answering the phone, not listening to the instruction not to use the hand scraper, and being rude to Ms Dancheva in a disciplinary or performance management direction. We are not saying that would have been justified. It would not. Mr Mihai was a good worker and had a sense of pride in his work which caused him to react badly to what he took as accusations. But we are saying that if the managers were upset about protected disclosures, they could have made a big fuss about some of these small issues and could even have marked him down as a 1 on some of the related topics. That did not happen.

242. Mr Mihai says that Ms Filip-Elisei had a conflict of interest in doing his appraisal because he had taken out a grievance against her. We can see that such a situation is not ideal. However, the best person to write an appraisal and assess an employee's work is usually the immediate supervisor. There is no evidence from the comments made in the appraisal that Ms Filip-Elisei was holding it against Mr Mihai that he had brought a grievance.

243. The claim that detriment 6 was a whistleblowing detriment therefore fails for these separate reasons:
    243.1. No protected disclosures were made.
    243.2. Detriment 6 was not carried out in any way because of any of the alleged disclosures
    243.3. As we explain below, the detriment 6 claim is out of time anyway.

Detriment 7

244. This alleged detriment is turning down Mr Mihai's grievance.

245. By letter dated 28 June 2023, Ms Lozovskaya rejected Mr Mihai's grievance.

246. Rejecting a genuine grievance is a detriment.

247. However, we do not believe that the reason the grievance was rejected was in any way because of any of the alleged disclosures.

248. The grievance dated 10 April 2023 was that Ms Filip-Elisei had made what Mr Mihai considered were unjustified accusations against him, ie that he did not answer the phone; that he had damaged carpets; and that he had not helped the team with a delivery. He felt the accusations were made with 'hatred' and 'harassment'. He said the atmosphere generally was not friendly but others feared speaking out. Mr Mihai wanted his supervisor to be required to prove the false accusations. If she could not do so, he wanted her removed from her position as supervisor. He wanted her to create an atmosphere of collegiality and peace, and he wanted to stop being part of the PA team if she was there.

249. The grievance letter says nothing about the cleanliness of the carpets or new carpet cleaning machines or insects. During the grievance meeting itself, there is very little mention of getting a new carpet cleaning machine. Following the meeting, Mr Mihai did email Mr Vodak and ask, amongst other things, when the carpet was last professionally cleaned.

250. We mention this because, although there is no doubt that Mr Mihai felt strongly about getting new carpet cleaning machines, the matters which upset him the most were what he considered to be the three false accusations and Ms Filip-Elisei's attitude towards him.

251. The outcome letter was thorough. There is nothing in the grievance outcome which suggests that the grievance was rejected because of Mr Mihai's protected disclosures. Ms Lozovskaya did her best to go through all his concerns and explain her reasoning. Mr Mihai may not have agreed with her decisions, but she explained why, and there was nothing hostile or aggressive or even unfriendly in the letter towards Mr Mihai. She ended by thanking Mr Mihai for bringing the matters to her attention and hoping she had answered his concerns. She suggested he meet with Ms Filip-Elisei to run through expectations of the role to ensure their ideas were aligned. She recommended that he see a GP regarding his blood pressure and said she would arrange a welfare meeting afterwards. She empathised that high blood pressure is stressful.

252. Although there was some delay in providing the grievance outcome following the last of the investigatory interviews, it was not a huge delay. In our experience, it is quite common for there to be delay in grievance outcomes bring sent out. It is not best practice, but we do not draw any adverse conclusions from the delay here.

253. There is nothing to suggest the grievance was rejected because of any of the alleged protected disclosures. The process was carried out in a calm and non-hostile manner. Ms Lozovskaya was friendly at the grievance hearing. She spoke to witnesses. The tone of the outcome letter is not hostile. The reasoning is set out.

254. The claim that detriment 7 was a whistleblowing detriment fails for these separate reasons:
    254.1. No protected disclosures were made.
    254.2. Detriment 7 was not carried out in any way because of any of the alleged disclosures.
    254.3. As we explain below, the detriment 7 claim is out of time anyway.

Detriment 8

255. This alleged detriment is turning down Mr Mihai's grievance appeal.

256. By letter dated 8 August 2024, Mr Selvaggi rejected his grievance appeal.

257. This was a detriment.

258. However, we do not consider that Mr Selvaggi rejected the appeal was in any way because of any of the protected disclosures. The tone of the outcome letter is friendly and constructive. Mr Selvaggi explains his reasons for making his findings. He has fair and logical reasons. Mr Selvaggi was willing to identify where Ms Filip-Elisei was partially to blame because of poor communication and said he would ensure action was taken by giving her coaching. Mr Selvaggi was very fair in identifying a few areas where Mr Mihai could also have communicated better. He offered to set up a mediation meeting. He was trying to be constructive and improve work relations. This approach was not that of someone who was worried or upset by any protected disclosures.

259. There is nothing to suggest the rejection of the grievance was in any way because of any protected disclosures or influenced by that. We do not find Mr Selvaggi's conclusions surprising or suspicious. Mr Mihai still does not agree with the conclusions. He cannot get past his feeling that he was unjustly accused. Mr Selvaggi did not agree. He thought it was down to poor communication which was leading to Mr Mihai and Ms Filip-Elisei distrusting each other's intentions.

260. The claim that detriment 8 was a whistleblowing detriment fails for three separate reasons:
    260.1. No protected disclosures were made.
    260.2. Detriment 8 was not carried out in any way because of any of the alleged disclosures.
    260.3. As we explain below, the detriment 8 claim is out of time anyway.

Detriment 9

261. This alleged detriment is asking Mr Mihai to work with two supervisors on 14 August 2023.

262. On 14 August 2023, Ms Spassova told Mr Mihai that the corridor cleaner had called in sick and he would have to work as a carpet cleaner and corridor cleaner that day. He was not in fact asked to work for two supervisors. He was just asked to help out with the corridor cleaning as well as his usual tasks because someone was off sick.

263. We do not consider it a detriment for Mr Mihai to be asked to carry out duties which fell within the general remit of his job. It was expected that someone in his role and others in the PA team help out with tasks when staff were short. That was not something new.

264. This may have meant a heavy workload, but that is not the question for us. There was no evidence at all that the request to help out was anything to do with the alleged protected disclosures.

265. The claim that detriment 9 was a whistleblowing detriment fails for these separate reasons:

265.1. No protected disclosures were made.
265.2. It was not a detriment.
265.3. Even if it was a detriment, it was not carried out in any way because of any of the alleged disclosures.
265.4. As we explain below, detriment 9 claim is out of time anyway.

Detriment 10

266. This alleged detriment is not inviting Mr Mihai to an event on 25 August 2023. The event in question was a DEI event.

267. The reason for not inviting Mr Mihai was nothing to do with him having made any protected disclosures. The reason was that he was in his notice period. The Talent and Culture Team, which sent out the invitations, does not send them to employees who are working their notice for events which are about what will happen in the hotel in the future. That sounds logical and we have no reason to doubt it.

268. The fact that Mr Mihai was invited to a different event on his last day by Ms Spassova, one of the managers he says were unhappy about his alleged protected disclosures, shows that he was not generally being excluded from events because of whistleblowing, The event she invited him to was thanking housekeeping for its past efforts. We can see the logic for inviting him to that event as compared with inviting him to an event looking to the future.

269. The claim that detriment 10 was a whistleblowing detriment fails for these separate reasons:
269.1. No protected disclosures were made.
269.2. Detriment 10 was not carried out in any way because of any of the alleged disclosures.
269.3. As we explain below, detriment 10 claim is out of time anyway.

Summary of our conclusions on the detriments

270. In summary, none of the alleged detriments were done to Mr Mihai because of any of his alleged protected disclosures.

Unfair constructive dismissal

271. Mr Mihai resigned because his grievance and grievance appeal were rejected and his point of view was not accepted.

272. The hotel did not reject his grievance and grievance appeal because he had made any protected disclosures. The hotel did provide adequate answers to the matters he raised in his grievance.

273. The hotel did not breach the implied term of trust and confidence by rejecting his grievance and grievance appeal and/or by the answers provided. Mr Mihai did lose confidence in the hotel as a result, but a reasonable person

in Mr Mihai's position would not have felt that the hotel had behaved in a way which was likely to or did breach trust and confidence.

274. Therefore Mr Mihai was not constructively dismissed. Mr Mihai's claim for automatically unfair constructive dismissal therefore fails.

Direct age discrimination

Issue 2.14.1: Assigning the claimant to work as a linen porter between 24 May 2022 and October 2022.

275. The claimant's age was 53 and he compares himself with younger people.

276. Mr Mihai says that, while he was an agency worker, he was made to work as a linen porter rather than a floor porter (also known as a general porter) from May 2022 until October 2022 because of his age.

277. We have no clear statistics to draw any conclusion from any pattern. Accepting both sides evidence, it seems that while Mr Mihai was working as a linen porter, there was only one other, who was aged 45. He saw a few younger linen porters, but only for short periods, whereas the average age of floor porters was 30 – 35. At present, the age of the hotel's linen porters is 22, 25, 40 and 45, and the floor porters are in the age range of 22 – 46 or 47. This does not show any clear consistent divide between the ages of linen porters and floor porters. The position while Mr Mihai worked as a linen porter was only for a short period of time and based on only a few numbers of staff. It was also imprecise. We cannot draw any conclusion from that.

278. Mr Mihai speculated that the hotel wanted younger people to be floor porters as they were more guest-facing, but there is no evidence that this was what the hotel thought.

279. There is insufficient evidence even to shift the burden of proof,

280. In any event, this claim is dismissed because it is out of time, as we explain below.

Issue 2.14.2: The claimant's supervisor, Mihaela Filip-Elisei, calling the claimant 'Nea Dan' ('Uncle Dan') from October 2022 until the meeting on 6 March 2023 when she stopped?

281. This claim is also dismissed because it is out of time, as explained below.

282. We would not have upheld it in any event.

283. Because the events were so long ago and because we were given no specific examples and contexts, it was difficult for the tribunal to know what Ms Filip-Elisei's manner was when she called Mr Mihai 'Nea Dan'. Although Ms Filip-Elisei called Mr Mihai 'Nea Dan' because of his age, it is a term of respect sometimes used for older people in Romania. The younger porters

were all using that term and Ms Filip-Elisei could see that Mr Mihai was happy with that. While it may have been inappropriate for a supervisor to use the same term, the evidence strongly suggests that Mr Mihai did not interpret it that way at the time. There was a small community of Romanian staff including the supervisor in that department and we cannot assess the nuances without more precise examples than we were given by Mr Mihai.

284. We also note that Ms Filip-Elisei stopped using the term when matters became more formal between them because she had management concerns and because he in turn was questioning her management style. This suggests that, if anything, her use of the term had previously been friendly. We are not saying that it is enough to have friendly intentions, if a term is used inappropriately. It can still be disrespectful. However, in this case, we are talking about a term which is generally used as a term of respect.

285. Also, the fact that Mr Mihai did not ask Ms Filip-Elisei to stop and the fact that he never complained to anyone about it suggests to us that he did not at the time interpret her use of the term as offensive. We are always cautious about suggesting that if someone does not complain to their employer at the time, it is because they did not mind. However, there are two points here. First, as we have said, use of the term is not inherently offensive. Second, and crucially, Mr Mihai was very outspoken and detailed in his complaints about Ms Filip-Elisei's conduct and manner in numerous other ways.

286. We therefore find that Mr Mihai was not subjected to a detriment by Ms Filip-Elisei calling him 'Nea Dan' and his claim of direct age discrimination fails.

<u>Age-related harassment ('Nea Dan')</u>

287. This claim fails because it is out of time.

288. It would fail anyway. It was not unwanted conduct. Mr Mihai did not mind at the time. That is why he did not complain about it until long after he had resigned. He says the reason he did not raise it in his grievance is that Ms Filip-Elisei had stopped calling him 'Nea Dan' by the time of his grievance, but his grievance was only 4 weeks after she had apparently stopped. That would be recent in Mr Mihai's memory. Also, it would not be clear after only 4 weeks that she had definitely stopped on a permanent basis, especially as he had not asked her to stop.

289. The conduct did relate to age. However, we do not consider that it had the purpose or effect of violating Mr Mihai's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for him. Those are very big words, and we do not find that his supervisor using that term towards him when the younger porters did so out of respect, is enough to violate Mr Mihai's dignity or create such an environment. Nor did it in fact have that effect, as we have already explained.

<u>Service charge: issues 2.22 – 2.24</u>

290. The claim, now that Mr Mihai understands how service charge was calculated, is for the period 21 August 2023 – 6 September 2023. We allowed this claim to be put forward. The respondent did not object to this.

291. Mr Mihai received no amount for service charge in his last pay packet. The hotel says that is because he was not entitled to it since he left before 20 September 2023.

292. We would emphasise that the law on service charge has changed since the relevant period but we are looking at the position as it was.

293. We find the Process document and Point 4 in particular to be extremely badly drafted. However, our interpretation of Point 4 is that as Mr Mihai left after 20 August, he should have been paid his share of the service charge from 21 August – 31 August 2023 with his final pay packet. That is not the way the respondent's representative presented the case. However, when we read paragraph 29 of Mr Selvaggi's witness statement, he is only talking about September and leaving before 20 September, ie his evidence was covering the period between 1 and 6 September 2023. The statement was silent as to whether the balance of August should have been paid.

294. The last payslip contains no service charge payment, so it is clear that Mr Mihai was not paid in respect of the period 21 – 31 August 2023, which he did work.

295. We appreciate that the service charge policy was discretionary. However, that cannot be operated in an arbitrary manner. What has happened here is that everyone appears to have been concentrating on the September period and overlooking the fact that the balance of August was not paid.

296. The hotel also says that it overpaid service charge because it had paid Mr Mihai for his first 3 months, to which he is not entitled under the policy. We do not think that is relevant. It is not the reason why the hotel did not pay the 21 August – 6 September 2023 period. Nor did the hotel prove to us that the first three months was an overpayment. For all we know, a conscious decision was taken to pay Mr Mihai given that he had previously been working as an agency worker.

297. For these reasons, we uphold the claim for an unauthorised deduction from Mr Mihai's final pay packet of his service charge share for the period 21 – 31 August 2023. We trust that the parties will be able to reach agreement on the appropriate figure without the need to come back for the Remedy hearing. However, until we are notified that there has been an agreement, we will leave the remedy hearing as fixed.

<u>Holiday pay: issue 2.21</u>

298. The holiday year ran from January – December. Mr Mihai and the hotel agree that in the 2022 holiday year, Mr Mihai was entitled to 29 days' paid

holidays (28 days + an extra Bank Holiday for the King's Coronation). They agree that he had taken 10 days.

299. Mr Mihai had his own unusual way of doing the calculation. However, we will follow the formula which is set out in the legislation.

300. The termination date was 6 September 2023. Mr Mihai worked in his last year from 1 January 2023 – 6 September 2023, ie 249 days. The formula in the legislation is 29 (the annual entitlement) x 249/365 (the proportion of the year worked). 249/365 = 0.68 x 29 = 19.72 days. Less 10 days taken = 9.72 days due.

301. When considering the daily pay rate, that is calculated by reference to the number of working days in a year. In 2023, this was 260 days (ie not weekends). Mr Mihai's gross annual pay was £26,229. The daily rate is £100.88 (£26,229 divided by 260.) This is the same daily rate as the respondent's calculation.

302. Our calculation is that £980.55 was due, ie 9.72 x £100.88.

303. Alternatively, if we considered that the respondent intended to pay the King's Coronation Bank Holiday in full and not to pro rate it if anyone left during the holiday year, our calculation would be as follows: 28 x 0.68 = 19.04. Less 10 days taken = 9.04. Plus the full Coronation Bank Holiday = 10.04. 10.04 x £100.88 = £1,012.84.

304. Mr Mihai was paid £1,018.89. He was not underpaid on either calculation.

305. As for Mr Mihai's own calculations, he has done them in a very unusual way, which for some reason has come out differently. It has led him to think more days were owing than in fact was the case for the proportion of the year that he worked. In any event, we have followed the formula in the legislation.

Time-limits

306. Mr Mihai's termination date was 6 September 2023. He notified ACAS for his first certificate on 30 August 2023. ACAS issued the certificate by email on 1 September 2023. Mr Mihai notified ACAS again in respect of the same prospective respondent on 1 December 2023 and ACAS issued a certificate on 4 December 2023. Mr Mihai presented his employment tribunal claim on 6 December 2023. He gave the number of the second certificate on the claim form.

Unfair dismissal time-limits

307. The termination date was 6 September 2023. The deadline for notifying ACAS about the dismissal was therefore 5 December 2023, ie 3 calendar months less 1 day. The claimant notified ACAS on 30 August 2023, while he was working his notice. He had given notice on 10 August 2023. ACAS issued the certificate on 1 September 2023, still within the notice period.

308. The deadline for making an unfair dismissal claim to the tribunal was 5 December 2023. The two days for ACAS conciliation do not get added to that deadline because they took place before the termination date and before the unfair dismissal time-limit even started to run.

309. Mr Mihai presented his tribunal claim on 6 December 2023, one day late.

310. We cannot allow in the unfair dismissal claim if it was reasonably practicable for the claim to be presented within the time-limit, ie on or before 5 December 2023.

311. We find that it was reasonably practicable for him to have presented his claim on or before 5 December 2023. He had obtained his first ACAS certificate on 1 September 2023. He knew the next step was to present the tribunal claim. By this stage, if he had found out about and gone through the ACAS process, he must have known there were tribunal time-limits. He had plenty of time after 1 September 2023 to present his claim. He did not say that he did not do so because he did not know there were time-limits or because he had made a mistake about the calculation or that he had wrongly thought that he could always issue another ACAS certificate. Even if those were the reasons, it was not reasonable for Mr Mihai not to have found out the correct position. He could have asked ACAS or the solicitor he said during the grievance appeal that he had consulted on-line. He could have gone to an organisation offering free advice. We know that is difficult these days and we appreciate there are extra barriers for someone who does not speak English as a first language. But a question on the basic rules of time-limits could have been answered by, for example, a Citizens Advice office. Mr Mihai was also researching on the internet. The fact is that Mr Mihai did know there was a 3 month time-limit. He told us the reason he did not put in a claim sooner was because he could not decide whether to do so or not. He could not decide whether he wanted to take on all that stress. We can understand why it is a difficult decision and we can understand wanting to avoid the stress. Unfortunately, there are rules about time-limits and a person needs to make up their mind. Mr Mihai did not prove that it was not reasonably practicable to have brought the unfair dismissal claim in time.

312. When a claim is out of time and time is not extended, it fails. We have heard the evidence and set out in these reasons why we do not think the claim would have succeeded anyway. But quite apart from that, it is dismissed because of time-limits.

Whistleblowing detriments time-limits

313. We will start by considering the time-limit for the whistleblowing detriment claims by looking at the timing of the most recent one, which is the least out of time.

314. The latest detriment happened on 21 August 2023, when the invitations went out for the DEI event, or arguably on 25 August 2023 when the event

took place. The primary time-limit and deadline for notifying ACAS in respect of this latest detriment would have been 24 November 2023. The claimant notified ACAS within that deadline, ie on 30 August 2023. 2 days can be added on for the time it took to conciliate, making the deadline for bringing a tribunal claim 26 November 2023. The claimant in fact brought the claim on 6 December 2023, ie 12 days late.

315. We consider that it was reasonably practicable for Mr Mihai to have brought his DEI detriment claim by 26 November 2023. He had had the grievance appeal outcome since 8 August 2023. He says he started researching the law after he resigned. He resigned on 10 August 2023 and his last day at work was 6 September 2023. He had already researched and thought about taking legal action by the time he notified ACAS on 30 August 2023, for his first certificate on 1 September 2023. There was plenty of time. The problem again was that he could not decide whether to go ahead. We do not criticise him for that, but the legal test is whether it was reasonably practicable to have made the claim in time, and it was.

316. If we were to look at each of the earlier alleged detriments separately, they were even more out of time, taking place for example in March and April 2023. Even if it was not reasonably practicable to have brought those claims within 3 months, a further reasonable period would have been at the latest by the end of October 2023, giving him time to research the law following his resignation.

317. Even if we found that the earlier detriments were part of a series of similar acts or failures ending with the DEI detriment, we have already explained why that last detriment is out of time.

318. Again, we have fully considered the evidence and decided the claims on the evidence out of respect for the parties, since we heard the case. However, as we have said, whatever the outcome on the evidence, we would have had to dismiss the claims for time-limit reasons.

Time-limits for unauthorised deductions claims (service charge and holiday pay)

319. These claims are in time because the pay slip shows that payments were made or would have been made on 30 September 2023. The deadline was 29 December 2023 for those claims.

Age discrimination time-limits

320. The assignment to work as linen porter took place between 24 May 2022 and an unknown date in October 2022. There is an argument that the time should run from 25 May 2022, the day when Mr Mihai says he was assigned to be linen porter. But as there is also an argument that daily decisions were made or could be made, we will count time from 30 October 2022, giving Mr Mihai the benefit of the doubt.

321. The deadline for notifying ACAS and bringing a tribunal claim for the assignment to linen porter duties was therefore 29 January 2023. Mr Mihai did not notify ACAS for the first time until 30 August 2023, 7 months late. He did not present his tribunal claim form until 6 December 2023, a minimum of 10 months 1 week late.

322. The reason why a claim is late and whether a claim could have been put in earlier is only one factor when deciding whether to allow late claims on a 'just and equitable' basis. Nevertheless, it is a factor. On that, even if Mr Mihai did not know until he resigned and started researching the law, that there was a law against age discrimination, he still waited a further 3 months following his last day at work before presenting his claim.

323. Also, during his employment, Mr Mihai had access to a trade union representative, and if he was unhappy about age-based decisions, he could have told that representative, and he is likely to have been told that age discrimination law existed – even if Mr Mihai did not get any more sophisticated advice from a local trade union representative.

324. When we weigh up the prejudice to each side of allowing or not allowing the linen porter claim, we think it is more problematic for the hotel. The allegations involve a detailed consideration of why Mr Mihai was asked to do mainly linen porter work 13 -18 months before the hotel even knew he had a complaint about that being age discrimination.

325. From Mr Mihai's point of view, this had not been important enough to raise at the time it happened or at his grievance or grievance appeal. It had not been important enough to put him off applying to work at the hotel permanently.

326. For these reasons, we consider that it was not just and equitable to allow the age discrimination claim about being assigned as linen porter out of time. The claim is therefore dismissed.

327. In any event, when we looked at the evidence, we could not find age discrimination.

328. Moving on to the other age discrimination claim, Ms Filip-Elisei stopped calling Mr Mihai 'Nea Dan' from 6 March 2023. The last time she said it would have been 5 March 2023 at the latest. The deadline for notifying ACAS would therefore have been 4 June 2023. Again this was not done so there is no time extension and the tribunal time-limit of 4 June 2023 applied. The claim form was presented on 6 December 2023, ie 6 months out of time for this claim.

329. As regards our 'just and equitable' discretion, as we have said, even if Mr Mihai did not know until he resigned and started researching the law, that there was a law against age discrimination, he still waited a further 3 months following his last day at work before presenting his claim.

330. Again, as we have already said, he had a trade union representative during his employment. In his email on 24 April 2023 following the grievance hearing, Mr Mihai said he had told his union representative about his problems at work and was on his way to contact a lawyer. We are not sure what kind of lawyer Mr Mihai eventually contacted, but the point is that he was aware he could do so. He could have mentioned his concerns about being called 'Nea Dan' and being made to feel old to either of those advisers and it is likely he would at the very least have been told that age discrimination law existed and there were time-limits.

331. The 'Nea Dan' claim is also very late. Although not as late as the other age discrimination claim, it was made 9 months after the last time Ms Filip-Elisei might have called Mr Mihai 'Nea Dan'.

332. Regarding the balance of prejudice, the hotel did not even know this was an issue until 9 months after the last time 'Nea Dan' might have been said. It is true that Ms Filip-Elisei was able to give general evidence on the matter. However, there were disputes over when the words were used, who else was present, and the tone in which they were said. It is not easy to discuss these matters such a long time later, when there has been no intervening mention or thought about them.

333. As for prejudice to Mr Mihai, Mr Mihai had not mentioned this matter at the time or in his grievance or grievance appeal. Mr Mihai says it was not a pressing concern at the time of his grievance because it had stopped and he had so many other matters to talk about. However, the grievance was sent on 10 April 2023, only one month after Ms Filip-Elisei stopped saying 'Nea Dan'. It might not even have been obvious so soon that she had stopped or that she had permanently stopped. Moreover, the grievance involved a heavy attack on Ms Filip-Elisei, so we would have expected any real objection to 'Nea Dan' to have been mentioned. It would have flowed naturally from what Mr Mihai was saying. It would have been in recent memory. So when weighing up the balance of prejudice, this does not appear to be a very important claim to Mr Mihai.

334. Balancing all these factors, this is something which could have been mentioned some time previously if it was a genuine concern for Mr Mihai. We are well aware that there are many occasions when employees do not complain about discrimination because they are afraid of repercussions or it is difficult for them to do so. However, the evidence all showed us that Mr Mihai was someone who was not afraid to complain when he was unhappy about something; he repeatedly did so and indeed, he found it hard to let matters go when they really upset him. The fact that he did not raise any objection at all to being called 'Nea Dan', either when challenging Ms Filip-Elisei to her face or when complaining extensively about her management style to a variety of other managers suggests to us that at the time, he did not find her calling him 'Nea Dan' objectionable.

335. For these reasons, we do not consider it just and equitable to allow out of time the age discrimination claim in relation to 'Nea Dan'.

Employment Judge Lewis

Dated: 25 February 2025

Judgment and Reasons sent to the parties on:

28 February 2025

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For the Tribunal Office