EMPLOYMENT TRIBUNALS

Claimant: Dr A O Agyeman

Respondent: Avicenna Retail Limited

Heard at: by CVP and in person from the Bristol Employment Tribunal

On: 28, 29 and 30 April and 1 May 2025 and in chambers on 9 and 20 May 2025

Before: Employment Judge Woodhead
Mrs D England
Mr C Williams

Appearances

For the Claimant: Representing himself

For the Respondent: Ms R Thomas (Counsel)

JUDGMENT WITH REASONS

1. The complaints of direct race discrimination are not well-founded and are dismissed.

2. The complaint of unfair dismissal is well-founded. The claimant was unfairly dismissed.

3. The claimant caused or contributed to the dismissal by blameworthy conduct and it is just and equitable to reduce the compensatory award payable to the claimant by 25%.

4. It is just and equitable to reduce the basic award payable to the claimant by 25% because of the claimant's conduct before the dismissal.

REASONS

5. I apologise to the parties for the delay in issuing this judgment and reasons.

THE ISSUES

6. There had been a preliminary hearing for case management on 23 July 2024 ("**the CMPH**") before EJ Cadney at which this hearing was listed and at which the List

of Issues ("**LOI**") to be determined by the Tribunal was discussed and agreed by the parties (see the appendix to this Judgment with the LOI amended to add clarity to the paragraph cross references). The Claimant brings complaints of unfair dismissal and direct race discrimination. The Parties confirmed that it was not alleged that the Claimant's dismissal amounted to an act of direct race discrimination.

THE HEARING

Documents

7. We were provided with the following documents at the start of the hearing:

   7.1 A bundle of 253 pages

   7.2 A further page for the bundle (being emails of 12 and 20 September 2023) which we added as pages 254-255).

   7.3 Witness statements for:

      7.3.1 **the Claimant** of 21 numbered paragraphs over three pages.

      7.3.2 **Ms F Caravona** (Investigating Manager) of 21 numbered paragraphs over three pages.

      7.3.3 **Ms H Shazad** (Disciplinary Hearing Manager) of 32 numbered paragraphs over five pages.

      7.3.4 **Mr A Bunn** (Appeal Hearing Manager) of 24 numbered paragraphs over four pages.

   7.4 A **chronology** which the Claimant confirmed agreement to on the first day of the hearing.

   7.5 A **cast list** which the Claimant confirmed agreement to on the first day of the hearing.

8. Before we started to hear evidence we sought to put the Claimant on an equal footing by explaining the process and in particular by providing guidance on:

   8.1 The importance of the list of issues as defining the matters that we would be asked to determine and therefore the focus that the parties should put in cross examination;

   8.2 The process of hearing the evidence and cross examination, tribunal questions, re-examination and the need for the Claimant, when it came to his cross examination of the Respondent's witnesses, to challenge them on things that they say in their witness evidence which are relevant to the List of Issues and which the Claimant disputes. We made clear that, as such, the List of Issues should be a useful tool for the Claimant to focus his cross examination.

8.3 We explained that if a witness is not challenged on the evidence in their witness statement the Tribunal is entitled to accept that evidence (take it at face value) and that if the Claimant did not challenge a witness on a material point then that could affect the Claimant's ability to establish his case.

9. Since the CMPH it had been anticipated that the Claimant would give evidence first and we concluded that this was the most appropriate sequence. One of the reasons for hearing the Claimant's evidence first was that it would afford the Claimant the opportunity to hear the Respondent (who was professionally represented) cross examine which might assist the Claimant in preparing his own questions for the Respondent's witnesses. It was clear that the Claimant had prepared his cross examination questions.

Timetable

10. At the CMPH a provisional timetable for this final hearing was agreed. However, subsequently applications by the Respondent for certain of its witnesses to give evidence remotely, and in the case of one witness (Ms H Shazad) on the afternoon of 30 April 2025 were granted. At the start of the hearing the Respondent made clear that Ms Shazad could only in fact give evidence after 4pm on Wednesday 30 April 2025 or on Thursday morning (1 May 2025) due to the timing of her flights. The Claimant did not want the Respondent's witnesses to be called out of order. We took time to consider this and then asked the parties to work to a timetable which meant that only Ms Shazad's evidence would be heard out of the more logical order. We made clear to the Claimant, having explained what cross examination entailed and taken into consideration his time estimates for each witness, when he would need to have concluded his cross examination of each witness.

11. We explored whether, because of the delay caused by Ms Shazad and Mrs Caravona's restrictions on availability, Friday 2 May 2025 could be added to the listing. Unfortunately, as at the morning of 28 April 2025, whilst the parties could be available, the Tribunal did not have capacity to extent the listing. The Parties agreed our timetable which anticipated submissions concluding before lunch on Thursday 1 May 2025.

Claimant page references and transcripts of covert recordings

12. We raised with the Claimant that in his witness statement he did not refer to page numbers in the bundle when he referenced documents in the bundle (as required by orders from the CMPH). After a break he told us that at the end of paragraph 4 he intended to refer to page 247-249. The Respondent explained that as regards the other references to pages, it appeared that they were references to covert recordings that the Claimant had made. The Claimant had disclosed the recordings to the Respondent but there was no transcript. After a break the Claimant confirmed that he wanted to delete the words:

12.1 "(ref: recording of Adrian Bunn)" from paragraph 9 because the recording was not clear and he and Mr Bunn were talking over each other;

12.2 The entirety of paragraph 17 because it referred to a covert recording of a private part of an appeal hearing while the Claimant was not in the room.

13. We adjourned the hearing to finish our reading and to allow for a lunch break. When we reconvened the hearing at 14:00 (with a view to starting to hear the Claimant's evidence) it became apparent that during our reading time/the lunch break, the Claimant had sent in a 12 page PDF consisting of a partial transcript of his covert recording of the appeal hearing and now did want to rely on the reference to a covert recording of the appeal hearing at paragraph 9 of his witness statement.

14. The transcript had been prepared by software from audio of the recording and so had inaccuracies. He said that he wanted to rely on pages 2 and 3 of that transcript.

15. We gave the Respondent the opportunity to check those pages of the transcript, which they did, and the Respondent agreed minor changes with the Claimant. However, the Claimant then said that a further section of the transcript at page 5 was important.

16. By this time most of the opportunity to hear evidence on the first day had been lost (particularly as the Respondent would need to check the new section of the transcript). The Claimant then seemed to suggest that there were additional things in transcripts he had not yet disclosed which he might rely upon.

17. We made clear that it was too late for that. We considered what was in the interests of justice and determined that the parties should agree a transcript of pages 1 – 5 to be ready and sent to the Tribunal by 9am on the second day.

18. We made clear that we expected that the hearing should start promptly on 29 April 2025 at 10am with Claimant's evidence without any further delay or need to discuss documents or housekeeping matters. We emphasised the importance of Rule 3 and the obligations it places on the parties. We reminded the parties that time lost on this claim meant that the Tribunal's resources, which are limited and stretched, could not be used for the benefit of other parties.

19. We reminded those in the room that they were not permitted to record the proceedings. We were then provided, just before 5pm, an agreed transcript for a section of the appeal hearing which we added to our bundle as pages 256 to 261.

<u>29 April 2025</u>

20. During our reading it became apparent 165 – 186 of the bundle (interview minutes) had been scanned in low quality to the point of illegibility in some cases. We asked for this to be re-scanned again and recopied for us. At the end of the day counsel for the Respondent told us that her instructing solicitor only had the scans we had but the Respondent was checking for the originals.

21. We heard the Claimant's evidence which did not conclude until 15:30 and, whilst we had mooted starting the evidence of Mr Bunn, who was at the hearing, there was insufficient time and Mrs Caravona needed to give evidence first thing the following morning because of understandable personal commitments. Before closing we guided the Claimant on the further preparation he could do to in respect his cross examination. We also reminded him that he needed to have page numbers ready so that he could use his time efficiently.

22. As the hearing progressed over the subsequent days we further guided the Claimant on how to focus his cross examination (including reminding him that he did not need to get the witness to agree with him– he just had to put his position to them). We reminded him not to ask the same question multiple times and guided him on putting the allegation or alleged failing to the witness rather than asking the witness a more open question (for example about what the witness considered to be fair). We encouraged him to plan and prioritise his cross examination. On occasion the Claimant would give a speech or put a question which had too many components to it for the witness to reasonably be expected to understand the question. We sought to break questions down for the Claimant to assist him with this.

23. We reminded the Claimant that he needed to challenge evidence that he did not agree with that was relevant to the List of Issues and that if he did not do so then we might take the witnesses' evidence at face value and that might hinder his ability to advance his case.

30 April 2025

24. On the morning of the third day the Claimant applied to add a further document into evidence which consisted of an online post-termination review of the Westfield Pharmacy given by a patient of the pharmacy. We heard submission on the document but did not allow it into evidence. The document was of limited if any relevance to the issues in the claim. The Claimant should also have made his application at an earlier stage of the hearing. If we were to allow the document the Claimant would have to have been recalled as a witness and would have had to give evidence on the document and be cross examined on that evidence. I light of the relevance of the document it was not proportionate for that to happen.

25. We heard the evidence of Mrs Caravona and Mr Bunn whose evidence concluded just before 15:35. Ms Thomas confirmed that it was not anticipated that the originals or a better copy of the handwritten appeal documents would be found. Indeed they were not produced before the end of the hearing.

26. That evening Ms Thomas provided a document setting out the law that she said was relevant to the claim. She sent this also to the Claimant.

1 May 2025

27. On the fourth day we heard the evidence in person of Ms Shazad. We then heard the Respondent's oral submissions. We had a break for lunch during which the Claimant had the opportunity to consider his submissions and response.

28. In the event, at the end of the break, he sent in written submissions. Over the lunch break we had concluded that we would like the Respondent to make submissions on a number of points. We made sure that the Claimant had a good note of those points – the Claimant having confirmed that he relied only on his written submissions. The Respondent was given time to consider the points we had raised and take instructions and then made further submissions. We gave the Claimant the opportunity to reply which he did briefly to comments that the

Respondent had made on his written submissions and to some of the points we had asked the Respondent to address.

29. We sought to manage the parties expectations of when they might receive a judgment and written reasons and the hearing concluded just before 16:00.

FINDINGS OF FACT

Preliminary comments

30. Having considered all the evidence, we find the following facts on a balance of probabilities.

31. The parties will note that not all the matters that they told us about are recorded in our findings of fact. That is because we have limited them to points that are relevant to the legal issues.

32. We have used the agreed cast list and adopted the initials of those referred to in that document.

33. The Claimant was a long serving employee. He was employed by the Respondent between 1 April 2004 and 30 October 2023, latterly as a Pharmacy Manager at Westfield Pharmacy. He was originally employed by Dudley Taylor Pharmacies Ltd (DTP) but transferred under TUPE to Avicenna Retail Ltd on 2 March 2021 [CWS1].

Respondent policies

34. The Respondent's Disciplinary Policy provides, among other things:

> ***Dismissal or action short of dismissal (step three)***
>
> *An employee will normally be dismissed if they have failed to improve to the required standard via the previous steps. In the event of a gross misconduct allegation, the Company may enter the process at step four and dismissal for first offence may occur. The employee will be issued with a letter setting out the reasons for dismissal and other arrangements including in relation to their final pay and their right to appeal. As an alternative to dismissal, the Company may decide that suspension without pay, transfer or demotion are appropriate sanctions.*
>
> ***Gross misconduct***
>
> *The following offences will be viewed by the organisation as gross misconduct:*
>
> • *unauthorised use of the Company's assets and equipment*
>
> • *insubordination e.g. refusal to carry out duties or obey reasonable instructions, except where employee safety may reasonably be in jeopardy*
>
> • *intentional discriminatory behaviour, sexual harassment, harassment*

in relation to any other of the protected characteristics set out in the Equality Act 2010, bullying or violent, dangerous or intimidatory conduct

- *divulging or misusing confidential information*

- *theft of fraud*

- *possession or consumption of alcohol or drugs whilst on the premises, or intoxication by reason of alcohol or drugs, which could affect work performance in any way or have an impact on other employees*

- *unauthorised or inappropriate use of e-mail, Internet and/or computer systems*

- *falsification of any Company records including reports, accounts, expenses claims or self-certification forms This list of examples is not exhaustive or exclusive, and offences of a similar nature will be dealt with under this procedure. Gross misconduct will result in the initiation or escalation of the Company disciplinary procedure and may result in immediate dismissal without notice or pay in lieu of notice.*

35. The Respondent's Anti-Harassment and Bullying Policy provides examples of personal harassment as follows:

[…]

- *picking on someone or setting them up to fail*

- *undermining their contribution/position*

- *demanding a greater work output than is reasonably feasible*

- *blocking promotion or other development/advancement.*

These examples are not exhaustive and disciplinary action at the appropriate level will be taken against employees committing any form of personal harassment.

Roles and responsibilities in the pharmacy

36. We accept the Claimant's evidence in response to Tribunal questions that:

36.1 Every prescription has to be checked by the Pharmacist before it can be prepared for a patient.

36.2 Counter assistants do not perform a regulated role and are there just to serve customers with over the counter medicines.

36.3 Dispensers can put prescription medication together for checking by an Accredited Checking Technician ("**ACT**") but a dispenser cannot provide prescription medication to a patient without that check having been undertaken.

36.4 ACT's are accredited by the General Pharmaceutical Counsel and can prepare and dispense prescriptions that have already been checked by a Pharmacist. ACT's are paid substantially less than a Pharmacist and are therefore useful employees in a Pharmacy because of the work that they can take from the Pharmacist. Pharmacists are increasingly providing advice to patients that might previously have been given by GP's (to free up GP capacity) and this can be the more profitable work for Pharmacists to do (this is frequently referred to as "**advanced services**").

Claimant's approach to staffing the Pharmacy

37. The Claimant originally advertised for ACT vacancies but they are in high demand and he found that ACT's often apply for roles in order to negotiate an increase in pay with their existing employer.

38. The Claimant, who clearly has had substantial managerial autonomy, therefore decided to move to advertising dispenser roles with the aim of recruiting people who showed an interest in studying to become ACT's and take that course (this required home study outside of working hours). By the time it came to the events in question the Claimant's management strategy was to be open with new recruits about the need for them to develop and become ACT's and if they did not show the potential or willingness to take that step then he would tend not to pass them in their probation periods.

39. There were some more long standing members of staff at the Pharmacy who complained about their pay but who, at the same time, were not willing to study, do the ACT course, progress to that level and 'unlock' the ability to earn more as an ACT. The Claimant saw having a pharmacy fully staffed by ACT's as the "Holy Grail". We accept the Claimant's evidence that he has in his career supported ACT's to develop onwards to become Pharmacists.

Claimant's testing of employees

40. We accept the Claimant's evidence that he keeps in mind how he came to be a pharmacist when he is managing his staff and that some professionals forget how they got to their position of seniority.

41. EP was not a graduate and had just finished her A levels and the Claimant was anxious about taking her on. He worried that if EP felt pushed she might be discouraged from doing the ACT course. After interviewing her he made sure that he had it in writing that EP comfortable to do the ACT course. The Claimant set EP chemistry questions which she was able to do and this reassured the Claimant.

42. The Claimant's approach to assessing whether a new staff member would be likely to develop to complete the ACT course was to set them maths or, in the case of EP, chemistry questions. The Claimant said that there was a thin line between encouraging staff and bullying them and that he was keen not to cross that line. We accept his evidence in that regard. He said he used to make points in a jovial way. We accept his evidence that he would say to staff that if he and they did not work together to get the ACT qualification then their pay would not increase and it was in the company's interest to keep their pay down. The only

way to get paid more generously was to get the ACT qualifications and he encouraged people to so.

43. The Claimant recruited LH as a dispenser. On 19 August 2022 [72] LH wrote to the Claimant an email as follows:

> *To Alf,*
>
> *Maths is something I've had to work hard on in my life and requires careful consideration from myself. I know exactly what I did wrong I times when I should of divided or vice-versa and then I did it by the wrong factor once or twice in the attempts. These types of questions I have answerd correctly in the screening and other exams which I have sat under exam conditions. I understand the importance of accuracy and being time conscious but I feel to be judged from this as unsuitable unfair as under those circumstances i did not give a good account of myself. I understand its insecurity from my part and it is something I can improve upon but please not in front of the team I found it humiliating. I shall see you tomorrow.*
>
> *Many thanks*

44. That October (2022) the Claimant wrote to a manager at the Respondent saying [138]:

> *After giving my line manager, Ms Fiorina Caravona, the background to my decision that [LH] will not pass his probation, she has advised me to contact you with details about my decision.*
>
> *I had noticed that [LH] lacked confidence for someone who had been a dispenser for over 8 years. I took the decision to test his problem solving skills by giving him simple maths questions to solve (at the level that he would have needed to pass at the screening test before going on the Buttercups Pharmacy Technician course). I was not surprised when he struggled with it because it proved my suspicion that he was weak in maths. What took me aback however was the email [LH] sent to me in response (below) to his poor performance in the tests.*
>
> *I explained to [LH] during a subsequent meeting that everyone who had passed probation had gone through the rigour of solving problems like this in the dispensary (in the presence of their colleagues).*
>
> *[…]*
>
> *Not long after that, a dispenser told me she written to my line manager (Fiorina) telling her it was unfair that [LH]' hourly rate of £10/h was higher than hers. […] I also told him his pay rate was higher that his colleagues who were 2-3 times more productive than he was. [LH] replied that he couldn't lie to his colleagues about his pay rate and that as a manager I should be ensuring that my staff were paid the going rate for dispensers. I told [LH] that in revealing his negotiated pay rate, he had put the morale in the team at risk. [LH]'s indifference and defensive response showed*

me that I would fail at any attempt to bridge the gap between his current level of knowledge and where he needed to be to fit into my team of highly capable staff.

[…]

Yesterday, after I explained everything to Fiorina and Alex, they agreed with me that I would have to let [LH] go because he would cause me more problems than be of benefit to the team.

45. The Respondent was therefore on notice of the Claimant's approach to testing employees. We find that the Claimant did have a robust management style, tested people and did not have much patience for those who proved not to have sufficient ability or drive to work and progress to and through the ACT course and he openly displayed this to staff.

46. The Pharmacy is clearly small and lacks private space. There was a consultation room at the front of the pharmacy but we find that the Claimant did not commonly use this for testing staff. He tended to test them when their colleagues were working around them. He did not do this with the aim of humiliating them or adding pressure to them in front of colleagues, he just did not think to do it elsewhere and considered that he treated everyone the same way.

Lunchtime supervision payment ("LSP")

47. There had been a number of changes to the approach taken at the Westfield Pharmacy with respect to lunchtimes. At one time the pharmacy closed for 30 minutes at lunchtime. A Mr Maddon was operations manager at DTP and, whilst the Claimant did not recall receiving it, we find on the balance of probabilities that he sent the Claimant a letter on 9 November 2009 which included the following [58-59]:

Elm Tree Pharmacy is open the following hours, during which you are on duty:

Monday 9am till 1pm and 1.30pm till 6pm
Tuesday 9am till 1pm and 1.30pm till 6pm
Wednesday 9am till 1pm and 1.30pm till 6pm
Thursday 9am till 1pm and 1.30pm till 6pm
Friday 9am till 1pm and 1.30pm till 6pm
Saturday 9am till 1pm

This results in you working 46.5 hours, although your contracted hours are recorded as 44 hours per week. The confusion has been caused by your premium payment for your lunchtime cover, as agreed when you were first employed.

You receive a premium of £2,329 for being available between 1pm and 2pm to customers, but in effect you aren't available during 1pm and 1.30pm as you close the pharmacy, an arrangement we are happy with. The premium however was calculated on the assumption that you would

be available to customers for 60 minutes during lunchtime from Monday to Friday, but you would switch off the dispensary lights and manage to still have a break.

In effect, the time that you work between 1.30pm and 2pm, Monday to Friday, is covered in your lunchtime premium payment. If we apply this condition, your actual working hours are:

Monday 9am till 1pm and 2pm till 6pm
Tuesday 9am till 1pm and 2pm till 6pm
Wednesday 9am till 1pm and 2pm till 6pm
Thursday 9am till 1pm and 2pm till 6pm
Friday 9am till 1pm and 2pm till 6pm
Saturday 9am till 1pm

This results in you 'working' 44 hours per week, which is what we have you down as contracted as working. We then pay you an annual premium payment of £2,329 for working 1.30pm to 2pm, Monday to Friday.

Hopefully this explanation clarifies the situation regarding your hours, which are correctly stated as 44 hours per week. The 'missing' 2.5hrs are covered by your lunchtime premium. When we review your salary next summer, we will investigate the option of replacing your lunchtime premium by changing your contracted hours to 46.5 hours per week to simplify the issue.

48. We accept the Claimant's evidence that the intention in the last sentence was not put into action.

49. Mr Maddon sent the Claimant another letter in September 2019 which said [61] "*You will continue to receive your annual supplement of £2,459.44 for remaining open during the lunch hour.*"

50. Therefore between 2009 – 2019 the Pharmacy stayed open rather than closing for 30 mins at lunch and the Claimant was paid the LSP to remain available in that hour. The Claimant argued in cross examination that over time the value of the LSP had dropped below the national minimum wage. However, that was not part of his claim.

51. We accept that the email exchange at [156] evidences that the Claimant was paid for 44 hours work per week with the LSP being paid on top. The Claimant accepted this in cross examination and that the LSP was not removed. Indeed in his appeal [163] against dismissal the Claimant said:

Lack of proper investigation:

The receipt of lunchtime supervision payments was central to my defence of why I believed colleagues wrongly perceived that I wasn't entitled to a lunch break and was conducting personal business during working time. If DTP wanted to stop that arrangement, they would have

> *written to me because it would have resulted in my pay rate being reduced, but they didn't. I informed my line manager about this in an email dated 26th September 2023, but after almost a month, this issue had not been investigated by the date of my disciplinary hearing on 25th October 2023. The responsibility lay with Avicenna to prove that this arrangement with DTP had stopped and thus I was required to take a fixed lunch break. I am willing to engage in an open and honest dialogue to resolve any issues or concerns that may have led to my dismissal.*

52. We accept the Claimant's evidence under cross examination that during refits of the pharmacy the patient consultation room was moved to the front of the premises (away from the dispensary) and that the only practical place for the Claimant to eat his lunch was at his desk close to the dispensary.

53. Based on the wording of the 2019 letter [61] we conclude that the Claimant had an entitlement to an hour's break for lunch but had to keep the pharmacy open. We conclude that the LSP was for the full hour and not for 30 minutes as referred to in the 2009 letter. We reach this conclusion because:

    53.1 the 2009 letter refers to a 44 hour week (40 hours Monday to Friday (which must include an hour lunch break) and 4 hours on Saturday);

    53.2 The pharmacy opening hours were 49 hours per week (resulting in one hour per day, Monday to Friday, needing to be accounted for either as working time or a lunch break);

    53.3 If the LSP payment, as the letter suggests, only covered 30 minutes per day Monday to Friday, then that does not explain what the status was of the remaining 30 minutes at lunch time Monday to Friday. It is clear that the Pharmacy did not close at all Monday to Friday so either the Claimant's working hours were 46.5 hrs per week with a 30 min lunch covered by the LSP or 44 hours per week with a 1 hour lunch break fully covered by the LSP. We consider that the latter is the more logical and probable interpretation.

    53.4 The 2019 letter refers to a lunch hour (although we accept that this might be use of a 'turn of phrase' rather than a deliberate reference to a particular period of time).

54. Owing to the fact that the Pharmacy was busy, the Claimant did not have a formal lunch break (whether of one hour or otherwise). He had to take breaks periodically through the day (including to eat).

10 September 2023 - concerns raised

55. On 10 September 2023 Mrs Caravona visited the Westfield Pharmacy as part of her normal management role. The Claimant was on annual leave that day and we accept that Mrs Caravona did not deliberately time her visit to coincide with the Claimant's absence [FCWS10].

56. CW (dispenser), BN (ACT) and EP (trainee ACT) and VP (trainee ACT) were all in the pharmacy that day. Mrs Caravona was chatting with CW and asked how

things were. CW said everything was wrong and raised her eyes to where the Claimant would normally sit [176 – notes of investigation carried out by Mr Bunn]. Mrs Caravona asked if there was problem with the Claimant, CW would not say yes or no but then called BN over. BN and CW then told Mrs Caravona that they were not happy about the atmosphere in the Pharmacy and said that the Claimant was a bully. They then called VP over and explained that people were leaving because of the Claimant (VP was due to leave her employment in two weeks' time) and that they were short staffed. VP told Mrs Caravona that she thought that the Claimant felt in competition with a member of staff who qualified as a pharmacist in Poland [HB] and his bullying resulted in her leaving the pharmacy.

57. At the Tribunal hearing the Claimant complained that the way these complaints were raised with Mrs Caravona amounted to a contamination of the evidence and raising complaints by committee. It was not until disclosure under the Tribunal process, well after the Respondent had decided his appeal, that the Claimant came to know the sequence of events on 10 September 2023 and the detail set out in the paragraph above. This is because he only had disclosure of further interviews conducted by Mr Bunn after the Claimant's appeal hearing. He was not given the opportunity to comment on those interviews before Mr Bunn made his appeal decision.

58. The Claimant said that Mrs Caravona should have immediately separated the staff and interviewed them separately. We do not consider that the way that events unfolded on 10 September 2023 resulted in unfairness. It is often the case that employees are reluctant to complain and that they only feel able to do so if they know that they have the support of colleagues. Having heard what the staff said and having decided that she needed to carry out a formal investigation it would have been good practice for Mrs Caravona then to have asked staff not to collude or talk about their complaints before they were interviewed, but the fact that she did not do so did not give rise to material unfairness in the procedure. Staff are likely to have discussed things before raising their concerns in any event.

Investigation

59. The concerns raised by staff prompted Mrs Caravona to start an investigation. We set out what staff told the Respondent in that investigation process in line with the topics that then came to form the disciplinary allegations against the Claimant (but have taken into account overlaps in what they said that relate to other disciplinary allegations). We deal with them in a different order because it is clear that it was the allegation that the Claimant was spending time on non-work related activities that led to the concern about patient safety.

60. The key steps in the investigation process were as follows:

    60.1 Mrs Caravona, in an email, asked HB open questions about why she had left. HB replied on 13 September 2023 [77];

    60.2 Mrs Caravona took the views by email of DL on 15 September 2023 [79];

    60.3 JB attended the pharmacy on 19 September 2023;

60.4 Photos were taken at the Pharmacy between 20 and 22 September 2023. There was a good deal of confusion about who took the photos and when and the Claimant raised serious concerns about this. Ultimately we do not consider that it is material who took the photos. The important things to know are:

60.4.1 what time of day were the photos taken?

60.4.2 what do they show?

60.4.3 were they presented to the Claimant before the disciplinary hearing?

60.4.4 were they presented to the disciplinary hearing manager before they took the decision to dismiss?

The question as to who took the photos was only clarified at the appeal stage. We conclude that the photos were taken by EP and CW and the confusion arose because somehow they then were sent to JB (Relief Manager) and it was JB that then sent them to Mrs Caravona [183]. Mrs Caravona had sent JB to the pharmacy and had expected her to be there on 19 and 20 September 2023. JB in fact only attended on 19 September 2023 and not on 20 September 2023. As we say, the confusion arose as to the taker of the photos because Mrs Caravona received them from JB and therefore assumed that JB had taken them. This was not a deliberate attempt to deceive the Claimant. It was an honest mistake.

60.5 On 25 September 2023 Mrs Caravona held investigation meetings with EP, BN, CW, LL (ACT) and VP. The notes of those interviews were written up into witness statements and put into one word document [95-98]. It is not clear whether those interviewed approved the content of their statements. We do not have the original notes of the interviews.

<u>Time on non-work related activities (watching Netflix, listening to music, tutoring daughter and other non work related activities (speaking to family on the phone))</u>

61. The investigation statements / emails commented as follows on this topic:

61.1 DL [79]: [..] "*its always been the same in the sense of one rule for Alf one rule for everyone else. He's always doing non work related stuff at work yet if we even mention anything non work related we get told or off even if it is work related we get told off. He constantly brings his home issues to work and that impacts us all. […] As long as everyone else is busting a gut it allows him to do the bare minimum, whilst taking all the praise for high figures".*

61.2 EP [95]: "*He brought his family problems into work and he is talking with his family both wife and daughter. He uses the work phone to ring his family which means e cannot use the phone from customers or surgeries. […] He has been watching Netflix a while ago a lot, but lately he is just playing on his phone and sat down doing nothing. He does not really help*

on the counter and will just ask staff if they can sort the prescription out without looking so then it puts us in an awkward position. […] Tutoring his daughter some days it is not as bad but It has been pretty constant lately and he is on the phone. […] It is a relief that he is gone because it was getting incredibly difficult. He just ands them to the ACT instead of doing it himself".

61.3 BN [95-96]: "*7 years I have worked here he was so passionate about the job and the staff were always helped with everything. He now has lost his passion; he doesn't care, and he is here all weekend and h does not com in to catch up on work. Normal day when we come in he spend hours on the CD check, he does papers then he phones his daughter to check if they have the same answer. He uses the phone all day so we cannot use It. He also will not let us dispense CDS and I think he is just being sloppy about the recording of CDS. He is constantly homeschooled 9-4 and he is doing papers with her regularly filling in chemistry papers then phones are daughter. Some of the patients adore him but they seem to be the ones that have been patients for years whereas other despise him. He watches youtube and we cannot really ask him anything as he sems cross when we do. I think h has just declined over the last 2 years and he just isn't dedicated".*

61.4 CW [96]: "*If e can get someone to do stuff for him, he will. He got me to come in and do the PQS as he didn't want to, and I had no idea what to do I had to ask someone else. He is by the CD register or on his phone or pad and he shouts at us to serve and do things. He has had a lot of family issues and he was on the phone for huge amounts of time. I have heard him on the phone all the time, most days he is tutoring his daughter. He can spend some days on the phone a lot and sometimes not as much. He has been on his iPad watching Netflix".*

61.5 LL [96]: "*He will be teaching his daughter if they are talking. Eats In the dispensary. CDS he never enters or loses the script, or he will ring the supplier for a new invoice. He gave out a methadone patient to much so told him the following day he would just give him left. He will only take on dds if he is happy about it, he does not know how to do PQS. He leaves most of the checking to us and he is not putting the scripts with the right medication or patient".*

61.6 VP [97]: "*He has been on Netflix and YouTube; he is constantly helping his daughter and once [LL] left he did nothing at all".*

Investigation - putting patient safety at risk

62. A number of the statements made comments about how the Claimant managed CD (controlled drugs) prescriptions and commented that he often reprinted them. VP commented "*He doesn't allow anyone else to touch CDS and has had at least 4 queries with methadone patients. He also hands out bags that are not complete and then chases the patient to say the left half. I don't think he is safe to be in pharmacy.*".

63. We note that at the disciplinary hearing the Claimant explained his approach to

controlled drug prescriptions and this was not a matter that the Respondent relied upon as a patient safety issue in deciding to dismiss him. It was clear from the evidence that we heard that the Respondent saw the patient safety issue as arising from the Claimant not listening and not being attentive to what was happening in the pharmacy because he was spending time on non-work related matters.

64. LL's comment that the Claimant "*leaves most of the checking to us and he is not putting the scripts with the right medication or patient*." was also not raised with the Claimant as a specific example of patient safety risk.

65. At the disciplinary hearing Ms Shazad raised with the Claimant that a number of people had mentioned the Claimant working at the pharmacy alone out of hours. The Claimant was not aware of the Respondent's policy against this and it did not form part of the rationale for dismissal. We find that the Claimant did work at the pharmacy when it was closed to keep on top of the workload.

66. We note here that on 7 August 2023 [223] Mrs Caravona had carried out an audit of the Pharmacy [206-224] and scored the pharmacy at 94.4% / green indicating it met standards [222] and that there was "*Low Patient Safety Risk – Highly likely to achieve GPhC 'Standards Met' status*" [206].

<u>Investigation - bullying</u>

67. The key comments in the investigation statements / emails on this allegation were:

    67.1 HB [77]: "*The reason why I left was Alfred's behaviour. […] The Girls were incredibly helpful and understanding. Unfortunately I cannot say the same about Alfred, he was supposed to be my mentor but instead he expected me to know everything from day one and not take into consideration that I haven't worked using the system in the U.K and it would take time to learn them. I found myself getting familiar and increasingly confident in using the systems, but any chance Alfred got he would be extremely negative towards me regarding my work and my work ethic and this got me very down every day. Towards the end I felt like he was being a bully and I couldn't do anything right. […] . I just couldn't face Alfred every day and I had several comments from the other girls telling me that the way he treated me wasn't right and they have experienced similar situations with Alfred. […] I don't like to give negative feedback about any individual but he is truly the reason I couldn't continue working at that branch"*.

    67.2 DL [79]: *[…] "i'm not looking forward to returning just because I know how its going to be. There has always been a high turn over of staff all for one reason, Alf. […] He doesn't believe in illness and has always pretty much required photographic evidence but even then he'd say it was pulling a sicky. […] . He's rude to reps, and he's unprofessional depending on what mood he's in, thats to staff and customers. He creates a vile atmosphere because no one's allowed to talk even whilst working all because he says so. The amount of customers that say to me out of work we all look miserable and that there is always an atmosphere and thats because thats how Alf wants it to be. Unfortunately he has got rid of so many good*

members of staff over the years which would have all made it a lovely place to work. Ive only ever stayed because I was young and naive, then it worked for me when I started having children and I don't like change. But even tho I have breast fed all 4 babies I've always pumped in my lunch break as he'a always been really funny with me and owing the company money etc even to the point i end up with silly minutes as holiday. He has always been awful to me, and I should have left a long time ago but here we are. It seems recently he has got worse from what I hear and can honestly never see it getting any better, but soon there will be no staff so regardless of high figures there will be no none to dispense or check them. Dudley Taylor knew what he was like but just turnt a blind eye to it all the time, so he's always got away with it. If you were to ask anybody thats left why they've left it would 100% all be because of Alf".

67.3 EP [95]: "*I have worked here for 2 years, we had blips at the beginning and he was good and attentive. He does A Level material with all new starters. I assumed he had done this with everything. He even said that [EN] was not good enough to be tech so helped push him out the door. He did help me to start with, but he never really checked my work, now has not really helped me at all with my tech work. He s just become really lazy at work".*

67.4 BN [96]: "*I think is relationship at home is not great, so he comes here as a relief. New staff must do maths and chemistry papers in the interview. He does the same with new staff as well"*.

67.5 CW [96]: "*He didn't speak to me for months because of something I said as a joke and he just didn't speak to me for months. 95% of the staff have left because of him and the way he speaks to people. […] He treats the staff horribly; [LH] and [LD] had the worst of it. [DL] especially. I think he likes to be in control he will tell customers he cannot take time off because the pharmacy would collapse whereas actually its better. He is constantly in the shop when the shop is closed at night and the weekend"*.

67.6 LL [96]: "*Feels like a weight has been lifted. 5 years I have been here, he pitted me against others just to get on the tech course. We didn't really get on, but we eventually managed a working relationship. New staters if he does not like them, he will try his best to get them out. He tests the new staff. If he did not like them, he would not talk to them and then stick them in the dds area. [MS], he told her she didn't have a chance at being a dispenser, [DL] he was horrendous to. [LH] was great and he didn't like him, so he pushed him out. He was a great team player. The only reason we have all stayed is because of each other. During the day he is here a lot more hours, he is here when the shop is shut and all weekend"*.

67.7 VP [97]: "*I have worked here for 4 years; he treats me ok but when he is having a bad day we stay out of his way. [DL], he treated awful and anyone who has left is because of the way he treats them. He tests all the new staff and if he thinks you are good enough, he will let you stay and with hica I think he felt threatened by her knowledge. [MS] had a new job and he convinced her to stay and promised er the course and then said no after she declined the job; he also had a conversation with her about her*

health and he was awful. [NAME] had health issues and I said o him she was good, and we should retain her and she had mental health issues and her dr had told her to drop to 2 days a week and Alfie said no she could not decrease her hours. Even ad a conversation about him not being himself but he ignored me. He won't keep people who come from other pharmacies, and I am leaving because of the way it has been. I used to love pharmacy, but he has drained me to the point I don't want to anymore. He is not safe, data protection, CDS. He doesn't allow anyone else to touch CDS and has had at least 4 queries with methadone patients. He also hands out bags that are not complete and then chases the patient to say the left half. I don't think he is safe to be in pharmacy".

68. On 12 September 2023 Mrs Caravona sent an email to VP saying "*It was nice speaking with you yesterday. Can I please ask you if you can send me an email explaining everything it is going on at Westfield pharmacy and what Alfie is doing during the day. And why you are leaving us. I can assure you, everything will remain confidential.*" In reply on 20 September 2023 VP sent the following email to Mrs Caravona but it was not provided to the Claimant before the disciplinary hearing and was not provided to Ms Shazad as the disciplinary hearing manager [254]:

"Thanks for your email, apologies for the late reply, As you are aware previous attempts to speak to management before Avicenna took over, regarding Alf have not been successful as names and details were openly shared, creating fear to speak up.

There are several reasons for me deciding to leave my position, first off circumstances with my family meant I needed to change from part time hours to full time and I was not interested in taking up extra hours in my current position!

I have regularly looked for other jobs due to the way the pharmacy is managed.

There has always been a bad atmosphere within the workplace, often due to being short staffed or just because Alf has had a bad day! I have seen the way he treats people and the things he says to them and it is often rude or just not acceptable to come from a manager.

We obviously have many people who start work at the pharmacy but not many that choose to stay. This leaves us very often short staffed which does not improve the mood in the pharmacy and also leaves us struggling to keep up with the work and to provide the best service.

Most people's reasons to leave are due to their experience with Alf, they are told they are not suitable for the job due to not being able to complete A level chemistry and Maths questions which in my opinion is nothing to do with the job role!

People are often encouraged to leave before the end of their probation.

Secondly, I am looking for more opportunities. Yes the opportunity to

complete the technician course at Westfield is open to me however I do not want to complete it with Alf as I know he will not provide the support I know I will need.

My time at Westfield has been well suited to this part of my life where I have had and raised my young children and I have worked part time but I do not see it as a place to stay for long term. Credit due to Alf on this part though as he has always been accommodating for appointments and time off when needed for my children. And generally I have never had any issues with him personally. Also making this very difficult to put into writing despite all he does.

As you have seen when you have visited, the pharmacy is very messy and disorganised! It is not a nice place to work as it should be especially after our refit. The service that customers are receiving is not one to be proud of, despite all of the girls working hard at their jobs. Anything anyone does to try to improve the efficiency of the pharmacy is torn down by Alf so it is like fighting a losing battle.

I have witnessed Alf walking away from customers mid conversation, answering his phone for personal calls, even when customers are speaking to him.

And the recent issue with the data breach on Facebook is not a one off, when he does not concentrate on his checking and bagging and the bench is so messy, it happens more than it should!

I even had a 1 to 1 meeting with Alf a couple of months ago and expressed my concerns on several points and asked him to keep a certain member of staff but nothing changed and the next day the member of staff was no longer working for us!"

Claimant's suspension

69. The same day, 25 September 2023, Mrs Caravona, together with JB, held a meeting with the Claimant and suspended him. The Claimant was suspended at the outset of the meeting. There was no structure to the meeting and it does not appear that Mrs Caravona took stock of the complaints being made in order to question the Claimant on them in an organised way. We conclude that the meeting was not an investigation meeting, it was a suspension meeting and no further investigation of the Claimant's views took place before the disciplinary hearing was held. On 25 September 2023 the Claimant was sent a suspension letter [102].

70. Mrs Caravona did not prepare an investigation report. In response to a Tribunal question Mrs Caravona said that she had briefed HR over the phone. It appears that she and the Respondent's HR team between them sent documents to Ms Shazad and a letter inviting the Claimant to a disciplinary hearing.

71. The Claimant was first invited to a disciplinary hearing on 6 October 2023 with a meeting due to take place on 11 October 2023. He did not receive the invitation so it was resent.

72. Ms Shazad, in preparing for the disciplinary hearing, had the following documents and they were the same as those provided to the Claimant:

72.1 HB's email of 13 September 2023 [77]

72.2 DL's email of 16 September 2023 [79]

72.3 Pictures taken by EP/CW:

72.3.1 The photo at [80] – a photo of an ipad with a maths question on it. It does not show the time the photo was taken.

72.3.2 The photo at [81] - a photo of an ipad with a maths question on it. It does not show the time the photo was taken.

72.3.3 The photo at [82] – a photo of an ipad with the same maths question as shown on 81 but taken from a different position. It does not show the time the photo was taken.

72.3.4 The photo at [83] - a photo of an ipad Spotify open and playing.

72.4 The Claimant's suspension letter dated 25 September 2023 [102].

72.5 The notes of suspension the meeting with the Claimant on 25 September 2023 [99- 101].

72.6 A Copy of the statements from the team working on 25th September 2023 [95 – 98].

73. Mrs Caravona did not send Ms Shazad an email that the Claimant had sent her on 26 September 2023 which the Claimant quoted in his written reply to the allegations made against him at the disciplinary hearing [HB123].

74. Neither the Claimant nor Ms Shazad had the following photos which were in the hearing bundle:

74.1 [84] - the same as 83 (a photo of an ipad Spotify open and playing) but showing the photo was taken at 12:28 on 20 September 2023,

74.2 [85] – showing prescriptions and medication untidily on a desk taken on 21 September 2023 at 12:47;

74.3 [86] - showing an ipad with a physics paper open taken on 22 September 2023 at 9:35

74.4 [87] – showing [80] (a photo of an ipad with a maths question on it) and that the photo was taken on 20 September at 15:34

74.5 [88] - showing an ipad with a chemistry paper open taken on 22 September 2023 at 11:16

74.6 [89] – showing the photo at [83] (a photo of an ipad Spotify open and playing) when sent to or from JB on 20 September 2023 at 13:10.

74.7 [90] - showing the photo at 81 (a photo of an ipad with a maths question on it) when sent to or from JB on 20 September 2023 at 13:11.

74.8 [91] - showing the photo at 82 when sent to or from JB on 20 September 2023 at 13:11.

74.9 [92] - showing the photo at [82] (a photo of an ipad with the same maths question as shown on 81 but taken from a different position) when sent to from JB on 20 September 2023 at 16:04. This photo had the following text superimposed on it "*This is from just now so he's been doing her work for over 4 hours*".

74.10 [93] - showing the photo at [86] (showing an ipad with a physics paper open) when sent to from JB on 25 September 2023 at 9:40

74.11 [94] – showing the photo at [88] (an ipad with a chemistry paper open) when sent to from JB on 25 September 2023 at 9:40.

75. Therefore, neither the Claimant nor Ms Shazad had any information about the times of day when the photos were taken. In any event the photos of course show only a snapshot of time and they show times when the Claimant was away from his ipad. In cross examination on the text referring to the Claimant having spent 4 hours on his daughter's work, Mrs Caravona said that she interviewed all of the staff members on that four hour allegation. However, there is no evidence of her having done so in the statements produced.

76. Mrs Caravona said in her witness statement (FCWS18) *"I had no further involvement in the matter, but I understand that the Claimant was subsequently invited to attend a disciplinary hearing.*" However Ms Shazad said that she had had some of the materials from Mrs Caravona and she had a conversation with Mrs Caravona about the case. We do not have any details about that discussion. Mrs Caravona was also interviewed as part of the appeal by Mr Bunn on 14 December 2023 [176].

Disciplinary hearing

77. As referenced above, there was some delay to the disciplinary hearing due to the Claimant not receiving the invitation. That invitation set out the following allegations and said that they may amount to gross misconduct that could result in the Claimant's dismissal:

> *"• Putting patient safety at risk*
>
> *• Bullying employees and colleagues under your line management, namely that we have had a number of statements from staff members, past and present, about the way you have treated them. This has led to a number of former employees to leave the Company.*
>
> *• Gross insubordination, in that you have shown unreasonable disrespect towards the Company by continuously neglecting your duties as a Pharmacy Manager, such as watching Netflix, listening to music, tutoring your daughter during working hours and other non-work related activities.*

> • *The above allegations have led to a fundamental breakdown in trust and confidence in you as a Pharmacy Manager."*

78. At the start of the disciplinary hearing the Claimant read a statement [121-134] which he sent to the Respondent after the meeting with supporting documents [135-154] ("**the Claimant's Written Reply**"). The Disciplinary hearing lasted very nearly two hours (13:00 to 14:59).

79. Ms Shazad opened the hearing with the following question "*So as noted on the invite, the allegations listed above on this page. There has been evidence, that I have seen, of you doing gross insubordination. Can you talk me through your rationale of doing these at work as you are a long-term pharmacist and these actions put the pharmacy at risk*.". The Claimant replied "*I've never watched Netflix or any video at work, or my iPad. The picture on the iPad was completed at work – sorry, at home. The iPad was on, but it wasn't completed during my work period.*". He explained that he used the ipad at work for taking notes of staff appraisals/meetings and during his lunch break (never during work) to listen to music. He showed Ms Shazad some work notes on the ipad.

80. The other matters discussed can be summarised as follows:

    80.1 The Claimant was asked why someone would say that he was watching Netflix. The Claimant said he did not know and there would not be time to do so and that people wanted to get rid of him.

    80.2 He was asked if he worked in the pharmacy out of hours and he said that he did and that it was that unpaid overtime which kept the pharmacy running. Ms Shazad told him that this was not permitted but the Claimant clearly did not know that.

    80.3 It was put to the Claimant that he was tutoring his daughter during work hours. The clear implication from the Claimant's response was that his time was more pressed when other staff were on lunch, he had to take breaks at other times and, notwithstanding the LSP he was entitled to take breaks. Ms Shazad, unreasonably in our view, took this to imply that he was not managing his own and others' time correctly. The Claimant made the point that just because he had to be on site did not mean that he was not entitled to a break (the clear implication being that he was doing non-work related activities during that break time). He explained that the staff could see everything he was doing (because of the layout and small size of the pharmacy) and could interrupt him and that it was part of his job to be interrupted. Ms Shazad queried whether the Claimant told staff if he was taking a break for lunch and he reasonably said that he did not – because the staff could see if he was eating. The hearing returned to this topic later after Ms Shazad commented "*By reading all the statements, this is very serious – bullying, direct insubordinations, non-clear lunch breaks."*. Ms Shazad reiterated her view that the Claimant needed to tell staff if he was on a break and the Claimant's response was that he needed to be contactable and was paid to be disturbed. We accept the logic of the Claimant's response.

80.4 When it came to the allegation of bullying, Ms Shazad simply asked the Claimant to talk her through "*some of the allegations made by your colleagues, in terms of them stepping up in their courses*". The Claimant explained his confusion about the allegations including saying "*How come they can't quote a single sentence for me to rebut?*" and that the allegations were '*exaggerations and half truths'*. He explained how his business plan was to recruit ACT's or people who could become ACT's. He noted racist comments made by DL toward him. Ms Shazad was understandably concerned by that comment and the risk of there being a culture at the pharmacy where racists comments might be viewed as acceptable. In that respect we note that the Respondent investigated that complaint. It is clear that the Claimant did not take offence at DL because he took her comments, even if racist, in good humour and not in a hurtful way. The Claimant had a long standing relationship with DL and if things became too much for the Claimant then he would normally tell DL to take the ACT course to improve her pay and that would normally end the discussion. He said that he did not consider that DL had ever taken offence at him.

80.5 The Claimant was asked about CW's complaint that the Claimant had not spoken to her for months. The Claimant denied this and said that he kept things formal and that in a pharmacy they had to speak.

80.6 When asked about his tone of voice the Claimant understandably questioned what tone of voice it was said had been used by him.

80.7 The Claimant was asked about his approach to the probation period for new starters and the Claimant explained his approach, as we have commented on above. He said that he had not had anyone enrol on the ACT course and not complete it and that he explained to new starters that it was harder than being at school because you have to work and study and that it was less about ability than willingness and determination.

80.8 As regards HB's complaints the Claimant gave examples of how he had explained the differences in this country to the approach HB knew from Poland. He explained that HB spent a lot of time questioning the Claimant's recommendations. The Claimant said he explained his views and asked her to present evidence to the contrary for him to consider but HB did not. He said he had spoken to HB privately and told her that, as she had pharmacist qualifications, her contribution to the team would be maximised if she would support two others in the team to academically boost their confidence whilst he mentored HB on the clinical aspects. She agreed, started getting frustrated when she couldn't answer questions she thought she should be to do and instead of continuing to ask for help, suddenly said she wouldn't do it, which took the Claimant aback.

80.9 Ms Shazad put it to the Claimant that every colleague had complained about his attitude and said he is rude. The Claimant questioned in what way he had been rude and said it was a baseless allegation and that there was nothing for him to rebut. He said that the fact that their statements were similar showed collusion.

80.10 In the context of rudeness Ms Shazad put to the Claimant "*The deputy manager (JB ACT) for Region 3 has evidence of this. She was the one who took pictures of the iPad*.". This suggests that Ms Shazad had evidence from JB that the Claimant had been rude on 19 September 2023 but she had provided no evidence to the investigation that was provided to the Claimant. The Claimant without prompting, presumably because it was the only day he had seen her, referred to JB's attendance at the pharmacy that day. He said he had little interaction with her. It is clear that the Claimant did not see the need for her attendance that day and had queried it with Mrs Caravona. He said he made a comment querying the value of Locum ACT's and suggesting that he hoped the company did not go into locum work. He said this prompted people to give their opinions and that was the end of it.

80.11 It was put to the Claimant that he sat around in the dispensary not doing anything, and making other colleagues do the work because he did not want to do it and that was a patient safety risk because he was not "fully there" (at the Tribunal hearing it became clear that by this Ms Shazad meant that the Claimant was not paying attention to what was going on). The Claimant's response was: "*My role as a pharmacist, with two ACTs, is to be interrupted. So, if there is anything that needs to be done without interaction, I will let the ACTs do that. I've spent a lot of time doing CDs because I asked them, months ago, to do them and they made a mess. It is easier for me to do those CD dispenses for stock levels than asking them to do that. If I don't trust them to do that, I will take the time to do it and do it properly. Given their track record, I don't have the confidence in them. Do I take more time than other people? No. This is not a patient safety issue as I will leave it to the end of the day so I'm not interrupted. If I delegated it to them and they haven't done it properly, I would prefer to do it. I think some locums come in and get them to do it before they check it. I like to double check my work. They don't give me CD prescriptions after handing out, so I like to reprint them so I can enter it. As we claim, I isolate them and replace the duplicate with the original*." . This was an understandable misunderstanding on the part of the Claimant of what the Respondent saw as the patient safety issue.

80.12 Ms Shazad put to the Claimant again "*The insubordination allegation, around Netflix, tutoring the daughter onsite and sitting not doing anything on the side, do you feel that is not a patient safety risk?*". This question included a number of premises with which clearly the Claimant did not agree and did not make clear the link with patient safety or indeed what the patient safety risk was. The Claimant's position was that he did not do the things he was accused of to the extent alleged and if he did so some of those things then it was on his lunch break. However, there had been no proper investigation of the Claimant's views before the disciplinary allegations were formulated and the members of staff who had made the allegations had not been asked to respond to the what the Claimant said in reply. Those staff had not been asked for examples of what they meant, for example, when they used the term bullying or bully. The disciplinary hearing was therefore characterised by imprecise questions to which the Claimant could only reasonably give a limited response.

80.13 The Claimant was given a final opportunity to speak and he (amongst other things):

80.13.1 Accused his team of misandry and pointed to two male colleagues (CH and TB) that he said learning difficulties in one case and autism in the other. He criticised how his colleagues had behaved towards them and pointed to double standards in their treatment of them as against their complaints against the Claimant.

80.13.2 pointed to evidence that he wanted to be taken into account;

80.13.3 said that it was *"unfortunate that all of this – emotions and views my colleagues have of me – and haven't been brought to my attention. Under Dudley taylor, this would be brought up in yearly appraisals. Since we've been bought by Avicenna, we haven't had that. It would be good to do so. I think that it has contributed to this not being actioned at an earlier time.*"

80.13.4 Suggested collusion amongst staff in the allegations that they made against him.

80.13.5 Explained again his management style and approach to staff recruitment and willingness to progress to become ACT's (including his keenness to ensure that people understand the commitment needed to take that step).

81. The Claimant's Written Reply:

81.1 Gave explanations of the dynamics in the team (the detail of his explanation was in significant contrast to the lack of detail and precision in the statements taken in the investigation) and his counter arguments to the bullying allegations (including a fuller explanation of his suggestion of misandry in the team). He argued that being meritocratic did not amount to bullying;

81.2 Asserted that photographs of maths work showed things he had completed at home and not in work.

81.3 Quoted an email that the Claimant had sent Mrs Caravona on 26 September 2023 [HB123]. Mrs Caravona had not sent this email to Ms Shazad.

81.4 Asserted that it was the Claimant's opinion that it would be unprofessional to watch Netflix at work, he would not have time and he did not do so. There was no photo showing Netflix being used, only a Spotify list of songs that the Claimant would sometimes play in the pharmacy for all and colleagues sometimes made requests for songs but music is not often played. He gave an explanation of video or YouTube watching in the pharmacy.

81.5 Set out his dispute that there were any patient safety issues and pointed to the results of the last professional audit. He said that his colleagues were

conflating what he did on his lunch break (like eating and speaking with his daughter), with being distracted during work.

81.6 Asserted that his out of hours work attendance at the pharmacy, which helped him work without distraction, was to do clinical checks ready for others to complete accuracy checking together with some claimed overtime for dispensing electronic prescriptions at the end of the month.

81.7 Attached other documents he relied upon and set out a detailed rebuttal of the comments made in the investigation statements [HB139-153]. This included, for example, earlier WhatsApp messages exchanged between DL and the Claimant which showed a much warmer relationship than DL had portrayed [146].

82. After the hearing on 25 October 2023 the Claimant sent Ms Shazad the Claimant Written Reply saying "*Thank you to you and your colleague (sorry, terrible with names) for your time and patience and the water. Please find attached electronic copy of my opening statement and rebuttal as promised. Just a quick observation, Jenny worked on Tuesday 19th September 2023. The pictures were taken on Wednesday*" [HB120].

83. On 26 October 2023 Ms Shazad spoke to GM over the phone about the Claimant's allegations of racism against DL [155].

84. On 27 October 2023 SC, of the Respondent's HR team, sent an email to Ms Shazad and Mrs Caravona confirming that the Claimant received lunchtime supervision payments [HB156].

Dismissal decision

85. On 30 October 2023 Ms Shazad verbally told the Claimant that she had decided to dismiss him summarily for gross misconduct and his employment therefore ended that day.

86. On 3 November 2023 Ms Shazad sent the Claimant her dismissal letter and informed him of his right of appeal [158-162]. As regards Ms Shazad's dismissal letter:

86.1 Ms Shazad found the Claimant had been guilty of the allegation of gross insubordination.

86.2 She said that, because of her finding on that allegation, she considered that he had risked patient safety because he was not *"fully engaged in [his] role as a Pharmacy Manager*". Ms Shazad recorded some of the responses that the Claimant gave to the allegations but largely did not explain her findings on them. She concluded that the seven work colleagues statements and photographic evidence gave her a reasonable basis to conclude that (i) the Claimant on a regular basis was not concentrating on his duties as a Pharmacy Manager (ii) was spending a considerable amount of time on the phone to his family during working hours (iii) was carelessness in his role as a Pharmacy Manager.

86.3 Ms Shazad concluded that the Pharmacy was not being managed correctly, safely and in line with the Company's standards or the GPhC's and therefore the Claimant had fundamentally broken her trust and confidence in him as a Pharmacy Manager.

86.4 As regards the Claimant's rhetorical question about whether he was legally entitled to a lunch break or did the receipt of the LSP remove his right to take a break, Ms Shazad concluded: "*As a Pharmacy Manager, you are responsible for time management in the pharmacy, including your timing, break timing, colleagues' break time, and their start and finish time. For you to tell me that you have not managed your own time correctly, worries me, and raises the question as to why have you not mentioned this before to anybody and are now only mentioning it during the disciplinary process*.". This did not address the point that the Claimant was making (i.e. that he was entitled to breaks and he was doing non-work related activities during those breaks).

86.5 Ms Shazad concluded that the Claimant was guilty of bullying. She relied on the fact that there had been a number of statements from staff members, past and present, about the way he had treated them. She concluded that this had led to a number of former employees leaving the Company and some current employees expressing their desire to leave. She quoted part of the Claimant's response to this allegation but she did not address it. Ms Shazad noted that she had spoken to GM who had denied that he had heard racism in the pharmacy but she did not put the allegations to the staff member in question i.e. DL (or colleagues who might have been witness to it). Ms Shazad commented that she had raised it with Mrs Caravona. However, the Claimant had never suggested that he had told Mrs Caravona about it, nor had he suggested to Ms Shazad that he needed Mrs Caravona's help in dealing with racism. She concluded that the Claimant had not "*been treated unfairly or any differently to how any other member of staff would do in terms of the allegations put forward to [him], nor that [he had] been subjected to any form of racism.*"

86.6 Ms Shazad concluded that staff had not colluded because Mrs Caravona investigated immediately and members of the team were spoken to individually and would not have had any prior knowledge about what they were being asked to provide information on. She concluded that the witness statements were a "*true, credible and honest account*" of the Claimant's "*conduct, management style and behaviour*".

Appeal against dismissal

87. On 9 November 2023 the Claimant submitted a written appealed against his dismissal [HB163]. He pointed to his clean disciplinary record and efforts to grow the pharmacy business and explained his view that the decision to dismiss was predetermined. He pointed to discrepancies in the photographic evidence, the dates given by the Respondent and who took the photos and commented on the written evidence. He complained about a lack of proper investigation and asked for the decision to be reconsidered.

88. Mr Bunn chaired an appeal meeting on 6 December 2023 which started at 12:40 and ended at 15:26 [165 - 175]. From the notes it is clear that the Claimant thought he would be given the outcome at the meeting and did not anticipate further discussion of his grounds of appeal. Mr Bunn confirmed in evidence that he did not conduct a rehearing, he focused on the Claimant's points of appeal.

89. Mr Bunn noted that a number of people had made similar complaints about the Claimant. The Claimant made the point that the photos (such as had been made available to him at that time) just showed an ipad open (not the length of time it had been open or, necessarily, what the Claimant had been using it for (it was an assumption that he had been using it for the personal matters displayed on the screen at the time the photo was taken). Mr Bunn asked why it was open showing chemistry and physics papers before lunchtime. It is clear from the exchanges that followed that Mr Bunn had photographs (most likely those at [86/93] and [88/94]) which had not been made available to the Claimant and that he had the meta data for photographs giving the times the photos were taken. Those photos, or at least some of them, were shown to the Claimant later in the meeting but it does not appear that he had an opportunity to comment on them or the evidence of the times that the photographs were taken.

90. The Claimant made the point that he was suspended but that he had not been asked if the allegations were true (before being called to the disciplinary hearing). He queried whether his dismissal had been predetermined given LL's comment, on the day of his suspension, that it was a relief that the Claimant was gone. The HR representative at the appeal hearing commented that the investigation was to gather the facts but this appeared to overlook the point that the Claimant's evidence would also be needed before the facts could be determined [166].

91. The Claimant asked again who had taken the photographs relied upon and the HR representative at the meeting went out of the meeting to check and returned to say that Mrs Caravona had confirmed to her that the photos had been taken by JB and other dispensers who had wanted to remain anonymous. The Claimant pointed out that JB had not been in the pharmacy on 20 September 2023. Mr Bunn's position was that it made no difference who had taken the photos, they still existed and corroborated what the team had said about the Claimant. He questioned "*do I have a reasonable belief that the staff have made this up yet the ipad shows the staff position*?". The Claimant replied that the photos showed what he did in his lunch break and that to say that he home tutored (his daughter) was wrong as there was no time for that. Mr Bunn asked why the Claimant looked at exam papers and the Claimant replied that he just looked at them and did not have his lunch in the consultation room at the front of the shop, he had it in the dispensary. He said that he was paid to stay in on the premises for lunch and occasionally showed others what he was doing and that he did home tutor but not very often [167].

92. When the Claimant explained that he did occasionally home tutor his daughter Mr Bunn questioned how he could expect that the Claimant was still the Responsible Pharmacists. The Claimant replied by referring to the LSP and there was a discussion of that. Mr Bunn said that he thought there was a big difference between (i) taking a break to eat or drink or have a conversation, if

urgent, with his family on the one hand and (ii) using that break to home tutor. The Claimant replied that he did not spend much time with his daughter (home tutoring her – she was home schooled) and that he did a lot if that at home and not at work. He said the ipad was open to check where things were. Mr Bunn asked the Claimant whether the witness statements of his colleagues were correct given that the Claimant had accepted that he occasionally home tutored. The Claimant clarified that he answered questions but did not home tutor his daughter at work. He said he got up early to tutor his daughter before work and checked on her while at work but did not tutor her at work. He said this was once a week at the most.

93. Mr Bunn said he would look further into who had taken the photos but he did not think it was relevant. The Claimant said again that the photos did not evidence he was home tutoring at work and explained that he kept the ipad open on things that people would not be interested in (he had made clear previously that he kept work related staff notes on the ipad that should not be seen by others).

94. Mr Bunn asked the Claimant why the Claimant thought that witnesses would fabricate their evidence. The Claimant explained that Mrs Caravona wanted him to provide more advanced services to patients (for which the Respondent could charge the NHS a fee) but because lots of staff did not pass their probation she thought the Claimant was making excuses for not increasing the provision of those services. The Claimant said that he thought that Mrs Caravona did not trust the Claimant because she had phoned the pharmacy to check on work and because HB had resigned. He said that he thought she had fabricated the allegations to remove the Claimant and that his staff had 'stabbed him in the back' to please Mrs Caravona. Mr Bunn questioned the plausibility of that.

95. The Claimant said that staff had just made the allegations because they could and that he did not watch Netflix or other streaming services. He said that there may have been an occasion when he and the staff had looked at song lyrics.

96. Mr Bunn asked the Claimant why he had the ipad in work and the Claimant gave the explanation he had given to Ms Shazad. He said he did not put staff notes on the work computer because it tied up that computer, preventing other staff using it.

97. The Claimant queried why so many staff had said the same thing. He admitted that he did not like weakness but the staff knew his ways and he expressed surprise at what they had said about him. He went on to suggest that it was motivated also by racism and referred to DL's jokes but again made clear that he had not taken offence at her. The Claimant found the allegations of watching Netflix particularly outlandish.

98. Mr Bunn said he would speak to staff about the bullying allegations. The Claimant asked for his written appeal to be considered. The Claimant commented at the end of the meeting that he did not understand the bullying allegations and referred again to his management approach. Mr Bunn commented that there were seven people against the Claimant but that the Claimant thought they were lying and aiming to get him out. Mr Bunn thought that was a complex way to get rid of someone. We do not consider that it was

complicated if staff did not like the Claimant's management.

Post appeal hearing investigation

99. On 13 December 2023 Mr Bunn interviewed CW [HB179]:

99.1 He asked her to give examples of how she said the Claimant had treated staff terribly. She said that DL had been going through a rough time and the Claimant had picked on her. If DL spoke then the Claimant would tell her not to talk and others would refrain from speaking to her so as not to get DL in trouble. She said the Claimant told DL that she could only express milk in her lunch hour.

99.2 When asked about the Claimant watching Netflix at work CW said that it was on several occasions over a period of months and when asked if it was in a lunch break she said that the Claimant did not take a lunch break and that the Claimant would watch it in the consultation room or on a bench.

99.3 When asked if CW had seen the Claimant home tutoring his daughter she said she had and said that she knew that was what he was doing because she could hear him and see the ipad. She said this was on lots of occasions, it used to be in the afternoons but could be at any time of day. She said that he also used tutor his son in work time too and that he had been known to bring them into the branch to tutor them too. She said that was about a year ago but most days they would see him home tutor his daughter and that the times varied between 10 minutes once or twice a day to "*much longer times of day*". She said that this would affect patients who were waiting for him.

99.4 She said that if he did not like you then the Claimant could be quite vile and made a colleague "*write her own reference as she was going to need it*". CW said that she had said something once that the Claimant did not like and he did not speak to her for two months and she had had to raise it with him to get it resolved.

100. On 14 December 2023 Mr Bunn interviewed Mrs Caravona [HB176]. Mrs Caravona commented:

100.1 It was around 16 September 2024 that concerns were first raised with her. She said she went to the Pharmacy when the Claimant was on leave and all the staff were sad and upset and she asked if it was because it was busy. She then gave the explanation that we have recorded above about how CW, BN and EP had come together to talk to Mrs Caravona about the Claimant.

100.2 Staff had told her they were not happy about the atmosphere, the Claimant was "not great" and was a "bully" and people were leaving and they were short staffed because of the Claimant;

100.3 VP told Mrs Caravona that she thought he created a horrible atmosphere, she did not like how he treated the trainees and HB and that the Claimant

watched Netflix.

100.4 VP had sent Mrs Caravona an email on an anonymous basis which she then sent to Mr Bunn [254-255 and as quoted above];

100.5 She had asked staff to send her any information they had but they did not until Mrs Caravona sent them the whistleblowing policy.

100.6 In discussion on the dates of the photos, confirmed that she had sent JB to the Pharmacy to support the staff. The staff told JB that they were scared of sharing details but JB gained their trust quickly and said that she would '*take the rap*' for them. EP had sent JB the photos and JB sent them on to Mrs Caravona and that is why Mrs Caravona thought that they had been taken by JB.

100.7 She had not had prior concerns about the Claimant, Mrs Caravona having been regional manager since April 2022. She said that she thought the staff had left it late to tell her about the problems because they were scared of the Claimant and when she had asked the Claimant why people were leaving, he had said it was because they were not capable.

101. On 15 December 2023 Mr Bunn interviewed HB [HB181] who commented:

101.1 When asked for examples of unprofessionalism:

101.1.1 That the Claimant had said he would be her supervisor but left her with the Dispenser and told HB that she would never be good enough and constantly compared her to the dispensers.

101.1.2 Gave her a chemistry test, and questioned her in front of everyone how she could have a degree if she did not know how to do chemical formulas and said that she was not worth his time;

101.2 That the Claimant had made her very sad.

101.3 When asked if she had seen inappropriate behaviour towards others said that she kept herself to her self.

101.4 The Claimant would just do maths tests all day long, was on his ipad a lot and would not deal with customers and she had seen him on the phone once or twice but she had only been there six weeks.

102. On 15 December 2023 Mr Bunn interviewed EP [HB183] who commented:

102.1 She had worked at the Pharmacy since 2021.

102.2 She and CW had taken the photos and she had sent them to JB.

102.3 Some days they did not hear much of him tutoring his daughter but other days he would be spending a couple of hours home schooling. This happened on and off for a couple of months.

102.4 When asked if the home schooling was during the Claimant's breaks, said the Claimant never told staff he was on a break and the home schooling was on an off and spread throughout the day and could sometime total a couple of hours and was more common in the afternoons after lunch.

102.5 On a couple of occasions he would take calls on the phone or watch things in front of customers and then walk off so that the staff had to deal with unhappy customers.

102.6 On at least 10 occasions the Claimant watched videos/a streaming service on a back bench or stool.

102.7 As regards her comment that it was a relief that the Claimant was gone, in many senses the Claimant had been difficult to work with: (i) he did not like to clinically check (ii) on Wednesdays and Fridays he would sign all the labels and tell them to bag them (iii) they were not allowed to dispense controlled drugs and (iv) there was no trust.

102.8 As regards bullying, it was new starters that EP was most concerned about. The Claimant would give them test (A level chemistry papers) and if they could not do it they would be let go and people would be compared against each other and that added to the stress that did not need to be there. LH had been told he was not quick enough and had been asked to do a dispensing race to prove he was ok. She complained about constant sexist comments that "*men were treated unfairly*".

102.9 Even when the Claimant was on holiday it was better.

102.10 The Claimant never wanted to provide advanced services to patients.

103. On 15 December 2023 Mr Bunn interviewed JB who commented [HB185]:

103.1 The Claimant had not wanted JB, as relief dispenser, to be at his Pharmacy on 19 September 2023 and emailed Mrs Caravona to tell her that in front of JB;

103.2 He was rude to JB and kept telling her that everything she was doing was wrong and he did not like JB doing things her way. The Claimant did not speak to the staff when they asked him things and was disgruntled that JB was there.

103.3 The atmosphere on 19 September 2023 was awful, the staff only spoke when the Claimant went to the toilet and JB was not allowed to touch the controlled drugs cabinet.

103.4 When she was alone with the staff she explained that she was there if they wanted to talk and asked them to send her anything that they had to back up their stories.

104. On 21 December 2023 Mr Bunn interviewed DL who commented [HB187]:

104.1 In respect of her racist banter, that she and the Claimant had a love hate

relationship;

104.2 There had been racist banter which was '*an integral part of their relationship*' and the Claimant gave as good as he got regarding DL's ability to do her job, her relationships in her private life, belittling her, treating her as a child, making her feel worthless and affecting her mental health. She described the Claimant once saying *that "it was a 'dog eats dog world, that men were the dogs and they could cock their legs anywhere"*;

104.3 The Claimant had never challenged her about her comments and she described their exchanges as 'hilarious'.

104.4 As regards bullying of other staff, this mostly involved the Claimant (i) humiliating them in terms of their abilities to do the job, (ii) asking them to do maths and chemistry tests prove that they were capable. She recalled the Claimant telling a colleague that nobody liked her and questioning why did "*she even bother turning up to work*".

104.5 She was happy that the Claimant's poor behaviour, management and bullying had been dealt with and that it had been raised with management in the past but had not been addressed.

105. On 21 December 2023 Mr Bunn spoke to a staff member who was also labelled as LL but who must have been someone else, CW and HB who commented [HB188]:

105.1 LL: as regards bullying, when staff start, if the Claimant does not like them, he makes life very difficult for them, and they quickly leave due to intimidation and working conditions. As an example, the Claimant decided that an employee who was "*a larger lady*" was too slow and the Claimant made it very obvious until she left;

105.2 LL: as regards DL and the Claimant's relationship, they both engaged in banter which could be offensive, neither took offence, it was in good humour and both were equal in the exchanges. This had not happened recently.

105.3 Unidentified member of staff labelled also as LL: They had seen the Claimant (i) bully new staff (ii) make many people cry on multiple occasions (iii) comment on colleagues' weight (iv) be hard on DL when she returned from maternity leave and not let her express milk except in her lunch break (v) make staff feel useless or stupid (for example making reference to their lack of education) (vi) when they started at the Pharmacy make them, and others starting at the same time, sit maths and chemistry exams in order to keep their jobs, which was stressful.

105.4 CW: She had seen banter which was not racist but was '*close to the bone*' between staff and customers that had usually been initiated by the Claimant. The relationship between DL and the Claimant was equal in terms of the banter between them, neither took offence and had the Claimant taken offence he would have made it known. As regards bullying

the Claimant would target individuals, then 'go' for them. She gave a number of examples, one of which was from more than 20 years ago, but others were (i) a colleague once interrupted him with a work query which annoyed him so much he didn't speak to her for 12 months (ii) picking on two colleagues constantly until they resigned (iii) taking a dislike to LH who queried his pay, so the Claimant refused to be his tutor and LH had to leave.

105.5 HB: That the Claimant constantly compared her ability other staff (current and past) and let her know they were significantly better at the job than she was. The Claimant constantly undermined her and damaged her confidence. The Claimant glared at her if she asked a question, as if to challenge her on why she was having to ask the question in the first place. The Claimant asked her write, over the weekend, an overview of a pharmaceutical product that she wanted to buy to justify the purchase and when she did not do so marked in his training diary that she had not done her homework.

106. Having conducted these interviews Mr Bunn did not provide the interview notes to the Claimant and he did not give the Claimant the opportunity to comment on them. The first time that the Claimant saw the notes was in the employment tribunal disclosure process.

Appeal outcome

107. On 22 December 2023 Mr Bunn sent his appeal outcome letter, rejecting the Claimant's appeal, which read as follows [HB191] (bold added and not in the original document):

> […]
>
> *I have attached the notes of the appeal hearing to this letter which contain details of our discussion.*
>
> ***1. In relation to your first ground of appeal, namely lack of due process, I find that this is not upheld.***
>
> *At the appeal meeting you said that within the disciplinary hearing minutes from 25th October 2023 it says "The deputy manager (ACT Jenny) for Region 3 has evidence of this. She was the one who took pictures of the iPad". You said the Avicenna investigators have lied by stating [JB] took the pictures. You said [JB] visited the branch on Tuesday 19th September 2023 and the pictures were taken on Wednesday 20th September 2023 therefore, she could not have been the one who took the pictures. The date of when the pictures were taken is evidenced on one of the pictures itself, as the pharmacy phone, which is in the background, displays the date as 20th September 2023. It is your belief that the pictures were in fact taken by [LL].*
>
> *You stated you have concerns that Avicenna instructed someone to take pictures of your iPad and then lied about who took the pictures. You felt this "casts doubt on the fairness of the whole disciplinary process".*

You feel that Avicenna "cloaked itself as a fair adjudicator choosing to believe the word of 7 past and present colleagues against my denials of misconduct and bullying" however you felt that by lying about who took the pictures "puts Avicenna's impartiality and credibility into serious doubt and suggests that Avicenna investigators were involved in the collusion to provide false statements of negligence of duty and bullying of staff against me in order to summarily dismiss me for gross misconduct".

I have fully investigated the points raised by you above and have found the following:

I have determined that the pictures referred above were not taken by [JB] on the 19th of September 2023. These were in fact taken by [EP] on the 20th of September and 22nd September 2023. These photographs were then sent to [JB] which I believe led to the misunderstanding that they were taken by [JB] during her branch visit on the 19th of September.

Although it is clear that there was a misunderstanding about the origins of the photographs, I can find no evidence or hold no belief that there was collusion amongst colleagues within Westfield pharmacy to deliberately mislead the investigation. I believe there was confusion over who took the photo rather than a deliberate manipulation of the facts. In any case it is my determination that the origin of the photographs do not materially change what the images portrayed and/or the fact that you were clearly using your iPad for non-work related activity during working hours.

During the appeal meeting I gave you every opportunity to explain the information within the photographs in the context of the allegations against you. You failed to explain adequately why you were reading chemistry, maths and/or physics papers during working hours.

It is my belief that there is nothing within the information gathered as part of this appeal process which is indicative of collusion, false statements, or evidence of a deliberate plot to exit you from the business. I can find no evidence to support your assertion that staff have been coached in terms of their statements in order to fabricate information and secure your dismissal. I believe that the evidence that has been gathered is a result of your own decision making and behaviours whilst working as Pharmacist Manager at Westfield Pharmacy.

Your assertion that [LL] took the photos is incorrect. It has been clarified that they were taken by [EP]. I do not agree with your claim during the appeal hearing that these photos supported his belief that the outcome of the disciplinary was predetermined. I can find no significant correlation between the date of when the images were taken and/or who took them and your belief that this was part of a plot to exit you from the business.

During the appeal hearing you also claimed that the outcome of the disciplinary hearing was predetermined since [LL] stated in her statement "I was glad he was gone". I can see no evidence that this statement

supports your assertion. When I spoke to [LL] regarding this, she confirmed that this was because she found you difficult to deal with. She said that she felt it was better in the pharmacy when you were not around and said for example, when you were on annual leave. It is my belief, that she felt it was better in general when you were not around, not that you were going to be dismissed.

***2. In relation to your second ground of appeal, namely lack of proper investigation, I find that this is not upheld**.*

At the appeal hearing you said the fact you received lunchtime supervision payments was central to your defence as to why your colleagues thought you were conducting personal business during working time. You said that if this arrangement were to have stopped, you would have been notified of this in writing by Dudley Taylor Pharmacy and your pay would have been reduced, however this never happened. You said you informed Avicenna of this by email on 26th September 2023 but it had not been properly investigated prior to your disciplinary hearing which was held on 25th October 2023. You said Avicenna should have investigated this with Dudley Taylor Pharmacy but failed to do so.

I have fully investigated the points raised by you above and have found the following.

It is acknowledged and evidenced that you were historically paid a lunchtime supervision payment. This, in my understanding, means that you were paid to remain in branch, as Responsible Pharmacist, whilst at the same time having the opportunity to take a break for something to eat/drink etc. During these breaks, it is my understanding, that you are paid to remain as the Responsible Pharmacist during this time.

During the appeal hearing I asked you whether the images on your iPad are indicative of your propensity to spend significant time whilst at work home tutoring your daughter. You admitted during the appeal hearing that you do in fact carry out some home tutoring with your daughter whilst acting as Responsible Pharmacist at work.

When I asked you to reconfirm that you did carry out home tutoring with your daughter whilst at work you responded that yes, you did, but only occasionally.

On this point I would refer to the original statements from staff at Westfield and the further investigation meetings held by me. There is evidence given by multiple staff at Westfield, that home tutoring was a regular occurrence, happening most days and being of various durations. There were some statements that estimated up to a total of two hours per day on some occasions.

By your own admission during the appeal hearing home tutoring was happening 'weekly'.

Whilst you assert that you are entitled to do what you want during this time, the fact remains that you were paid by Avicenna to be the Responsible Pharmacist and home tutoring your daughter was not part of this responsibility. This home tutoring was confirmed by yourself and you further acknowledged this happened whilst you were the Responsible Pharmacist.

I made it clear to you that it would be normal for a pharmacist to take a break to eat and drink whilst signed on as Responsible Pharmacist but in my experience and to my knowledge, home tutoring was not acceptable as you were being paid by the Company during this time.

Following my review of the disciplinary process, it is my belief that a full and thorough investigation was carried out and there was no dispute regarding the lunchtime supervision payment and/or that you were required to take a fixed break at a set time. I do not believe that the staff made incorrect judgements about when you should or should not have been on a break. In fact I believe the opposite to have taken place. It seems as though it was clear to staff that your behaviour was not appropriate for the Responsible Pharmacist, namely that you were frequently carrying out non-work related activities during working time and this is supported by the evidence that they gave.

During the appeal hearing you also raised the following concerns which I have responded to in turn:

3. You referred to being suspended prior to the investigation meeting taking place.

At the suspension meeting you were given an opportunity to respond to the concerns raised against you. This is not uncommon practice and was due to the severity of the allegations and to safeguard colleagues who had made allegations of bullying against you.

4. You alleged that the staff were lying/colluding against you and gave some examples of this:

a. You said that Fiorina wants you gone as the pharmacy can't do certain services due to a lack of staff. You said this was because you kept dismissing staff in probation.

There is no evidence to support this allegation. It is my belief following a review of the evidence the reason for your dismissal was due to the substantive issues of Patient Safety, allegations of bullying at work and gross insubordination.

b. You said the staff made "outlandish comments" against you.
However, some of what the staff have reported against you, namely that you tutor your daughter and/or speak to her on the phone during normal working hours has also been admitted by you. There is insufficient evidence to support that the staff have made "outlandish comments" about you.

c. You said that the pictures of your iPad were taken on 20th September 2023 but the staff were not spoken to as part of the investigation until 25th September 2023. You feel this gives them enough time for them to collude against you. *You did not provide any evidence as to why you feel this is the case and I can find no evidence to support your allegation. Conducting an investigation takes time and it would be impossible for all staff to have been spoken to on 20th September 2023.*

d. You said that the staff colluded against you to please Fiorina. You also said that "the racists" didn't like that you were "black and of a level of authority" Your reasoning for this is that when staff made allegations of bullying against you they did not give any specific examples of your behaviour. You then went on to say that [DL] makes comments about race that causes you offense. You said that staff did not refer to this in their statements. You then went on to say that you did not think [DL] was racist and that she did not mean to be offensive. You said why was it ok for her to make jokes at your expense but not ok for you to retort or respond to this. At the hearing I asked you if you raised concerns of racism with management and you replied that you are management*.*

In response to this I have spoken with the staff and [DL] regarding your concerns. All of the staff understood what racism means and none of the staff said that they witnessed behaviour which they felt could amount to racism. When I asked them specifically about any comments made between you and [DL], the staff did agree that certain comments had been made by both you and [DL] that could be deemed as inappropriate and offensive. The staff said this did not happen on a regular basis and that you were never upset with any of these comments and would often find these funny. The staff agreed that you and [DL] would engage in workplace 'banter' and that you would often make inappropriate comments to her too. The staff felt these exchanges were in good humour. The staff felt that if you were not happy or took offense to something then you would have made it known you were unhappy.

The Company does not condone racism, or any discriminatory behaviour disguised as 'banter', and further internal investigations will take place in line with Company procedures regarding this. However, as Pharmacy Manager, the Company would have expected you to have put an immediate stop to any racist behaviour by raising this with an appropriate senior colleague so that the matter could be dealt with accordingly. Instead, it would appear from speaking with the staff members that you engaged in this behaviour which as Pharmacy Manager sets a bad example towards the rest of your colleagues.

The staff went on to provide further examples of workplace bullying that they suffered whilst working with you. It is my belief following a review of the evidence and further investigations that the staff were not colluding to get you out of the business on the grounds of your race but instead due to the mistreatments and behaviour they suffered whilst working with

you.

In summary, as part of this appeal process, I have reviewed all of the documentation available, conducted an appeal hearing with you and conducted further investigation in order to obtain additional insight into your case.

I believe that within the realms of what can be determined as reasonable and acceptable, I have considered all of the information available to me in formulating my opinion.

I believe that adequate opportunity was given to you at the appeal hearing to present new and empirical evidence to support your assertion that the process was unfair, the evidence fabricated and inadmissible, and the decision made was unwarranted and disproportionate.

It is my opinion that you presented no new information or evidence that enabled me to believe that a fundamental error had been made in terms of your dismissal. It is my belief that your grounds of appeal were not backed up with any evidence.

There is a significant amount of evidence, in terms of colleague statements and photographs, to support the original decision. This would lead me to conclude that the original decision was sound and based on a reasonable belief.

During the whole process of investigation, disciplinary and appeal there has been no evidence from any colleague that would support your position. In fact, the additional investigations carried out by me served to substantiate the evidence in favour of the original decision being sound.

It is therefore my belief that the decision to dismiss you on 30th October 2023 was reasonable and, in the circumstances, that decision stands.

You have now exercised your right of appeal. This decision is therefore final.

[…]

THE LAW

Unfair Dismissal

108. The test for unfair dismissal is set out in section 98 of the Employment Rights Act 1996. Under section 98(1), it is for the employer to show the reason (or, if more than one, the principal reason) for the dismissal, and that it is either a reason falling within subsection (2), e.g. conduct.

109. Under s98 (4):

> *'… the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) depends on*

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

110. Tribunals must consider the reasonableness of the dismissal in accordance with s98(4). However, tribunals have been given guidance by the EAT in ***British Home Stores v Burchell*** **[1978] IRLR 379; [1980] ICR 303, EAT**. There are three stages:

110.1 did the respondent genuinely believe the claimant was guilty of the alleged misconduct?

110.2 did it hold that belief on reasonable grounds?

110.3 did it carry out a proper and adequate investigation?

111. Tribunals must bear in mind that whereas the burden of proving the reason for dismissal lies on the respondent, the second and third stages of *Burchell* are neutral as to burden of proof and the onus is not on the respondent *(**Boys and Girls Welfare Society v McDonald*** **[1996] IRLR 129, [1997] ICR 693**).

112. Finally, tribunals must decide whether it was reasonable for the respondents to dismiss the claimant for that reason in all the circumstances of the case. We have also reminded ourselves that the question is whether dismissal was within the band of reasonable responses open to a reasonable employer. It is not for us to substitute our own decision for that of the disciplinary and appeal decision makers, unless there is only one possible outcome from the application of the relevant legal principles to the case (**London Ambulance Service v Small Court of Appeal [2009]**).

113. The range of reasonable responses test (or, to put it another way, the need to apply the objective standards of the reasonable employer) applies as much to the question of whether an investigation into suspected misconduct was reasonable in all the circumstances as it does to other procedural and substantive aspects of the decision to dismiss a person from his employment for a conduct reason. The objective standards of the reasonable employer must be applied to all aspects of the question whether an employee was fairly and reasonably dismissed (***Sainsbury's Supermarkets Ltd v Hitt*** **[2003] IRLR 23, CA**). The question is not whether there was something else which the respondent ought to have done but whether what it did was reasonable.

114. When considering the question of the employer's reasonableness, we must take into account the disciplinary process as a whole, including the appeal stage. (***Taylor v OCS Group Limited*** **[2006] EWCA Civ 702**). The Tribunal must focus on what information and circumstances were present and in the mind of the dismissal and appeal managers at the time they made their decisions (**West Midlands Coop v Tipton [1986]**).

115. We must also take into account the ACAS Code on Disciplinary and Grievance Procedures. By virtue of section 207 of the Trade Union and Labour Relations

(Consolidation) Act 1992, the Code is admissible in evidence and if any provision of the Code appears to the tribunal to be relevant to any question arising in the proceedings, it shall be taken into account in determining that question. A failure by any person to follow a provision of the Code does not however in itself render him liable to any proceedings.

116. The Claimant also referred us to the ACAS guidance (as distinct from the Code) on investigations and establishing the facts where is says (emphasis added):

> *When investigating a disciplinary matter take care to deal with the employee in a fair and reasonable manner. The nature and extent of the investigations will depend on the seriousness of the matter and the more serious it is then the more thorough the investigation should be. It is important to keep an open mind and look for evidence which supports the employee's case as well as evidence against.*

Direct race discrimination

117. Section 39(2) of the Equality Act 2010 prohibits an employer discriminating against one of its employees by dismissing him or by subjecting the employee to a detriment. This includes direct discrimination because of a protected characteristic as defined in section 13. Section 9 makes clear that race is a protected characteristic and Section 9 provides:

> *(1) Race includes—*
>
> *(a) colour;*
>
> *(b) nationality;*
>
> *(c) ethnic or national origins.*
>
> *(2) In relation to the protected characteristic of race—*
>
> *(a) a reference to a person who has a particular protected characteristic is a reference to a person of a particular racial group;*
>
> *(b) a reference to persons who share a protected characteristic is a reference to persons of the same racial group.*
>
> *(3) A racial group is a group of persons defined by reference to race; and a reference to a person's racial group is a reference to a racial group into which the person falls.*
>
> *(4) The fact that a racial group comprises two or more distinct racial groups does not prevent it from constituting a particular racial group*.

118. Section 13 of the Equality Act 2010 provides that 'A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others'.

119. Under section 23(1), where a comparison is made, there must be no material difference between the circumstances relating to each case. It is possible to compare with an actual or hypothetical comparator.

120. In order to find discrimination has occurred, there must be some evidential basis on which we can infer that the Claimant's protected characteristic is the cause of the less favourable treatment. We can take into account a number of factors including an examination of circumstantial evidence.

121. We must consider whether the fact that the Claimant had the relevant protected characteristic had a significant (or more than trivial) influence on the mind of the decision maker. The influence can be conscious or unconscious. It need not be the main or sole reason, but must have a significant (i.e. not trivial) influence and so amount to an effective reason for the cause of the treatment.

122. In many direct discrimination cases, it is appropriate for a tribunal to consider, first, whether the Claimant received less favourable treatment than the appropriate comparator and then, secondly, whether the less favourable treatment was because of the protected characteristic. However, in some cases, for example where there is only a hypothetical comparator, these questions cannot be answered without first considering the 'reason why' the Claimant was treated as she/he was.

123. Section 136 of the Equality Act sets out the relevant burden of proof that must be applied. A two-stage process is followed. Initially it is for the Claimant to prove, on the balance of probabilities, primary facts from which we could conclude, in the absence of an adequate explanation from the Respondent, that the Respondent committed an act of unlawful discrimination.

124. At the second stage, discrimination is presumed to have occurred, unless the Respondent can show otherwise. The standard of proof is again on the balance of probabilities. In order to discharge that burden of proof, the Respondent must adduce cogent evidence that the treatment was in no sense whatsoever because of the Claimant's race. The Respondent does not have to show that its conduct was reasonable or sensible for this purpose, merely that its explanation for acting the way that it did was non-discriminatory.

125. Guidelines on the burden of proof were set out by the Court of Appeal in **Igen Ltd v Wong [2005] EWCA Civ 142; [2005] IRLR 258** and we have followed those as well as the direction of the court of appeal in **Madarassy v Nomura International plc [2007] IRLR 246, CA**. The decision of the Court of Appeal in **Efobi v Royal Mail Group Ltd [2019] ICR 750** confirms the guidance in these cases applies under the Equality Act 2010.

126. The Court of Appeal in Madarassy, states:

> *'The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal 'could conclude' that on the*

balance of probabilities, the Respondent had committed an unlawful act of discrimination.' (56)

127. It may be appropriate on occasion, for the tribunal to take into account the Respondent's explanation for the alleged discrimination in determining whether the Claimant has established a prima facie case so as to shift the burden of proof. (**Laing v Manchester City Council and others [2006] IRLR 748; Madarassy**) It may also be appropriate for the tribunal to go straight to the second stage, where for example the Respondent assert that it has a non-discriminatory explanation for the alleged discrimination. A Claimant is not prejudiced by such an approach since it effectively assumes in his/her favour that the burden at the first stage has been discharged (**Efobi v Royal Mail Group Ltd [2019] ICR 750,** para 13).

128. In addition, there may be times, as noted in the cases of **Hewage v GHB [2012] ICR 1054** and **Martin v Devonshires Solicitors [2011] ICR 352**, where we are in a position to make positive findings on the evidence one way or the other and the burden of proof provisions are not particularly helpful. When we adopt such an approach, it is important that we remind ourselves not to fall into the error of looking only for the principal reason for the treatment, but instead ensure we properly analyse whether discrimination was to any extent an effective cause of the reason for the treatment.

129. Allegations of discrimination should be looked at as a whole and not simply on the basis of a fragmented approach **Qureshi v London Borough of Newham [1991] IRLR 264, EAT**. We must "see both the wood and the trees": **Fraser v University of Leicester UKEAT/0155/13** at paragraph 79. Our focus "must at all times be the question whether or not they can properly and fairly infer… discrimination.": **Laing v Manchester City Council, EAT at paragraph 75**.

ANALYSIS AND CONCLUSIONS

Direct race discrimination (Equality Act 2010 section 13)

130. The Claimant describes himself as black and complained of three matters which he said amounted to direct race discrimination (i) removal of the LSP (ii) a requirement that he remain on site during the lunch period and (iii) limitation of the activities the Claimant was entitled to undertake during his lunch break, in particular use of his iPad.

131. The first allegation of race discrimination fails on the facts. The LSP was not removed from the Claimant and continued to be paid to him.

132. We accept the Respondent's submissions that the Claimant advanced no evidence that he had been subjected to the direct race discrimination that he alleged.

133. The Claimant accepted in cross examination that the requirement to stay in the Pharmacy at lunch (by virtue of the LSP) and the restrictions on what he could do in his lunch break had nothing to do his race. The Claimant also agreed that the payment of the LSP had nothing to do with his race and originated from an earlier

agreement negotiated with DTP. The Claimant accepted that it was a mutual and friendly arrangement and that he had not himself sought to change it.

134. The LSP also did not give rise to less favourable treatment as regards the requirement that he remain on site. That was why he was being paid the supplement. The Claimant's comparators did not serve his argument when he referred to Pharmacies at Coleford and Clements. They were not valid comparators because they did not receive the LSP and had a wholly unpaid lunch. We are satisfied that there is no evidence that staff at those Pharmacies, had they been of a different race and also received the LSP, would not have been required to stay at the pharmacy (we find that they would as a condition of receiving the LSP).

135. As regards what the Claimant was permitted to do during his lunch break, we again are satisfied that there is no evidence that there was any link to the Claimant's race. We accept the Respondent's submission that, to the extent that Mr Bunn suggested that the Claimant should not be tutoring his daughter in breaks, then he would have taken that view with anyone who was being paid the LSP and there is no evidence that the Claimant was treated less favourably than a living or hypothetical comparator who did not share his race.

Unfair dismissal

136. We have taken care specifically to remind ourselves that:

136.1 the question is whether dismissal was within the band of reasonable responses open to a reasonable employer. It is not for us to substitute our own decision for that of the disciplinary and appeal decision makers.

136.2 The range of reasonable responses test applies to all of the procedural and substantive aspects of the decision to dismiss.

136.3 When considering the question of the employer's reasonableness, we must take into account the disciplinary process as a whole, including the appeal stage.

136.4 We must focus on what information and circumstances were present and in the mind of the dismissal and appeal managers at the time they made their decisions.

136.5 The question is not whether there was something else which the respondent ought to have done but whether what it did was reasonable.

Dismissal and potentially fair reason?

137. It is of course not disputed that the Respondent dismissed the Claimant. We accept the Respondent's evidence that it dismissed the Claimant for the potentially fair reason of 'conduct'. This is plain from the disciplinary process that was carried out and there is nothing to suggest that the grounds for dismissal, namely:

Putting patient safety at risk

> *Bullying employees and colleagues under his line management. This led to a number of former employees leaving the Company*
>
> *Gross insubordination by way of unreasonable disrespect towards the Respondent by continuously **n**eglecting his duties as a Pharmacy Manager by doing things such as watching Netflix, listening to music, tutoring his daughter during working hours and doing other non-work related activities*

were not the true reason for the Claimant's dismissal.

138. We do not consider that Mrs Caravona decided to dismiss the Claimant for some other reason or because, as the Claimant suggested, he was not providing enough advanced services in the Pharmacy and so got staff to concoct their evidence. There is no evidence to suggest that.

Genuine belief

139. We accept that Ms Shazad and Mr Bunn genuinely believed that the Claimant had neglected his duties by spending time on non-work related activities and had therefore put patient safety at risk because they genuinely believed that he was not monitoring closely enough what was happening in the Pharmacy. We also accept that they genuinely believed that the Claimant's conduct towards his colleagues amounted to bullying. There was no suggestion that their belief was not genuine, the complaint of unfair dismissal turns not on that but on the other questions which we address below, including the reasonableness of their genuine belief and the sanction which they imposed.

Belief held on reasonable grounds and following as reasonable an investigation as was warranted in the circumstances?

140. We have kept in mind that the relevant questions are not "*How would we have responded to the issues raised by staff? How would we have investigated the allegations? What did the Respondent not do that it could have done?*". The question is "*was what the Respondent did within the band of reasonable responses?*".

141. We have concluded that the Respondent's investigation and disciplinary process was not within the band of reasonable responses taking into account that the Respondent is a large employer, operating a large number of Pharmacies and has the benefit of a dedicated HR team. The following points are central to this conclusion but we also address the individual allegations below:

    141.1 The allegations made against the Claimant were serious and it is clear from the outset that the Respondent anticipated that the Claimant might be dismissed. However, the Respondent's investigation was not sufficiently thorough to fall within the band of reasonableness.

    141.2 The Respondent did not conduct an investigation interview with the Claimant and did not consider properly testing his responses with the staff members who made the allegations against him. In the circumstances we conclude that only an investigation that did this could have fallen within the band of reasonableness. This was important given the imprecise nature of

the allegations made against the Claimant (e.g. with respect to the amount of time and when they said he was doing non-work related activities and the nature of the alleged "bullying") and given that it was clear that they were speaking to each other about the Claimant and their complaints against him.

141.3 There was insufficient questioning of the staff making the allegations on the responses given by the Claimant at the disciplinary hearing and that, coupled with the fact that there was no adequate investigation meeting with the Claimant, leads us to conclude that the Respondent did not keep an open mind and look for evidence which supported his response to the allegations as well as the evidence against. The Respondent was satisfied that there were seven members of staff making allegations against the Claimant who said broadly similar things. The Respondent did not adequately balance what the staff accused the Claimant of with what the Claimant said in reply. This might ordinarily have been captured in an investigation report or summary, but Mrs Caravona did not prepare such a document.

<u>Gross insubordination by way of unreasonable disrespect towards the Respondent by continuously neglecting his duties as a Pharmacy Manager by doing things such as watching Netflix, listening to music, tutoring his daughter during working hours and doing other non-work related activities</u>

142. The categorisation of this allegation as one of "*gross insubordination*" and "*unreasonable disrespect to the Respondent*" was unusual and on the balance of probabilities we conclude that it reflected the Respondent's keenness to anchor the allegation in the categories of gross misconduct set out in the Respondent's disciplinary policy (which are in any event not exhaustive). Insubordination would more properly fit a situation where an employee had been told by their employer directly to do or not do something and where the employee had then gone on directly to disobey the employer's instruction. That sort of conduct might also more properly be described as disrespectful.

143. In this claim the essence of the allegation was clearly that the Claimant had continuously neglected his duties as a Pharmacy Manager by doing things such as watching Netflix, listening to music, tutoring his daughter during working hours and doing other non-work related activities. It was clarified at the Tribunal hearing that the refence to '*other non-work related activities*' essentially referred to the allegation that Claimant spoke to family members on the phone during work hours.

144. Given the number of staff members who said that the Claimant was doing non-work related activities during the Pharmacy's opening hours and given that the Claimant accepted that he did do some of the things alleged during those hours we find that the Respondent did reach a reasonable conclusion that the Claimant was spending some time doing non-work activities in Pharmacy opening hours. We find that it was reasonable to conclude that the Claimant also watched Netflix or other videos at work given the number of staff members that commented on this. However, the Respondent did not have a reasonable basis for concluding that these non-work related activities amounted to the Claimant <u>continuously neglecting his duties as a Pharmacy Manager</u>. We note also that

the Claimant was not given the opportunity to comment on the evidence that Mr Bunn obtained after the appeal hearing.

145. In re-examination Ms Shazad was asked if she could quantify the amount of time that the Claimant was spending on non-work related activities in an average day. Ms Shazad replied that she believed he was doing it whenever he could get the chance and that if it was getting quieter he would jump to the back for a quick 5 minutes. She said the Claimant was not telling staff he was on a break and it was a big distraction. This response captured the lack of precision in this allegation and the evidence that related to it as to:

145.1 the amount of time it was said that the Claimant was spending on each of these activities;

145.2 at what time of the day he did it;

145.3 the length of time this had been going on for.

146. It would of course not have been reasonable or practicable for the Respondent to have forensically catalogued each occasion on which the Claimant did something not related to his work while at the Pharmacy or to have co-opted the staff at the Pharmacy into making records of what the Claimant was doing and when over a particular period of time.

147. However, the level of evidence that the Respondent did have, taking into account its size and resources and the seriousness of the allegation was not, taking into account the band of reasonableness, sufficient in the circumstances for the Respondent to rely on in upholding this allegation against the Claimant.

148. Neither the Claimant nor Ms Shazad had any information about the times of day when the photos were taken. In any event the photos of course show only a snapshot of time and they show times when the Claimant was away from his ipad. The Respondent did not investigate the locking time on the ipad or whether there was a locking time at all. With respect to the text on one of the photos referring to the Claimant having spent 4 hours on his daughter's work, Mrs Caravona said that she interviewed all of the staff members on that four hour allegation. However, there is no evidence of her having done so in the statements produced.

149. It was incumbent on the Respondent to have sought more precise information from the staff at the Pharmacy and for the Claimant's response to their assertions to have been tested with them to a degree. It would have been reasonable for them to have asked staff:

149.1 To be more precise about when they saw the Claimant do what and for how long he did it;

149.2 Whether it might have been the case that the Claimant had been doing Pharmacy work on his ipad and had left it unlocked on a personal screen so as not to breach colleagues' privacy;

150. The Claimant clearly had to take his breaks throughout the day and did not have the opportunity to have a formal lunch break. It was therefore not practicable (or necessary because he could be interrupted) for him to signpost to staff if he was having a break. However, the staff making the allegations were not asked whether it could be possible that he was doing the non-work related activities during a break or whether/how they concluded (if they did) that the time he spent on non-work activities was routinely more than one hour a day in total (i.e. exceeded the period that the Claimant was allowed for a lunch break – time during which he needed to stay in the pharmacy and able to be interrupted if there was something urgent).

151. There was no questioning of either the witnesses or the Claimant on the times of day on which the photos of the ipad were taken. As we have explained, it only came out by chance at the appeal hearing that Mr Bunn had photos with times on them and again this was not properly explored with the Claimant.

152. Given the imprecision in the investigation and talking into account Ms Shazad's evidence in re-examination, we do not consider that the Respondent reached a reasonable conclusion or sufficiently investigated the amount of time that the Claimant was said to be spending on these things. They did not have a reasonable basis for concluding that he was routinely spending more than an hour a day on non-work related activities such that he was spending more time than he had for breaks. We therefore find that the Respondent did not reasonably conclude that he was guilty of gross insubordination, unreasonable disrespect for the Respondent or continuously neglecting his duties as alleged.

<u>Putting patient safety at risk</u>

153. As we have explained, notwithstanding the references to issues in respect of controlled drugs (which were never properly put to the Claimant as allegations) it is clear that the Respondent deemed that a patient safety issue arose because of the amount of time that they found that he was spending on non-work related activities. The Respondent considered that this meant that the Claimant was not sufficiently aware of what was happening in the pharmacy in order to meet his responsibilities as responsible pharmacist. We conclude that the Respondent did not have a reasonable basis for finding that the Claimant was guilty of this misconduct because:

    153.1 As we have explained, the Respondent did not have a reasonable basis for concluding, and was not clear on the amount of time that the Claimant was spending on non-work related activities;

    153.2 In any event, even if the Claimant was doing work related activities (particularly seeing a patient in the consultation room) then he could not conceivably have been aware of everything that was happening in the Pharmacy at all times;

    153.3 The Pharmacy had recently been subject to an audit, which considered patient safety and which it passed at 94%;

    153.4 In any event, there was no evidence that if something urgent came up or a decision involving risk arose, that he could not be interrupted.

153.5 It was not part of the Respondent's case on patient safety that staff were afraid to interrupt him with a work related issue.

154. We note that Ms Shazad's witness statement at paragraph 27 suggests that she put particular importance on the patient safety allegation. She said there "*27. I didn't think a lesser sanction was appropriate here. Due to the strength of the evidence and the nature of the allegations, there had been a breakdown in trust and confidence and therefore no alternative sanction would be appropriate. In my experience oversights due to distractions during dispensing can cause patient harm and a risk to patient safety.*".

<u>Bullying employees and colleagues under his line management. This led to a number of former employees leaving the Company</u>

155. It would have been reasonable for the Respondent to conclude on the evidence that the Claimant was responsible for the following:

155.1 The significant problem with morale and the atmosphere in the Pharmacy. The reasons for that were two fold:

155.1.1 The Pharmacy was often short staffed. Staff members blamed the Claimant for the short staffing because he dismissed new starters on who he did not think would go on to become ACT's.

155.1.2 The Claimant had a robust management style, particularly with respect to new starters, did not like to be challenged and was often 'off-hand' with staff.

155.2 Dismissing new employees in their probation period if he felt that they did not have the motivation or capability to progress to gain the ACT qualification. Mrs Caravona knew that this was his approach to staffing the Pharmacy. This was the reason for staff leaving coupled also with the atmosphere in the Pharmacy.

155.3 Testing new employees, including by setting them questions, to assess whether they would be able and prepared to put the work in to progress to achieve the ACT qualification. He did this in the pharmacy while other colleagues were present but not with the purpose of humiliating them in front of others. BH (a Polish qualified pharmacist) and LH had clearly in particular been unhappy about this. BH, most likely because of her own professional standing, had not been happy about it, but had not formally complained about the Claimant before she left.

155.4 Challenging staff (including those longer serving dispensers who complained about their pay) to put the effort in to take the ACT qualification and point them to those other members of staff who had made that progress (by way of comparison but not so as to seek to humiliate anyone).

155.5 Engaging in banter with DL. DL and the Claimant each 'gave as good as they got' and DL did not take offence. We find that DL's evidence was

inconsistent and her comment that the Claimant was 'awful' to her was not a balanced representation of the nature of their relationship. As we have said, the Claimant's response to the disciplinary allegations included earlier WhatsApp messages exchanged between DL and the Claimant which showed a much warmer relationship than DL portrayed [146]. The Claimant should of course have sought to recalibrate their relationship and put it on a more professional footing and that should have included making clear that, even if he did not find her racist jokes offensive, others might and she must stop. This would also have prevented others in the team having the perception of the Claimant and DL's relationship being worse than the Claimant and DL themselves perceived it to be. However, he did not bully DL and VP, who was also about to leave at the time, said that her personal relationship with the Claimant was ok.

156. There is a suggestion that there had been previous complaints about the Claimant [HB254] and that staff had felt unable/intimidated into not complaining about him. However, this was not relied upon by the Respondent.

157. There was also a suggestion that the Claimant had ignored a colleague but the details of this were not clear and the Claimant denied it and pointed out that it would be impractical in that working environment to ignore someone.

158. We consider that, at most, the Respondent could have concluded that the Claimant had poor management and customer handling skills and needed to foster a more inclusive and less challenging working environment and one in which he was more approachable. Clearly there were things that needed to be addressed in the workplace but it did not amount to bullying. We do not consider that the Respondent had a reasonable basis for forming the view that the Claimant bullied staff or that he was guilty of gross misconduct in this regard.

159. For these reasons we conclude that the Claimant's dismissal was substantively unfair.

Was the decision to dismiss a fair sanction, that is, was it within the range of reasonable responses open to a reasonable employer when faced with these facts?

160. We remind ourselves that the Claimant had 19 years of service with the Respondent.

161. As the Respondent did not have a reasonable basis on which to conclude that the allegations it had put to the Claimant were substantiated, we conclude that the decision to dismiss was not a fair sanction, it was not within the range of reasonable responses open to a reasonable employer.

162. Given what we have found that the Respondent could reasonably have concluded, we consider that the most severe sanction that a reasonable employer could have imposed in the circumstances was a final written warning coupled, perhaps, with (i) coaching on his management style (ii) mediation with his staff members (and failing that consideration of moving the Claimant to another branch (which Ms Shazad referred to in her outcome letter [161])) (iii) clear guidelines on the expectations on the Claimant with regard to breaks and the interplay with the LSP.

163. There was no explanation from Ms Shazad as to why a final written warning and coaching, coupled with mediation might not have worked. This was not something that was raised with the staff members or the Claimant.

164. Further, Ms Shazad gave no explanation of why a warning and move to an alternative branch (neither of which were discussed with the Claimant) would not have achieved the required change in the Claimant's behaviours. Ms Shazad did not have a reasonable basis for reaching her conclusions in this regard (see our quote of paragraph 27 of her witness statement above).

Did the Respondent adopt a fair procedure?

165. The procedure adopted by the Respondent was not in the band of reasonable responses of a reasonable employer in these circumstances (the Claimant being a long serving employee and the Respondent being a substantial undertaking with a professional HR department). In particular:

165.1 The investigation by Mrs Caravona was flawed because she did not adequately interview the Claimant and then test his responses with staff members making the allegations. The Claimant was suspended at the outset of the meeting. There was no structure to the meeting and it does not appear that Mrs Caravona took stock of the complaints being made in order to question the Claimant on them in an organised way. This was not a proper investigation meeting it was a suspension meeting and no further investigation of the Claimant's views took place before the disciplinary hearing was held.

165.2 The information Mrs Caravona obtained in the investigation was insufficiently precise to support the allegations that were then put to the Claimant (for example with respect to the evidence of when and for how long he was said to have been engaged in non-work related activities).

165.3 Mrs Caravona made clear in evidence that, in reaching her conclusions as an investigator, she had relied upon and trusted JB and what JB had seen on 19 September 2023. She also referred to having been sent video footage by JB. That video footage did not form part of the investigation or disciplinary process. Mrs Caravona did not formally interview or document her discussions with JB. However, it is clear that Ms Shazad then also spoke with Mrs Caravona. That meeting or call was also not documented.

165.4 VP's more balanced email of 20 September 2023 [254] was not provided to the Claimant or to Ms Shazad.

165.5 Mr Bunn had photographic evidence at the appeal hearing (including photographs with meta data showing the time of the picture) which had not been shared with the Claimant and was only shown to the Claimant on a phone in the appeal hearing. Mr Bunn then went on to interview witnesses himself but did not then give the Claimant the opportunity to comment on what those witnesses said before reaching his decision. That evidence could not therefore be safely said to have rectified earlier procedural unfairness.

If it did not use a fair procedure, would the Claimant have been fairly dismissed in any event and/or to what extent and when?

166. We have not addressed this question because we have found that the Claimant's dismissal was substantively unfair and we do not consider that there is a basis for concluding that, had a fair process been followed, then the Claimant might have been fairly dismissed.

167. We are not in a position to suppose what might have reasonably have been found, had the Claimant had the opportunity to comment at the appeal hearing stage on the evidence that Mr Bunn went on to gather, because Mr Bunn did not give the Claimant the opportunity to comment on it before reaching his decision on the appeal.

If the dismissal was unfair, did the Claimant contribute to the dismissal by culpable conduct? This requires the Respondent to prove, on the balance of probabilities, that the claimant actually committed the misconduct alleged.

168. For the reasons we have explained, we consider that there is insufficient evidence on which to base a finding that the Claimant contributed to his dismissal by culpable conduct based on (i) the non-work related activities that he was undertaking at work and/or (ii) jeopardising patient safety.

169. However, also for the reasons we have set out, we consider that the Claimant did contribute to there being a bad atmosphere and discontent at the branch and that this was culpable conduct (albeit not conduct warranting summary dismissal). As we have explained, there was clearly a material degree of discontent at the Claimant's management style and approach and we assess that it would be just and equitable to make a consequent reduction to the basic and compensatory awards of 25%.

_____

Employment Judge Woodhead

14 July 2025

Sent to the parties on

17 July 2025 By Mr J McCormick

For the Tribunals Office

Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

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

Appendix

AGREED LIST OF ISSUES

The claims

55. By a claim form presented on 26th December 2023 the Claimant brought the following complaints;
(a) Unfair dismissal;
(b) Discrimination on the grounds of race;

The Issues

56. The Claimant was employed by the Respondent between 1st April 2004 and 30th October 2023, latterly as a Pharmacy Manager.

Direct Race Discrimination (s13 Equality Act 2010)

57. The claimant identifies as black.

58. Less Favourable Treatment - He contends that, prior to his suspension in September 2023, he had agreed a monthly pay supplement of £204.95 for lunchtime supervision, which allowed the pharmacy to remain open. The respondent:

a) Removed the pay supplement; but
b) Required him to remain on site during the lunch period; and
c) Limited the activities he was entitled to undertake during his lunch break, in particular use of his iPad.

59. Comparator -The claimant has not identified a specific comparator (as there was no other Pharmacy Manager) but contends that he is the only black employee and is not aware of any white employee having any limitation placed on their ability to leave the premises or what they were permitted to do during their lunchbreak.

60. The respondent asserts that the claimant has mischaracterised this. They assert that it is standard industry practice for the Responsible Pharmacist to be available on site during lunch hours. The complaint about the use of his iPad and or contacting his daughter were general requirements and not confined to lunchtime.. Neither requirement was imposed on him due to his race.

Unfair Dismissal

61. The respondent contends that the claimant was dismissed for misconduct (which is a potentially fair reason for dismissal (s98(2) ERA 1996)); and that the dismissal was procedurally and substantively fair. The allegations were:

a) Putting patient safety a risk;
b) Bullying employees and colleagues;
c) Gross Insubordination - in the neglect of his duties and watching streaming services, listening to music, tutoring his daughter and other non-work related activities.

62. The claimant contends that his dismissal was unfair in that:

i) The respondent could not reasonably have concluded that he was guilty of any of the allegations of misconduct;
ii) The investigation was not a neutral enquiry into the allegations, but involved collusion between the investigator and witnesses to create and/or exaggerate evidence.

63. The Judge discussed the issues with the parties and recorded that the matters between the parties which will fall to be determined by the Tribunal are as follows;

1. Unfair dismissal

1.1 Was the Claimant dismissed? (This is not in dispute – see above)

1.2 What was the reason for dismissal? The Respondent asserts that it was a reason related to conduct which is a potentially fair reason for dismissal under s. 98 (2) of the Employment Rights Act 1996.

1.3 Did the Respondent hold a genuine belief in the Claimant's misconduct on reasonable grounds and following as reasonable an investigation as was warranted in the circumstances? The burden of proof is neutral here but it helps to know the Claimant's challenges to the fairness of the dismissal in advance and they are identified as follows;

1.3.1 – See above. [62. i. and ii.]

2. Direct race discrimination (Equality Act 2010 section 13)

2.1 The Claimant describes himself as black.

2.2 Did the Respondent do the following things:

2.2.1 (See above); [58 a. b. & c.]

2.3 Was that less favourable treatment? The Tribunal will have to decide whether the Claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and those of the Claimant. If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether s/he was treated worse than someone else would have been treated. The

Claimant has not named anyone in particular who he says was treated better than he was and therefore relies upon a hypothetical comparator (and see above).

2.4 Is the Respondent able to prove a reason for the treatment occurred for a non-discriminatory reason not connected to race?

3. Remedy

Unfair dismissal

3.1 What basic award is payable to the Claimant, if any?

3.2 Would it be just and equitable to reduce the basic award because of any conduct of the Claimant before the dismissal? If so, to what extent?

Discrimination or victimisation

3.3 Should the Tribunal make a recommendation that the Respondent take steps to reduce any adverse effect on the Claimant? What should it recommend?

3.4 What injury to feelings has the discrimination caused the Claimant and how much compensation should be awarded for that?

3.5 Should interest be awarded? How much?