Case Number: 3311138/2023

EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr Z Lajimi	**v**	**Travelodge Hotels Limited**

Heard at: Reading Employment Tribunal

On: 28 April 2025 to 1 May 2025 (face to face), 2 May 2025 (remotely by C.V.P.) and 14 May 2025 (tribunal discussion in chambers remotely by C.V.P.)

Before: Employment Judge George
Members: Ms A Crosby and Ms H Edwards

Appearances

For the Claimant: self representing
For the Respondent: Mr S Profitt, counsel

RESERVED JUDGMENT

1. The claimant was unfairly dismissed.

2. The complaint of automatic unfair dismissal for the principal reason of protected disclosures is dismissed on withdrawal.

3. The complaint of direct discrimination on grounds of association with a disabled person is not well founded and is dismissed.

4. The complaint of direct sex discrimination is not well founded and is dismissed.

5. The complaint of direct age discrimination is not well founded and is dismissed.

6. The complaint of direct race discrimination is not well founded and is dismissed.

7. The complaint of detriment on grounds of dependants leave is not well founded and is dismissed.

8. 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 20 %.

9. 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.

10. All other remedy issues will be considered at a remedy hearing **on 8 September 2025**. The hearing will be before Employment Judge George, Ms Crosby and Ms Edwards, **by C.V.P.** with a time estimate of **1 day**.

11. No later than **seven days after this judgment is sent to the parties** the claimant shall send to the tribunal and the respondent an updated schedule of loss setting out his revised calculation of compensation for unfair dismissal.

12. No later than **22 August 2025** the respondent shall send to the claimant and the tribunal a counter schedule of loss setting out their legal and factual case on the remaining remedy issues (List of Issues 2.1.1 to 2.1.8 and 2.1.11).

13. No later than **1 September 2025** the parties are to send to each other:

    a. any documents they intend to refer to at the remedy hearing which are not already in the hearing file or supplementary hearing file and

    b. statements of the evidence to be given by the claimant and any other witnesses.

14. The respondent is to prepare a remedy hearing file of those documents and send an electronic copy to the claimant and the tribunal no lager than **5 September 2025.**

REASONS

1. Following a period of conciliation between 19 July 2023 and 30 August 2023, the claimant presented a claim form on 22 September 2023. The respondent defended the claim by a grounds of response accepted on 17 December 2023. The claim arises out of his employment by the respondent company which runs a chain of hotels, latterly as a Hotel Manager, between 10 March 2028 and 5 July 2023.

2. In this hearing we had the benefit of a joint hearing file of documents with pages numbered from 1 to 847 and page numbers in these reasons refer to that file. A replacement for page 317 was provided separately; the page showed a WhatsApp message and the replacement showed a more complete exchange including the date so that the relevant message could be dated as having been sent at 18:49 on 18 February 2023.

3. There had been an exchange of correspondence between the parties on 7 & 8 April 2025 about additional documents which the claimant wished to refer to at the hearing. The respondent's solicitor did not agree that additional disclosure should be added to the agreed final bundle and suggested that the claimant prepare a supplementary bundle of the documents he wished to add so that he could raise it with the tribunal on Day 1. The proposed additional documents were discussed between the parties and the respondent took a pragmatic approach for which the tribunal was grateful. On Day 2, a supplementary hearing file of 74 pages (SB page 1 to 74) was put before the tribunal by consent. Although the respondent argued that the documents were not relevant, they thought in the circumstances it was better to reserve objections to the point when questions were asked on a particular document. In the event, only a small number of pages were referred to.

4. During the claimant's oral evidence it emerged that he wanted the tribunal to view certain video footage. The tribunal had not previously been supplied with or asked to view the video footage. They had been shared with the respondent who did not object to the tribunal viewing the footage. The claimant asked that short videos he had recorded on his mobile phone of CCTV footage being played on a computer in the hotel be played to the Tribunal. The videos and a still image taken from one were admitted in evidence on Day 3. Ms Muscott was asked questions about them.

5. In the end, we heard oral evidence from six witnesses: the claimant gave evidence in support of his claim and the respondent called

    a. Marie Muscott – London East Area Operations Manager. At the relevant time the claimant reported to her as District Manager for London East;

    b. Ryan Alcock – London West Area Operations Manager (which we understand to be the present title for what were formerly District Managers),

    c. James Burleigh-Carson – Area Operations Manager who conducted the disciplinary hearing;

    d. Samantha Sheffield – People Business Partner; and

    e. Alan Harfield – Regional Maintenance Manager who chaired the disciplinary appeal hearing.

6. The claimant withdrew the complaint of automatic unfair dismissal on Day 4. The respondent had served a witness statement on behalf of Katherine Gourley but because of that withdrawal it was not necessary for them to rely upon her

evidence and they did not call her. We refer to those witnesses, and other individuals who are relevant to the narrative, by their initials in these reasons and mean no disrespect by that.

7. Mr Profitt provided written final submissions and those are referred to as RSUB in these reasons. Mr Lajimi likewise prepared closing submissions in writing and those are referred to in these reasons as CSUB. The parties exchanged these by 9.30 am on Day 5 and the hearing started at 10.30 am to allow the tribunal and the parties to read them before oral submissions. Mr Lajimi did not read the submissions in advance because he found it too upsetting to do so but confirmed that he was content to make his submissions nevertheless. The tribunal was especially careful to ensure that he had had the opportunity to respond to the arguments given that he had chosen not to read the written submissions in advance.

8. The claimant has a son who is autistic and non-verbal. His needs are complex and had been described as requiring constant supervision. The claimant brought his son with him to the tribunal on Day 1 because, he explained, he had had to keep his son away from school for the duration of the hearing as the travel time to Reading to attend the face to face hearing meant that he was unable also to do the school run.

9. We started by closing the hearing to the public so that we could discuss how it was practicable to conduct the hearing over the five day time allocation in those circumstances. Since the medical needs of a minor were to be discussed during that case management, we closed the hearing to the public lest personal matters concerning the son be aired opening (and therefore his right to respect for private life be at risk of infringement).

10. Most of Day 1 would, in any event, have been a reading day. It quickly became apparent that the claimant's son would be a sufficient distraction in the tribunal hearing that it was fair to no one for him to remain in the hearing room while the tribunal was in session. Furthermore, although the claimant suggested that his son stay in the waiting room on his own while he himself was in the hearing, some of the available details about his condition suggested that this posed a risk of harm to the son.

11. After exploring the practicalities and the alternative childcare options available the tribunal agreed that the claimant's childcare obligations would be accommodated by using the remainder of Day 1 for reading in the absence of the parties (so that the claimant and his son could leave). Then on Day 2 & Day 4 the claimant's wife was able to care for their son and the tribunal could sit for a comparatively long day on those days. Mr Profitt was confident that he could conclude the claimant's cross-examination on Day 2 in less time than had originally been timetabled. On Day 3 we would start the hearing so soon as the claimant was able to attend after taking his son to school; the latter had an afterschool club so we would need to finish promptly at 16.00 to enable Mr Lajimi to get back to collect his son.

12. The original intention was for evidence and submissions to be concluded by the end of Day 4 leaving a full day for tribunal discussions. The respondent called 5

witnesses (even without the need to call KG) which made that aspiration a challenging one although, based on the number of questions Mr Lajimi had prepared for each witness not an impossible one. In the event, evidence was concluded by the end of Day 4 and submissions were delivered on Day 5. To accommodate the claimant's childcare responsibilities, this was conducted by C.V.P. with the non-legal members sitting remotely.

13. The changes to the timetable explained above meant that it was not possible to deliver a reasoned decision in the time available. We reserved our judgment and listed a provisional remedy hearing. In fact the tribunal needed to meet for an additional discussion day.

14. The tribunal was required to make a decision at the start of Day 2 on one disputed matter. The respondent had a WhatsApp group for the witnesses during the hearing and Mr Profitt, quite properly, disclosed the existence of it. He did so to reassure the tribunal and the claimant that it was there to allow his lay clients to pass direct to his laptop (which he was using in the hearing room) messages which in earlier times might have been passed using pieces of paper. He undertook that, when witnesses were in the middle of their evidence having given their oath or affirmation, they would be removed from the WhatsApp group.

15. Although it was understandable that the claimant, who was as a litigant in person unfamiliar with typical tribunal proceedings, should be unnerved by this, we decided that it was necessary for the respondent to be able to do this to allow instructions to be taken smoothly and efficiently. We explained to the claimant that as independent counsel, Mr Profitt has a duty not to mislead the tribunal and we had confidence that we could trust that he would remove the witnesses as promised so that they would not be involved in discussions about the case during their evidence. Each time a witness started to give evidence, Mr Profitt confirmed they had been removed and the usual witness warnings were given during any breaks.

The Issues

16. The claim had been case managed by Employment Judge Shields on 13 May 2024 who allowed an application to amend the claim. She set out a List of Complaints and Issues (page 92 and following).

17. This was discussed on Day 1. It was apparent from the List of Issues itself that some of the specific allegations of discrimination and detriment on grounds of dependants leave were said to have taken place more than three months before the claimant contacted ACAS. Therefore, depending upon our findings and conclusions, we might need to consider whether particular complaints had been presented within the relevant statutory time limits. This was added as an issue which needed to be covered in evidence and submissions. The dismissal based complaints were in time and therefore, given the conclusions we have reached on the other issues, there was no need for us to decide whether the discrimination or detriment complaints had been presented in time.

18. The claimant withdrew his complaint of automatic unfair dismissal on grounds of protected disclosure on Day 4 and therefore we did not need to consider the issues in section 3 of the list of issues.

19. Other amendments to the list of issues were:

    a. The respondent accepted that the claimant's son was disabled within the meaning of s.6 EQA and that they had known that at all times relevant for the direct associative disability discrimination complaint. We did not need to consider section 4 of the list of issues.

    b. The claimant accepted that the individuals relied on as comparators were not in materially the same situation as him and therefore he relied on hypothetical comparator in respect of all discrimination complaints. He did refer to some of the named individuals as relevant for the question of how the hypothetical comparator would have been treated.

    c. The respondent defended the age discrimination complaint on the grounds that there was a non-discriminatory reason shown for any acts proven to have occurred. They did not argue that any act of less favourable treatment on grounds of age was a proportionate means of achieving a legitimate aim and we did not need to consider paragraphs 7.5 and 7.6 of the List of Issues.

20. Through oversight, there was no discussion at the outset of the final hearing about whether issues relating to Polkey and conduct should be decided within the initial conclusions. This was discussed before the closing submissions and both parties expressed themselves ready and prepared to deal with the question of whether there should be a deduction for conduct (List of Issues 2.1.9 and 2.1.10). This was agreed upon and we set out our conclusions on those issues below.

21. However, the question of whether there should be a deduction from compensation for the prospect that there would have been a fair and non-discriminatory dismissal in any event, or an uplift or reduction for breach of an applicable ACAS code were left to be the subject of further argument at a remedy hearing, if any.

22. In order that this judgment should not be unnecessarily long, we do not repeat the List of Issues which was the same as that at page 95 subject to the above amendments.

Findings of Fact

23. We make our findings of fact on the balance of probabilities taking into account all of the evidence, both documentary and oral, which was admitted at the hearing. We do not set out in this judgement all of the evidence which we heard but only our principal findings of fact, those necessary to enable us to reach conclusions on the remaining issues. Where it was necessary to resolve conflicting factual accounts we have done so by making a judgment about the credibility or otherwise of the witnesses we have heard based upon their overall

consistency and the consistency of accounts given on different occasions when set against contemporaneous documents where they exist.

24. 0n 8 February 2023 Kozan Yilmaz (KY) emailed complaints about the claimant to MM (page 221). KY was an assistant hotel manager who was on probation. His probationary period had been extended on 23 January 2023 by the claimant who had entered details on KY's record expressing concerns about the latter's performance. In doing so, the claimant went through the correct process to address his concerns. The probation had been extended until 7 May.

25. In summary, the complaints raised on 8 February concerned alleged abuse by the claimant, and an unsupportive and unhelpful approach to KY's training. MM considered this to be very serious as she summarises in para.32 of her statement. The allegations included that the claimant had falsely accused KY of performance issues but also behaviour by the claimant which, if true, would be completely unacceptable in a hotel manager.

26. One of the allegations was that he had said to a female member of staff that "you're a woman, you should know how to clean" (see page 221). Another (page 222) was that KY had been unreasonably criticised for lateness when "he on the other hand comes to work hours late all the time and leaves hours early often." At the top of page 223 KY recorded "He has removed Crystal from her supervisor role without telling her."

27. It was reasonable, when she received a complaint of that nature, that MM should investigate it. When a manager receives an email such as the original complaint by KY it is unarguable but that the manager or supervisor has to treat it seriously and look into it. It was right and proper for her to respond immediately and to put the other things to one side. MM explains that, in those circumstances, she decided it was not right to carry out the claimant's appraisal which was due to be conducted on 9 February. Again, we think that was the right and proper course of action. She had, as Mr Profitt argued, just received a complaint of potentially serious conduct concerning, among other things, how he dealt with his staff which is one of the matters she had to assess in the appraisal. She had only been his manager for a short time and entirely reasonably and, we accept, genuinely wanted to consider the allegations before conducting the appraisal.

28. KY was dismissed by the claimant on grounds that he had failed his probation on 9 February 2023, the day after he put in his complaint. He appealed and MM conducted the appeal hearing on 17 February 2023. (page 231). By that time, at the request of the Employee Relations (ER) team, KY had sent further details of the behaviour he alleged against the claimant (page 227). He repeated his original allegations in broadly the same terms and suggested possible other witnesses.

29. According to MM's statement evidence (para.35), she made a short visit to the hotel on 16 February 2023. The claimant was absent on annual leave which covered at least 16 and 17 February 2023. MM gave evidence in her para.35 that she asked Viktor Koszo (VK) for help in gaining access to the CCTV footage

because she wanted to investigate KY's allegation that the claimant arrived late and leaves hours early. VK was the other assistant hotel manager.

30. We've viewed mobile phone recordings made by the claimant of short excerpts of CCTV footage - apparently from 16 February - showing Ms Muscott and VK in the office with the CCTV equipment. This was accepted by her. In the footage the camera is pointing towards an L-shaped desk and, for most of the time, Ms Muscott is to the left of VK and, to her left, is a monitor or monitors which we understand to be the CCTV display where recordings from the hotel system can be viewed. The claimant had created a still from his recording of the CCTV footage and stated that it showed that footage of him in the reception area was on the CCTV monitor at the time that both Ms Muscott and VK were in the office.

31. She had asked Viktor to telephone the claimant to obtain the password to the CCTV system because, apparently, only the hotel manager knew it. Ms Muscott accepted that the claimant may have been shown on screen in the background of one of the clips we were shown. Viktor was present in the office at the same time. However she insisted that she had not spent time analysing the footage on the 16 February but only on the 17 February; on the latter occasion in the absence of VK saying that, had the claimant copied footage from that day, he would have seen her on her own in the office doing so for several hours. Her explanation for the likelihood that claimant was visible in the background clip visible on the 16 February footage was that she had gone through the footage briefly on that day to see how far back it went.

32. Returning to MM's account of 16 February, she says in her statement (para.36) that she asked VK how he was and that he did not wish to respond in any detail. Her evidence was that it was in a later telephone call on the same date that VK disclosed verbal complaints about the claimant.

33. Before MM was appointed as District Manager, that position was held by Paul Mattias. His predecessor in the role was Andy Southwood (hereafter referred to as ASd). The respondent's case is that page 331 is an email dated 20 February 2023 by which VK sent the document at page 318 and that that had been originally sent to the AS (see MM paras 55 to 57). Pages 318 to 320 appear to be a separate document to that starting at page 321. The claimant disputed that the document or documents were genuinely documents created by VK.

34. Although the claimant argues that MM and VK colluded in reviewing the CCTV evidence, he does not dispute anything that the CCTV evidence shows. A transcript was produced of the CCTV footage uncovered by MM within the investigation. The claimant did not dispute the contents of that transcript in meetings and we were not taken to it in the hearing. The claimant's case broadly is that MM was fishing for evidence and wasn't impartial as an investigator should be in asking neutrally for information of relevant possible witnesses.

35. MM's account in her para.36 and 49 includes the statement that "I did not discuss my reasons for reviewing the CCTV". She says that Viktor contacted her separately by telephone in the evening. She doesn't say as much, but it is a reasonable inference from what happened next that in the phone call she asked him to set out anything that he wanted to say in writing.

36. We accept that she did not do her detailed CCTV review until the following day – the 17 February. We accept, based on the email at page 331, that the documents at 318 and 321 were probably Viktor's documents which made further allegations about the claimant. A separate question is whether they were solicited by MM.

37. The basis of this allegation by claimant is the comment on page 329

> "Honestly if he does not get removed and punished I will be really disappointed in justice … and only agreed to do it because Marie assured me that his missing hours on camera should be enough to get him removed."

MM denies making that comment. The claimant alleges that she failed to take opportunity to deny that when responding or forwarding to ER and that an inference should be drawn that the comment was made.

38. Given the length of VK's document we do not think an inference can reasonably be drawn from MM's failure to deny that comment at the time alone. However, that is not the only relevant evidence on this point.

39. MM denies that she said to VK that the missing hours on camera should be enough to get him removed. She was asked by the tribunal about the wording of the email from VK at page 331 because, taken as a whole, it might be suggested that something had been said to the effect that she wanted something or some support from him or that she would support him – particularly where VK refers to "our side". Her answer was:

> "When I was in the hotel I had conversation that – he was very paranoid said that lot complained about C before never got anywhere with it and was protected by lots of people he was very paranoid. I tried to put him at ease – that he could talk to me. Certainly there were no 'sides' and I would look into it impartially. But I can see how it looks."

40. It is a reasonable inference from the words used by VK in page 331 that he knows that MM is investigating complaints into the claimant. The more important question is whether she was acting neutrally in trying to achieve the aim of reassuring a potential witness or whether she was trying to achieve a particular outcome in the investigation; whether she was building a case. That would not be impartial and that is the gist of the claimant's allegation against her.

41. The wording of the email does suggest that she had a conversation in the hotel with VK which went beyond a general encouragement for VK to contact her with any concerns. It is probable that he was in office while MM located how long CCTV footage was available for. The wording of the email shows that Viktor clearly knew when he wrote it that MM looked for CCTV footage about the claimant's working hours.

42. At that stage, Viktor should not have known anything whatever about why MM wanted the CCTV footage; he was a potential witness to the complaints by KY that she was investigating. Viktor does seem to have been encouraged to say to MM anything he wanted to say about the claimant specifically. This was not a

neutral stance by MM. On the balance of probability she said something to the effect that the claimant would not remain in his position.

43. It is unfortunate that her account of her movements on 16 February has not been consistent. The claimant attacks her credibility because some six weeks later, when asked about the events of 16 February, she stated that she had met with the claimant on that date at the hotel for a regular meeting when she did not. Her explanation was that it was in the diary for that date (page 829) and when replying to the ER query she thought that the meeting had gone ahead, and recounted what had in fact happened at a previous regular meeting in January. We accept that people can be genuinely mistaken and that is what happened on this occasion.

44. MM used the opportunity with KY during his appeal hearing to ask about his complaint against the claimant, because his complaints about training were relevant to his appeal. (page 231). In effect this became the investigation meeting with KY and the notes of his appeal hearing were used as evidence in the investigation into the claimant.

45. To judge by the minutes (page 231 at 236), among the questions she asked KY during his appeal was whether the claimant ever worked afternoons to which KY answered "Whilst I've been there he never has. From the start of the new year he just put "IN" on his rota and you wouldn't know what time to expect him."

46. MM also carried out a fact find with Angie (AS – see page 239). It is recorded at the top of page 242 that:

> "He [the claimant] made a comment to me last week because I couldn't clean some glue on the counter. I said maybe we needed a special liquid to clean it and he told me "I should know how to clean this because I am a woman". I didn't want to say anything back because my Mum works here and I just started here so I want to do well. I didn't like the comment but if I said anything back I feel like I'd be the one losing. Also he did something that everyone wasn't happy with.
>
> MM Does Zied never work afternoons?
>
> A: Until 3pm. The longest he ever works in the afternoon is 4pm"

47. Both assistant hotel managers' evidence on hours corroborate each other. Their evidence on the alleged conduct also corroborates each other's. AS's evidence corroborates both.

48. Further fact finds were carried out with Valerie (page 251) and Marie-Laure (page 245).

49. On 17 February 2023 MM emailed PM, the previous District manager, about employment of the claimant's son (page 257). He replied and MM, in response, said that she will possibly need a statement from PM about whether the claimant ever asked for flexible working/work form home to support his son on 17 February 2023 (page 316).

50. On 18 February 2023, at about 18.49, the claimant texted MM as follows (page 317):

> "Hi Marie, we never had a chat as of why I may work flexibly. I had this conversation with all DMs and I'm judges by my results and all were flexible with me hence why I enjoy doing my job. I have a disabled child with sever autism and needs my help every day before school and after school. Having said that I still do more than my contracted hours working on site, of site from home and during annual leave and on my days off. I feel a bit stressed now with all this situation and started having anxiety for being managed while I was only managing performance and have a proven track of excellence performance and great labour stability."

51. In that text he claimed that
    a. He may work flexibly
    b. He had conversations with all his DM, he was judged by his results and they all were flexible;
    c. His son needs his help every day before school and after school
    d. He does more than his contracted hours working on site, off site from home, during annual leave and on days off;

52. On 19 February 2023 (page 258) MM forwarded that to PM. When he responded saying not "to the extremes you mention" he was saying that with reference to the claimant's WhatsApp description of the arrangement for his working hours. Anyone reading the email would reasonably think that PM knew what the claimant alleged in the WhatsApp message when he replied as follows,

> "I've always been 100% clear with my teams that their rotas should match their actual working hours.
> I've never had a FWR from Zied.
> He has explained about his family circumstances and has, on occasion, had to go and deal with issues.
> He has never told me that he is starting late or finishing early to the extremes you mention."

53. The differences someone reading this email from PM might see between the claimant's account and PM's comments are:

    a. The hotel manager's (and the whole team's) rotas should match their actual working hours;

    b. The claimant has "on occasion" had to go and deal with family issues; this contrasts with the claimant's account that he helps his son every day before school and after school;

    c. PM had not been told that the claimant was starting late or finishing early to the extent described – contrary to the claimant's implicit suggestion that all his DMs (including PM) knew that – in term time at least – he was starting late and finishing early, making up hours at home.

54. On 20 February 2023 MM sent the evidence she had so far collected to Employee Relations (ER) (para.54). The Business Partner suggests suspension and MM suspended the claimant on 23 February 2023. She requested his IT

access to be suspended (page 308). We accept that is more likely than not to be routine and a natural consequence of the claimant being suspended.

55. Similarly (taking a similar type of act out of chronological order) on 16 May 2023, MM emailed to put his bonus on hold as he was suspended. MM's evidence (para.96) was that he wouldn't have been eligible for a bonus for the quarter that was just completed. Her email (page 499) simply asked for the payment to be held and did not explicitly state what the payment would have been for.

56. The performance bonus policy available to us was at page 129. This makes clear that if the bonus is governed by that policy then whether or not a bonus is paid in full is potentially affected by the outcome of ongoing disciplinary (clause 6 &7). As we have said, MM also postponed his appraisal – pending investigation of the complaints – and that potentially affects the amount of the bonus (clause 4). However, her oral evidence was that the email at page 499 concerned the quarterly Food & Beverage bonus and not that linked to the performance rating.

57. When this was put to the claimant in cross examination, he stated that his believe was that MM had not paused the quarterly Food & Beverages bonus but the performance bonus which should have been unaffected by any disciplinary action outside the relevant bonus year. That is not exactly what the bonus policy says. In any event, it could not be calculated when his rating had not been finalised because he had not had an appraisal so the email at page 499 is more consistent with it being the Food & Beverages bonus, as MM said. We accept that it was standard practice to pause that when there were ongoing disciplinary proceedings.

58. MM confirmed the claimant's suspension in writing on 24 February 2023 (page 344)

59. On 24 February 2023, after oral notification of his suspension but before it had been confirmed in writing, the claimant put in a grievance (page 347). The claimant agreed that he put in the grievance after he'd been told he was suspended. In it he complained of lack of support by MM and that she was targeting him personally "probably because of my race or religion" or because she wanted her friends to take over his hotel. He made allegations about her conduct and attitude.

60. The grievance includes the statement (page 348)

> "While I'm on annual leave she came to the hotel on a few occasions to watch the CCTV and used pressurising interrogating tactics to my staff so they can say what she wanted them to say. I have spoken to my AHM Victor about his meeting with her and he said ,he felt pressured to say something because he is afraid of her and that he is in between myself, as his line manager, and the district manager due to his new role he was afraid to lose his job ,the way she made him feel. "

61. He states (page 3 of his statement) that he asked for the formal process (which we understand to be the disciplinary investigation process) to be restarted. What happened was that MM conducted two further investigations: a fact find with Crystal Kinch (CK) on 26 February 2023 (page 363) and with Hanan Anakar

(page 370). After that, according to MM, it was decided that she should not hold the fact finding meeting with the claimant because of the allegations made against her in the grievance and the investigation was handed over to RA.

62. There was nothing of substance to the suggestion that RA was not impartial to and independent of MM. They were both District Managers; they were work colleagues. Mr Alcock was an appropriate person to hand the investigation over to.

63. That allegation is largely based upon MM's email to RA at page 427 when she wrote on 3 May 2023 to thank him and another and said "Ryan - owe you for the work put in on this fact find." This seems to us to be an unremarkable thank you to the District Manager for another district for taking on a task which ordinarily she would have done. There is nothing in the emails to suggest her involvement from the date of the grievance up to the point of the fact find with the claimant sought to influence anything or was anything other than facilitating the arrangements for the meeting. This disciplinary may have continued to appear on her case list but there is no evidence she did anything of substance in the investigation after interviewing HA and asking PM for a statement about the claimant's father-in-law.

64. We found MM's evidence (her para.87) in response to the suggestion that she was upset at being challenged over the use of ionising machines to be credible and reliable. We reject the suggestion that she harboured any grudge over this. To the contrary, we find that she accepted he was correct to challenge her and had no issue with him doing so.

65. The grievance contained a number of allegations to the effect that MM herself did not always express herself using appropriate language that one would expect of a senior manager: examples include the use of abbreviated swearwords in a text or WhatsApp message and appearing to "like" or laugh at poor treatment of guests. The claimant did not raise this allegations against MM until his grievance which post-dates his suspension. Therefore even if the allegations were true – and we do not make a finding to that effect – they cannot amount to a motivation for a campaign against the claimant, particularly when there are plain and obvious reasons why MM started the disciplinary investigation.

66. The claimant produced an advertisement for a Designate Hotel Manager. Apparently this dated from April 2023 (see claimant's statement page 17). He argued that we should infer from that that a decision had been made that his Hotel Manager's role would become vacant, the temporary cover would permanently fill his role and her role would become vacant.

67. MM's explanation for that advertisement was that, sometimes, the respondent takes on an additional head, surplus to the then requirements, to fill roles which may come up. The respondent apparently does this because their experience is that, for external candidates, hotel management can be a hard business to learn. To avoid prolonged vacancies, and the respondent runs a large number of hotels in their chain, they take on and train hotel managers so that they are available to be placed in a permanent vacancy later. That is what is meant by a Designate Hotel Manager and they would not necessarily be working towards being the

hotel manager in the location mentioned in the advertisement. We accept MM's evidence that, although the applicant applied for the post advertised at Cheshunt "on the bench" so to speak (page 657), they were later placed in Edmonton which was a different hotel.

68. Our findings on this were supported by SS's evidence about the practice namely that this is to recruit and additional head because to have a new starter "up and ready and trained" takes about 3 months. There can be a number of factors in flux, such as a new hotel opening or a resignation which means it is desirable to train someone without a clear idea where they would be needed.

69. The claimant also gave evidence that on April 7 2023 Elena (EE), the permanent Cheshunt Hotel Manager, was covering the Hotel Manager's role in Enfield during his suspension. We do not infer from that that the decision about his disciplinary had been made. EE, who had previously been Assistant Hotel Manager at the hotel, had moved to cover his absence during suspension.

70. On balance, page 657 was probably an advert for a spare or bench hotel manager not for a permanent replacement for EE, which is what the claimant argued we should infer. The practice of recruiting Designate Hotel Managers is practical given the size of the business as a whole. We do not think in the light of all of the evidence and that it can be inferred from this advertisement that the claimant's dismissal was predetermined. That would require us to infer that MM had prior knowledge of the decision when the decision maker had not yet been appointed (see JBC para.5 – he was approached on 5 May 2023). This is no more than planning for eventualities.

71. As we explain further below, we are quite satisfied from his analytical approach to the evidence that Mr Burleigh-Carson was independent minded which itself makes the allegation of predetermination improbable.

72. The suspension letter set out 3 allegations (page 344 and see RA para.7).

    a. That the claimant had not worked his contracted hours and that his hours worked did not match Fourth (the online time management system);

    b. That he had been verbally aggressive to team members on multiple occasions;

    c. That he made discriminatory comments to a team member on the basis of gender;

73. The claimant was invited to a fact find on 14 April 2023. The summary of that fact find (page 388) shows that RA wished to consider additional allegations which had not been in the original letter (see also his para.14) and adjourned to enable the claimant to make a phone call before being asked questions about the additional allegations. Those were:

    a. That the hours he attended at work meant that he had not maintained an acceptable level of punctuality or attendance;

b. That he had paid his father-in-law for shifts which he had not worked and which were not on timesheets;

c. That he had allowed his son to work night shifts in breach of the Young Workers Policy;

d. Discrimination, harassment or bullying in relation to the comment to AS but also the allegation that he had demoted CK.

74. RA discussed the claimant's relationship with KY and some other staff and then asked him about the comment to AS (page 393). These are the (non-verbatim) notes of what the claimant said:

"reception desk had selotape sign that had damaged the desk remember no selotape sign and need to use branded sign. said lets remove selotape left residue asked Angie to clean residue, she said she didnt know how, i suppose to say come on youre a smart woman you can do it. mad a mistake and said your a woman you can do it. Valrie suggested nail polish remover, i said could use maybe SAO. we ended up doing together it wasnt said with any offensive attention. When i was made aware i went to angie and asked i had offended her and she said no and valerie said back in my day no one got offended by anything now we get offended. I apologised if she felt she had been offended. this conversation was on the 23 rd february. I asked angie if she is happy working here she said yes but it can be a challenging environment."

75. At the bottom of page 393 RA raised the question of working hours/times:

RA - Why would you not show your times on the rota

ZJ - because i work flexibly and have been for many years Also shows implied terms of employment from legal document.

RA - what do you mean flexibly -

ZJ i mean i am just judged on results whether i work 1 hour or 10 hours.

RA - What does that mean if i work 1 hour or 10 hours.do you mean you come in to work for a couple of hours each day.

ZJ - i have never worked less than 40 hours a week i might go to another hotel as part of a champion role.have been to cambridge to brighton many places. was champion for fourth, laundry H&S , payroll at various times for different districts have been to many hotels, Im not sure why i have been singled out for this. example :where came in for 1 hour then went to the DOM. from whatsapp between Zied and Marie.

RA - at this point in time i am asking a question in relation to your comment not in relation to the allegation made which we will come to.

RA - Have you ever come to work after 10am and left by 12pm?

ZJ - no unless its on my day off to support team do banking breakfast or to reduce my workload and i dont put that on fourth.

Ra - If you go to another hotel to help as an example do you let your team know.

ZJ - not always i dont have to tell them all the time, they know i train other managers they see the calls from other hotels i dont have to tell them i am senior manager but if they call me when i am on holidays or days off i answer and help them.

76. After a break, RA returned to allegation 1, that about alleged failure to work contracted hours and not working the hours shown on Fourth. He reads to the claimant from the CCTV script and then there is the following exchange (our underlining not in the original):

RA - CCTV footage shows that you usually arrive in the hotel around 9/10am, but are showing on the rota as starting at 7am, why is this? or not completing the length of the 8 hour shift on the rota

ZJ- Managers don't go back to fourth and put in their exact times they worked as in clock in clock out. I do all sorts of work planning, rotas admin from home and that has been the case for 8 years i have been working flexibly. Statement from andy shows he was aware of that.and Paul Matthias is aware of that i care for a disabled child, no one has asked me to apply for disabled hours if they had i would have done. Whatsapps emails etc show that i am working from home.

RA - Reads out statement from Paul

ZJ - i don't totally agree with this statement. i have plenty of evidence that my DMs have been happy with my performance. i have gone on to do this because i have never been questioned and i have delivered results. It's not like i go home and switch off im still working even though i might not be on site. i was asked to go to a hotel by Marie following a break in on the 1st of january and i went without hesitation and i didnt record this on fourth.

77. When he gave oral evidence, RA was asked about the statement from Andy referred to by the claimant (see our underlining above). When asked whether he remembered whether he took away a copy of what the claimant had shown him and said that he remembered taken a number of copies away but he could not remember for definite if he had taken away the document at page 750 or that at page 640. He certainly did not deny being shown a document which could reasonably be described as a statement from Andy (ASd).

78. There was a detailed discussion about what was referred to before us as the "working hours" allegation (Allegation 1). The claimant's explanation to RA was the same as before us: that hotel managers are not expected to work in that way and not expected to put their hours in Fourth accurately. RA's evidence was that he understood that hotel managers were expected to keep to working hours and enter them accurately.

79. As we said above, ASd was the District Manager and the claimant's line manager before PM. There are two documents in the hearing file which the claimant has produced as being statements from ASd: pages 640 and 750. The minutes set out in para.76 above show that there was reference in the fact finding meeting to at least one statement from Andy and the claimant asserted that it showed that his then line manager was aware that he worked flexibly and worked a number of his hours from home.

80. Neither of the two alleged statements are signed. That at page 640 starts "I am writing this letter as a recommendation for Zied Lajimi" and is undated. It reads like a reference about the claimant's abilities and performance in his role. We think it more likely than not that the statement referred to by the claimant during the meeting with RA was that at page 750 because that is the only one which refers to hours. We are satisfied that it was available to RA and, for whatever reason, it was not included with the information pack handed over to JBC. It would have been listed as an enclosures had it been included (page 463). We reject RA's evidence in re-examination that he had only seen the shorter version at page 640.

81. Taking that statement at page 750 at face value for the moment, it appears to suggest that ASd was generally aware that the claimant worked the pattern of hours he asserted and was more than happy with his performance. It contains statements that he never doubted that the claimant did the hours required and that he always worked the hours in Fourth. He also confirmed that when he handed over to PM "Zeid's working hours were discussed". ASd's employment ended on 17 September 2021. However PM became the claimant's line manager from a reorganisation in late 2020 and had that role until 19 October 2022 when MM took over. We find that RA knew that the claimant was relying on information from a previous line manager which supported his argument that his conduct was not culpable and was agreed to by his line manager prior to late 2020 as set out in the document at page 750. As we see from the extract at para.76, RA read out PM's statement to the claimant who said that he disagreed with it in part.

82. We also note where the minutes record the claimant said "WhatsApp show I'm working from home". This corroborates the claimant's statement page 16 where he gives evidence that he recommended to RA that he examine his email records and work phone (for WhatsApp messages) to indicate his "work engagement from as early as 6:30 AM until after 10 PM, seven days a week." In other words, the claimant asked RA to investigate sources of information which might show whether or not he was doing his contracted hours outside the working times shown on Fourth.

83. The claimant also criticises RA for not returning to the witnesses whom MM had interviewed to see whether those witnesses accepted that their evidence had been accurately recorded. At page 3 of his statement he states that asked for him to restart the process. We accept that RA probably did not know from the respondent the detail of the grievance against MM which had led to his appointment (para.87 below) however in the meeting on 18 April 2023 the claimant asserted (page 399):

"on the day when i came back from holiday in Feb (i had been asked for CCTV

> password whilst off) Marie had been to watch CCTV. i didnt have work phone with me i would get the password later. Asked if anything in particular looking for she said was following up from Kozan grievance and i called back with password.
> When came back to work asked VIktor what had been said with Marie, he said i dont wnat to be in trouble between you and marie," Marie asked me what i had to say about Zied and dont worry he wont last here " probably hence why hos statement come to light now with more being added recently that i wasnt aware of?" (our underlining)

84. In this passage the claimant related to RA the same conversation he claimed to have had with VK that he had put in his grievance. RA's explained to us why he did not interview witness from whom there was already evidence. In the case of PM he considered that the email he had been provided with was sufficient. In the case of the others, he thought that what they had to say was sufficiently covered by the interviews with MM.

85. RA did interview KY (page 406), EE (who had not previously been interviewed - page 413) and VK (page 422) about the allegation concerning the father-in-law's employment which had come to light subsequently. Ulitmately, this allegation was not used in JBC's decision making.

86. In the meeting with VK which, according to RA's statement, was on 21 April 2023, RA asked him about the claimant's working hours (bottom page 422). He did not ask him about the alleged comment that VK was said to have made to the claimant to the effect that Marie said not to worry because Zied would not last here (see our underlining in para.83 above). RA was not specifically asked in cross-examination about that part of the notes but he was asked in general why he did not reinterview and his answer was general – that he didn't think it necessary.

87. This did not engage with the reasons for the claimant's concerns about the reliability of the notes of witness interviews. In summary, he was concerned that they were undated and unsigned which meant they could have been manipulated to fit an alleged agenda by MM. We are satisfied that the gist of that should have been clear to RA from the fact find interviews even if he was unaware about the detail of the grievance which included essentially the same allegation. In fact his oral evidence was that he was unaware that the change of investigator had come about because of a grievance.

88. RA's explanation for not checking the claimant's texts and emails for evidence was that he expected the claimant to present him with that evidence. However the claimant's access to his emails had been restricted. The claimant did ask him to do that (RA para.24 and page 396). When asked for an explanation for not doing so in oral evidence he said

> "I'm not sure that I would have gone back to emails all way back to 2011 unless specifically pointed to do so"

89. The senior managers (by which we mean District Managers and above) started from the position when investigating the allegations against the claimant and in

disciplinary that the Hotel Managers' hours on Fourth should match the hours worked: in other word if the Hotel Manager has complete Fourth to confirm that they worked a particular shift then those should be the actual hours that they worked. There was conflicting evidence in the hearing which we find it impossible to resolve about the extent to which Fourth makes it possible to adjust hours if a Hotel Manager has been allocated a particular rota but has been directed to do a specific task. For example, the respondent appoints some Hotel Managers as champions for particular areas and they need in the course of their role to travel to other hotels than their own to offer support. The claimant was a laundry champion for part of the relevant period. The conflicting evidence concerned whether it was possible to customise what is recorded on Fourth. Taking the evidence as a whole, and given the core dispute between the parties, we do not think it necessary to resolve this dispute.

90. However it came across to us that the senior managers took it for granted that people knew that the requirement was that Hotel Managers' hours on Fourth should match the hours worked. On the other hand, the claimant stated that they did not have to match and that he was unaware that this was a requirement as it was not the practice that he had followed for a number of years without criticism.

91. We accept that part of the reason for the system and the requirement for hotel managers and below to complete in this way is to monitor working time and to keep records for national minimum wage purposes. The respondent is quite entitled to have such a system, indeed it is prudent for them to do so. Not having such a system would expose them to the risk that they breached their obligations under the Working Time Regulations 1998 and the National Minimum Wage Regulations 2015.

92. However, the claimant insisted throughout the investigation and before us that he was working at least his contracted hours of 40 hours per week, and that it was acceptable for a Hotel Manager to certify the accuracy of Fourth even if the number of hours were worked at different times of day. He also insisted that his District Managers were well aware that he worked in this way because (he said) he had had conversations with each of them to explain his ways of working when they started.

93. Furthermore, JBC accepted that historically this had been common practice. In his statement evidence he dated a change which he said made clear it was unacceptable to before Covid (para.13 JBC) although referring to an email dated December 2020 which would be during Covid. His oral evidence was more detailed: that the time at which it was made clear the practice should stop was by 2019 or 2020. He said that there had been a change and thereafter the hours a Hotel Manager was schedule to work, the hours on Fourth and the hours actually worked had to match.

94. The respondent has provided very little documentary evidence that that change in requirement was effectively communicated. JBC para.13 produced an email of 30 December 2020 (page 777) which went to all of the London East Hotel Managers from the then District Manager (PM) a New Year message. Within it, under the heading "COST" is the following bullet point:

"Rotas submitted for final sign off by 12pm Wednesdays, 3 weeks of rotas on Fourth at all times, accuracy of HM/AHM shifts i.e. what's on Fourth is what you are working!"

95. PM's email (page 258) stated that he had always been 100% clear with his teams that their rotas should match their actual working hours. That is the total evidence before us (and the total evidence before JBC) of the extent that the claimant personally was told of this change.

96. According to the claimant, he'd had a conversation with each of his managers and make clear how he was working and they had accepted it.

97. The allegations that RA considered should go forward to a disciplinary hearing and the specific type of misconduct alleged are set out on page 460. They cross refer to paragraphs in the disciplinary policy and (omitting those which were not upheld) include:

"Allegation 1
● 5.2.35 - Failure to maintain an acceptable level of punctuality or attendance.
- Specifically, failure to work your contracted hours on multiple occasions over an extended period of time i.e. not working morning shifts/working shorter shifts than recorded without authorisation/awareness from your line manager.
…
Allegation 3
● 5.2.17 - Any serious act of discrimination, bullying or harassment.
- Specifically, making a discriminatory comment to a team member on the basis of her gender.
- Specifically, making discriminatory comments about guests/team members on the basis of race/nationality.
Allegation 4
● 5.2.31 Failing to ensure that a Travelodge colleague is treated fairly and with respect to expectations and behaviours of a Leader at Travelodge.
- Specifically, informing Crystal that she had been promoted to the role of Supervisor, asking her to complete the related duties and changing her role on Fourth accordingly, but then changing this back to 'Team Member' multiple times without her being aware/without authorisation; resulting in her being paid incorrectly.
- Specifically, using aggressive/unprofessional language when talking to team members resulting in them feeling uncomfortable/stressed when working with you.

98. Although allegation 1 refers to punctuality, RA does appear to allege that the claimant wasn't working 40 hours a week and not merely that he was not accurately recording his hours on Fourth. Given that, we consider it surprising that he made no attempt to see whether claimant was working outside the hours during which he was in the hotel – if only for the period covered by CCTV. In effect, RA did not investigate the claimant's defence that he was working at least 40 hours a week but not only working at the hotel.

99. RA's statement evidence does not set out why he thought there was a case to answer to each allegation.

100. The claimant's only written contract was that for Assistant Hotel Manager (starting on 10 March 2008) and the designated place of work was a hotel in the London Region. Confirmation of his transfer to the role Hotel Manager is at page 142 (14 January 2016) and it states that "all other terms and conditions remain the same". We find that his designated place of work under his contract was the London Enfield Travelodge.

101. As a matter of fact the claimant was also asked in his role to travel to other hotels as a laundry champion. Page 145 is from the claimant's September 2021 appraisal with PM. The notes of this conversation include no mention of working hours one way or another – neither of recording them nor of flexible hours. There is an acknowledgment that he can add "huge value to the success of London East hotels in 2021 and beyond to those HM's that aren't performing to the highest levels as you are" and this is something PM wants him to work on going on into 2022.

102. We consider whether the claimant had an adequate opportunity to respond to all of the allegations. This is relevant to the claimant's allegation that he did not have a fair opportunity to respond to the additional fact findings by RA after the meetings between the two of them on 14 and 18 April 2023.

    a. It is not uncommon or unusual conduct of an investigation for the investigator to carry out further fact finding meetings and then expect the disciplinary officer to ensure that the employee had a fair opportunity to answer any additional points in the disciplinary meeting. We accept that the fairness of the procedure is not undermined by RA handing things over at that point without a further fact find meeting with the claimant.

    b. JBC adjourned the disciplinary hearing because the claimant expressed himself ill-prepared to respond to the additional information;

    c. We are concerned with the process as a whole not with whether something could have been done differently at one stage;

    d. In any event, the additional information concerned the allegation about the claimant's employment of his father-in-law which was not upheld by the disciplinary officer.

103. However, we think there are the following justifiable criticisms of RA:

    a. He appears to have concluded that the claimant was not working his contractual hours of 40 hours week without looking into the claimant's defence that he worked them outside the rota'd hours;

    b. He seems to have regarded the claimant as obstructive (RA para.25). However he lacked the curiosity one would expect in an independent minded investigator about the claimant's report to him that VK had said

that MM reassured him that the claimant "wont last here" despite having the opportunity to ask VK about that in a fact find conducted after meeting with the claimant. We conclude that he did not take reasonable steps to investigate the claimant's allegation that MM had manipulated the evidence.

c. He did not contact PM to ask specific questions in the light of the claimant's defence about what he had agreed with PM. He appears to have overlooked entirely the statement from ASd that the claimant wished to rely on and did not ask PM about the allegation there had been a conversation on handover. He did not seek to interview ASd and did not pass the statement on to the disciplinary officer. On the face of it, the statement set out potentially relevant evidence about the hours worked by the claimant, the reason for it and the claimant's belief that this was sanctioned.

104. Meanwhile, the claimant's grievance was investigated by SS who met with the claimant (page 428). Her outcome is dated 16 May 2023 (page 500). The claimant asked for the CCTV to be available because he considered it disrespectful for MM to have viewed CCTV footage about his movements with VK sitting next to her (page 435). SS did not interview VK who was alleged by the claimant to said he felt pressured to say something (page 348). In the grievance hearing (page 437) the claimant repeated the allegation that VK had told him that MM said that "you can say anything to me about your manager because Zied wont last long here." We recognise that the grievance was wider than this point. However there was a clear allegation in the grievance that MM had influenced witnesses in the disciplinary investigation against the claimant. It was also clear to SS that the documents which were the product of her investigation have gone forward to the RA investigation.

105. SS's explanation for not asking VK about these allegations was that she understood the hotel staff had conflicted loyalties and she "didn't know which answer she would get from VK". SS had not seen the email which we have (page 329 see para.37 above). We know that VK himself had said that MM told him the missing hours should be enough to get the claimant removed.

106. Even reminding ourselves that she did not have that information, we found SS's explanation for not interviewing VK baffling. It amounted to a decision not to interview a prospective witness because she had decided he would be unreliable whatever he said.

> "I didn't believe impartial person to ask question to. Aware that he was playing both sides. Disgruntled in the hotel as well. I didn't feel I was going to get a true answer from Victor. He may have supported C may not have."

107. The relevance of this to the unfair dismissal claim is that it is one of the opportunities for allegations that the evidence had been manipulated to be investigated. In the outcome, SS summarised the grievance into 7 points. Point 4 concerns targeting because of race or religion and one of the factual allegations of alleged targeting concerned MM's investigation into the claimant (see penultimate paragraph on page 348 within the grievance). It is rejected in the

outcome at page 503 without any reference to the alleged statement by VK to the claimant.

108. To judge by the minutes of the grievance meeting at page 455 to 456 he is asked what he wants from the grievance. He makes it clear to SS that he considers MM to be pressurising witnesses into making evidence in the disciplinary fact find against him. SS does not address that in her grievance outcome. The consequence is that the claimant's allegation that the initial investigator has manipulated the evidence was not looked into and a relevant witness was not interviewed about this allegation. MM was spoken to (see the fact find on 9 May 2023 page 476) but at that time her mistaken or misremembered account was that she had visited the hotel for a visit with the claimant on 16 July (page 479). The obvious thing to do given the conflicting accounts was to speak to VK.

109. SS's reasons for not doing so are inadequate. No reasonable grievance investigator would fail to ask the relevant witness whether this comment had been made. There may be reasons why, having heard what the witness had to say, she would reject their account but that is speculation. Having considered it, she might have been able explain whether the evidence was or was not relevant to her conclusions that MM was not targeting the claimant because of race. We remind ourselves that SS was investigating an allegation of race discrimination. However, had there been evidence that the claimant was being targeted or that disciplinary action was premeditated that would potentially be relevant to whether or not there was discrimination.

110. Furthermore, a fair grievance investigation was relevant to the ongoing disciplinary investigation. Had allegation point 4 been upheld (or even had it been found that MM had sought to influence witnesses but discrimination was not accepted), then the disciplinary investigation would be expected to take account of MM's targeting.

111. We have gone through this in some detail but that was necessary to explain our conclusion that the factual allegation that MM had targeted the claimant and influenced witnesses, including by saying he wouldn't be employed long was not looked into either by SS or by RA. SS's reasons for not doing so do not make sense. RA's view that it was not necessary to reinterview the original witnesses is flawed because he had no justifiable basis to reject the claimant's account of what VK had said without interviewing the latter. Overall, the respondent's approach to the grievance adversely affected the fairness of the disciplinary process.

112. Another matter considered by SS was the question of whether MM was lying or mistaken about what she had done on 16 February. We think that she was quick to presume that MM was mistaken – the point is that this is the occasion on which the claimant said MM made the comment to VK. The claimant's point is that from his perspective MM initially sought to cover up whether she was in the hotel on the day when he says she made the comment. There is at least the prospect that her change of account would give weight to the allegation that she had manipulated the evidence.

113. The conclusion in respect of Grievance point 6 is that that MM reasonably viewed the footage but that misses this point. SS did not make a finding about whether the comment to VK was made on that occasion and does not appear to have analysed whether the change in stance by MM about whether or not she met with the claimant on 16 February was relevant to whether or not she was truthful about not discussing the investigation with VK.

114. The claimant also alleges that Ms Sheffield was too close to MM to investigate the grievance. We did not need to address that but we are satisfied that the claimant's allegation that MM was making a case (our words, not the claimant's) against him was not properly investigated by SS or by RA.

115. The disciplinary hearing was first convened on 19 May 2023 (page 523). The claimant did not consider he had been given sufficient opportunity to consider the additional fact finds. The hearing was adjourned again from the next meeting (6 June) as the claimant wanted a face to face hearing. It was finally convened on 13 June 2023 (page 548).

116. The claimant had originally received the invite letter at page 460. The replacement for final disciplinary hearing (page 543 – 547) included the allegations from RA's invite to the fact find set out above (para.97). The enclosures were as listed at page 546 (originally at page 463). Both include in allegation 2 as part of the allegation of fraud the charge of a failure to ensure his hours are accurately recorded.

117. RA did not provide to JCB the document which the claimant said was a letter from ASd, which we have found was that at page 750. JCB told us that he did not remember seeing either letter. He had registered when reading the minutes of the fact find that there was a reference to ASd which had confused him because he hadn't seen anything from ASd. He had not picked up from those minutes that there potentially was something he had not seen which referred to the claimant's working hours. Based on what he had in front of him, that is unsurprising but the document the claimant provided to RA should have been provided to JCB.

118. The claimant had the opportunity to comment on the minutes (original version at page 548) and made amendments.

119. The claimant defended the allegation of using discriminatory language towards AS by saying that, once he found out about the allegation he approach her and, on his account, apologised. He said this in the disciplinary hearing (page 590):

> "Exactly she should not ask, as she is putting words in her mouth which also she took notes but not how people talk. All statements are not signed by anyone. Angie's English is bad and what's written there is not words that Angie uses also Valrie have never commented or said anything about what I said to Angie in fact when she saw me apologizing to Angie she said to me that this days people are so sensitive that you no longer know what to say, back in my days worst thing were said and no one got offended. This is what Valerie said to me when she saw me apologizing to Angie at reception on 20th February 23"

120. JBC upheld some of the allegations and decided that the conduct merited dismissal without notice. The dismissal letter is at page 603. In his statement (JBC para.23 onwards) Mr Burleigh-Carson explained that he found the following:

    a. It was a requirement that Hotel Managers accurately record all of their hours accurately on the People System (Fourth), however the claimant had been starting late and leaving early due to personal reasons, without authorisation of his line managers, while not accurately recording his actual hours worked on Fourth and therefore JBC found that he had not been working his contracted hours.

    b. In para.27 he explains that he found that that part of Allegation 2 which was based on the claimant's failure to record his working hours accurately amounted to fraud (page 606).

    c. In terms of the allegation of conduct towards AS, JBC found that the comment "you're a woman, you can do it" was made. He explained in oral evidence that he had rejected the claimant's evidence that he had intended to say something else. In his outcome letter (page 606 – 607) JBC reasoned that, regardless of intention, that comment was inherently discriminatory.

    d. When JBC came to consider allegation 5 (concerning CK), he found that she had been told she was promoted to the role of Supervisor when the intention had been for her to "act up" into the role on particular shifts. He also found that the way the claimant went about actioning the temporary appointment was incorrect and, instead of using a temporary contract, he altered the system on a shift by shift basis in order to pay CK at a Supervisor's rate for the work she had done in the role of Supervisor. Since this had not been properly communicated to her, and she believed she had been promoted, the respondent felt it necessary formally to amended CK's role to Supervisor and pay her back pay.

    e. The section of the outcome letter which explains how those findings were taken into account in deciding whether or not to dismiss starts at page 609. That reasoning does not refer to allegation 5 and we prefer his contemporaneous explanation of his rationale to his oral evidence that he took that particular allegation into account in his decision to dismiss. The letter is carefully written and those allegations which were not taken into account have been excluded from the part of the letter which explains the reason for dismissal.

121. We agree that JBC's findings of what happened in relation to CK's acting up/promotion are consistent with the available evidence and we find on the balance of probabilities that that is what happened. Based upon SS's oral evidence, it appears that the claimant misunderstood what procedure to follow when a member of staff was temporarily acting up into a role for particular purposes.

122. JBC did not find that part of Allegation 2 relating to the claimant's father-in-law proved for reasons he states in his statement para.26. We accept that this is some evidence that JBC was applying his mind to the evidence analytically and independently. Indeed he dismissed or did not rely on more of the allegations within the disciplinary action than he upheld.

123. Nevertheless, included within the rationale (page.609)

    a. The last bullet point under Allegation 1 & 2 shows that not only did JCB find that the claimant was not working his contracted 40 hours but he also found that the claimant was aware that he should have been accurately recording his hours, should not have been working remotely but chose to do so.

    b. The last bullet point under Allegation 3 shows that he took the finding of sex discrimination very seriously and considered it was unacceptable in any role – meaning redeployment was not suitable.

124. These points summarise why the decision was to dismiss rather than a lesser sanction.

125. What was the basis of JCB's conclusion that the claimant had not worked his contracted hours? We accept that JBC genuinely believed, on the basis of the evidence in front of him that that was the case. He had evidence from the admitted CCTV transcript that, on a number of occasions, the claimant was not there at the start time of his rota'd shift and not there at the end time of the shift as shown on Fourth. He had evidence of that. JBC genuinely believed there had been a policy change from the historical practice and thought that the claimant should have known that (JBC para.13). He based that conclusion on his own knowledge that the policy had been widely advertised, however the document he asked the claimant about is that at page 777 which the claimant denied knowledge of.

126. JBC said that he genuinely believed that the claimant had not obtained authorisation of his line managers for the pattern of hours he was working. The basis of this belief was that both the claimant and MM said that the claimant had not had any previous conversation with MM. The claimant only contacted MM about working hours by text on 18 February 2023 when he already knew she had looked at CCTV footage. JBC thought PM's email was reliable and provided him with sufficient evidence that PM had not agreed to the claimant working those hours, despite what the claimant said. The claimant's version of events was that PM knew and consented.

127. We accept that those were beliefs that JBC genuinely had based on his conclusions. The question is whether JCB had reasonable grounds for those beliefs; whether JBC had reasonable grounds for his decision after as much investigation as was reasonable in all the circumstances.

128. We find that the grounds for his decision on allegations 1 & 2 were heavily influenced by his conclusion that the claimant was not in fact working his contracted hours. However, no one during the investigation or disciplinary

process checked whether the claimant was or was not doing work outside the hours shown on CCTV and that information was available to the respondent but not to the claimant who was excluded from accessing the email system. It would not have been necessary, as RA seemed to think, to go as far back as 2011; a comparison with the period covered by CCTV would have been proportionate.

129. The claimant denied receiving the email of 30 December 2020 (page 777). JCB accepted when it was put to him by the claimant that he had mentioned it in the disciplinary hearing but not shown it to the claimant. JCB was asked why he concluded that the claimant had been working this pattern of hours without authority when he accepted that, prior to late 2020, the claimant and others had been self-regulating their hours for many years. His answer was:

> "I accept that this had been common practice. … I've been [with the respondent] 10.5 years – I joined in 2014. It was common practice at that point to not record hours accurately. During Covid and post Covid there was a shake up and in December 2020 there was a realignment of areas. [There was a] new District Manager and clear communications through line from District Manager to Hotel Manager that all working should be recorded accurately through Fourth. That PM communicated to [the claimant] it went to everybody and was discussed multiple times because of concerns about excessive working hours. It is the one at 777."

130. We accept that JBC did not believe either that the claimant had not seen the email at page 777 or that he did not know about the change in practice. He took into account his own knowledge in reaching that conclusion. His belief that the claimant's working pattern had not been authorised was based on the email from PM at page 258. We do not think that those four lines were a reasonable basis for that conclusion because we do not think there had been as much investigation as was reasonable in all the circumstances. The claimant disputed that account and relied on a statement he said had been made by ASd that he was confident that "Zied's working hours were discussed" when he handed over the hotel to PM (page 750). The failure to revert to PM at that point means that there was not as much investigation as was reasonable in all the circumstances and it was not reasonable to place so much reliance upon that short email when so much more detail came to light after it had been sent.

131. We accept that some of what is said on page 750 is ambiguous. The claimant has been very critical about whether the unsigned sets of minutes relied on by MM were in fact the evidence of the witnesses she had spoken to and yet he relies on unsigned documents himself. At page 750 penultimate paragraph is written "I had confidence that Zied was available whenever needed and never doubted he did the hours required. I would visit unannounced, and stay, and he was always working the hours in Fourth." It's ambiguous because it might support what the claimant says or might contradict it. However, what he says has the potential to support the claimant's defence so the reasonable employer would clarify any ambiguity by asking ASd about it.

132. Although he ceased to be District Manager once the policy about reporting hours changed his statement about handover is potentially relevant.

133. He was no longer in employment, but a phone number was provided on page 750 and phone number and email address on page 640. If the statements were genuine, a means of communicating with ASd was offered.

134. The statement at page 750 is some support to what the claimant said in his defence both in term of whether he was working at least 40 hours a week and in terms of whether his District Managers generally and PM specifically knew and consented to it. Those are potentially very relevant factors when deciding whether or not the claimant was deliberately arriving late and leaving early which has to be the basis of the fraud conclusion.

135. It is true that JCB was entitled to take into account the email from PM and the admitted fact that they claimant had not raised his working hours with MM at all until after he knew she was looking at CCTV footage. The claimant put to MM that the specific handover visit at the hotel had not taken place because of illness. Nevertheless, there was we find a failure to investigate matters which had the potential to support the claimant's defence. These are not merely counsels of perfection but potentially go to the heart of whether he had committed gross misconduct, to the alleged scale of it and to the issue of trust.

136. The claimant appealed the decision to dismiss and was invited to a hearing to be chaired by Alan Harfield (page 618). The hearing ultimately took place on 8 August 2023. The claimant confirmed to Mr Harfield (as he did in his evidence before us) that he had never made a formal application under the flexible working policy for a permanent variation to his contract of employment but explained that that had been discussed with ASd (see AH para.14).

137. Mr Harfield did not consider that any further evidence or explanation had been provided to substantiate the argument that the decision had been predetermined. He considered that RA had been independent as had JCB. He upheld the decision to dismiss in an outcome at page 635. He did not carry out any further investigations with PM, VK, ASd or the other witnesses. At the appeal the claimant alleged that the initial decision to start disciplinary proceedings was race discrimination, an allegations which AH dismissed.

138. We accept that Mr Harfield genuinely believed the conclusions he set out in his outcome letter.

Law applicable to the issues in dispute

139. As we explain above, our conclusions on the discrimination and detriment complaints means that we do not need to consider whether those complaints were in time. We have not needed to apply the law about whether or not the employment tribunal has jurisdiction to consider those complaints.

Unfair dismissal - liability

140. The relevant statutory provisions in complaints of unfair dismissal where the respondent alleges that dismissal was because of the claimant's conduct are

s.98(1), (2)(b) and (4) of the Employment Rights Act 1996 (hereafter referred to as the ERA). Where, as here, dismissal is admitted, it is for the respondent to show the reason for the dismissal and that it is a reason falling within s.98(2). In this case the respondent relies on conduct which is a potentially fair reason within s.98(2).

141. If the tribunal is satisfied that the respondent has proved a potentially fair reason for dismissal then they must go on to consider whether the decision to dismiss the employee was fair or unfair. That depends on whether in all the circumstances the respondent acted reasonably or unreasonably in treating that reason as a sufficient reason for dismissing the employee.

142. When the employee's conduct is said to be the reason for dismissal then we find guidance for the approach we should take to that task in the case of British Homes Stores v Burchall [1980] ICR 303 EAT and other subsequent cases which built upon the test which has become known as the "Burchall test". We need to be satisfied that before deciding to dismiss the employer had formed a genuine belief in the employee's guilt. However, in order for it to be reasonable for the employer to treat the conduct as sufficient reason to dismiss the employer must have had in mind reasonable grounds for that belief and at the stage that the belief was formed the employer must have carried out as much investigation as was reasonable in the circumstances.

143. We must ask ourselves whether the conduct of the respondent fell within what has been described as the "range of reasonable responses". It is not whether we would have reached the same conclusion as the employers in question, but whether their conclusion or decision was one within the range of reasonable responses to the employee's conduct. The test is whether no reasonable employer would have dismissed the claimant in like circumstances. The same is true of the employer's conduct of their investigation into the claimant's alleged misconduct. The question for us is whether the investigation was within the range of reasonable responses which a reasonable employer might have adopted: J Sainsbury plc v Hitt [2003] ICR 111, CA. If at particular disputed act within the investigation is one which a reasonable employer might have taken, then it is within the range of reasonable options open to the investigator.

144. The employer does not need to carry out an investigation of such thoroughness that it could be compared with a police investigation. On the other hand as the ACAS Guide to Discipline and Grievance at Work (2015) says at paragraph 4.12

> "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."

145. Mr Profitt rightly reminded us that the tribunal should be careful to avoid substituting our own views for those of the employer (RSUB para.13 to 14). He quoted from London Ambulance Service NHS Trust v Small [2009] I.R.L.R. 563, CA where the Court of Appeal reminded tribunals that we should limit our consideration to the facts relating to the handling of the disciplinary procedure, dismissal and appeal based on what was known to the employer at the time of

dismissal. In para.43 of the judgment the Court of Appeal pointed out the risk that a tribunal, seeing the claimant determined to clear his name – and litigants in person frequently consider an unfair dismissal complaint an opportunity to do so – can be distracted from the question of whether the employer did or did not act in a way no reasonable employer could.

Unfair dismissal - conduct

146. The provisions of s.122(2) and 123(6) of the Employment Rights Act 1996 set out the powers of the tribunal to reduce any basic and compensatory awards because of conduct or contributory fault respectively which we are asked to use in the event that we conclude that the dismissal was unfair.

147. The classic test is in Nelson v BBC (No.2) [1979] I.R.L.R. 346 CA. The conduct need not be gross misconduct but it must be culpable or blameworthy.

148. The same criterion apply to a deduction from the basic award under s.122(2) as to a deduction from the compensatory award under s.123(6). However the sections are not identically worded. The tribunal should identify the conduct which is said to give rise to conduct justifying a reduction in either award, decide whether it is culpable or blameworthy and decided whether it is just and equitable to reduce the amount of the basic award (or compensatory award) to any extent. The difference is that conduct which makes it just and equitable to adjust the basic award under s.122(1) need not have caused or contributed to the dismissal.

Direct discrimination

149. Employees, such as the claimant, are protected from discrimination by s.39 Equality Act 2010 (the EQA) the material parts of which provides that an employer must not discriminate against one of their employee by dismissing them or subjecting them to a detriment. The claimant alleges that he was the victim of a number of acts of discrimination contrary to s.13 EQA which prohibits direct discrimination. Direct discrimination contrary to s.13 for present purposes is where, by subjecting their employee (A) to any other detriment, the employer treats A less favourably than they treat, or would treat, another employee (B) in materially identical circumstances apart from that of the protected characteristic relied on and does so because of A's protected characteristic. The claimant alleges that particular acts were discrimination on grounds of sex, race and/or age. There is considerable overlap between the claims with some specific incidents alleged to be discrimination on more than one ground but the complaints are not identical.

150. All claims under the EQA (including direct discrimination) are subject to the statutory burden of proof as set out in s.136. This has been explained in a number of cases, most notably in the guidelines annexed to the judgment of the CA in Igen Ltd v Wong [2005] ICR 931 CA. In that case, the Court was considering the previously applicable provisions of the antecedent legislation but the guidance is still applicable to the equivalent provision of the EQA.

151. When deciding whether or not the claimant has been the victim of direct discrimination, he must first show that the alleged act of discrimination happened, as a matter of fact, as alleged. Then the employment tribunal must consider whether he has satisfied us, on the balance of probabilities, of facts from which we could decide, in the absence of any other explanation, that the incidents occurred as alleged, that they amounted to less favourable treatment than an actual or hypothetical comparator did or would have received and that the reason for the treatment was sex, race or age. If we are so satisfied, we must find that discrimination has occurred unless the respondent proves that the reason for their action was not that of sex, race or age – as the case may be.

152. We bear in mind that there is rarely evidence of overt or deliberate discrimination. We may need to look at the context to the events to see whether there are appropriate inferences that can be made from the primary facts. We also bear in mind that discrimination can be unconscious but that for us to be able to infer that the alleged discriminator's actions were subconsciously motivated by race we must have a sound evidential basis for that inference.

153. The provisions of s.136 have been considered by the Supreme Court in Hewage v Grampian Health Board [2012] ICR 1054 UKSC – and more recently in Efobi v Royal Mail Group Ltd [2021] ICR 1263 UKSC. Where the employment tribunal is in a position to make positive findings on the evidence one way or the other, the burden of proof provisions are unlikely to have a bearing upon the outcome. However, it is recognized that the task of identifying whether the reason for the treatment requires the Tribunal to look into the mind of the alleged perpetrator. This contrasts with the intention of the perpetrator, they may not have intended to discriminated but still may have been materially influenced by considerations of sex, race or age. The burden of proof provisions may be of assistance, if there are considerations of subconscious discrimination but the Tribunal needs to take care that findings of subconscious discrimination are evidence based.

154. More recently, in Field v Steve Pye & Co (KL) Ltd [2022] EAT 68; [2022] IRLR 948 EAT, HHJ James Tayler addressed the question of whether it is permissible to move directly to the second stage of the test for discrimination. He pointed out that where there is significant evidence that could establish that there has been discrimination, it cannot be ignored and a decision to move directly to the question of the reason for a particular act that should be explained. In effect, the basis for doing so would be that the Tribunal had assumed that the claimant had passed the stage one Igen test. He recommended that were there is evidence that could indicate discrimination, there was much to be said for properly grappling with the evidence and deciding whether it is or is not, sufficient to switch the burden of disproving discrimination to the respondent.

155. Furthermore, although the law anticipates a two stage test, it is not necessary artificially to separate the evidence adduced by the two parties when making findings of fact (Madarassy v Nomura International plc [2007] ICR 867 CA). We should consider the whole of the evidence when making our findings of fact and if the reason for the treatment is unclear following those findings then we will need to apply the provisions of s.136 in order to reach a conclusion on that issue.

156. Although the structure of the Equality Act 2010 invites us to consider whether there was less favourable treatment of the claimant compared with another employee in materially identical circumstances, and also whether that treatment was because of the protected characteristic concerned, those two issues are often factually and evidentially linked (Shamoon v Chief Constable of the RUC [2003] IRLR 285 HL). This is particularly the case where the claimant relies upon a hypothetical comparator. If we find that the reason for the treatment complained of was not that of sex, race, or age (as the case may be) but some other reason, then that is likely to be a strong indicator as to whether or not that treatment was less favourable than an appropriate comparator would have been subjected to.

Detriment on grounds of dependants leave

157. The right to time off for dependants is set out in s.57A Employment Rights Act 1996 which provides (so far as is relevant):

"**57ATime off for dependants.**

(1)An employee is entitled to be permitted by his employer to take a reasonable amount of time off during the employee's working hours in order to take action which is necessary—

(a)to provide assistance on an occasion when a dependant falls ill, gives birth or is injured or assaulted,

(b)to make arrangements for the provision of care for a dependant who is ill or injured,

(c)in consequence of the death of a dependant,

(d)because of the unexpected disruption or termination of arrangements for the care of a dependant, or

(e)to deal with an incident which involves a child of the employee and which occurs unexpectedly in a period during which an educational establishment which the child attends is responsible for him.

(2)Subsection (1) does not apply unless the employee—

(a)tells his employer the reason for his absence as soon as reasonably practicable, and

(b)except where paragraph (a) cannot be complied with until after the employee has returned to work, tells his employer for how long he expects to be absent.

(3)Subject to subsections (4) and (5), for the purposes of this section " dependant " means, in relation to an employee—

(a)…,

(b)a child,

(c) …"

158. An employee may present a complaint to the employment tribunal that their employer has unreasonable refused to permit them to take time off under s.57A ERA but s.57B ERA provides that the time limit is three months beginning with the date when the refusal occurred. The complaint in the present case is under s.48 ERA of detriment on grounds relating to dependants leave (contrary to s.47C ERA). Such a complaint must be brought within three months of the act complained of (subject to the effect of early conciliation).

159. It can be seen from the wording of s.57A that the right to take unpaid dependants leave is aimed at taking a reasonable amount of time off work to take necessary action in respect of unexpected of sudden events affecting the employee's dependants and to make any necessary longer-term arrangements for their care: Qua v John Ford Morrison [2003] I.C.R 482, EAT.

Conclusions on the Issues

160. We now set out our conclusions on the issues, applying the law as set out above to the facts which we have found. We do not repeat all of the facts here since that would add unnecessarily to the length of the judgment, but we have them all in mind in reaching those conclusions.

Unfair dismissal – LOI 1

161. It is accepted by the respondent that the claimant was dismissed. The automatic unfair dismissal on grounds of protected disclosure complaint has been dismissed on withdrawal so we do not need to consider LOI 1.2. The next question is whether the respondent has shown the reason for dismissal and that it was a potentially fair reason.

162. We refer back to our findings on JBC's reasons for his decision to dismiss set out in para.120 - 130 above and our findings on the appeal in para.136 - 138. The set of circumstances which were the reason why JBC decided to dismiss were that he genuinely believed that claimant to be guilty of gross misconduct. Specifically, he believed that the claimant had committed acts falling within Allegations 1, 2 and 3:

    a. That the claimant had failed to work his contracted hours on multiple occasions over an extended period of time;

    b. Had failed to ensure that his hours were accurately recorded on Fourth and this amounted to fraud, and

    c. That the claimant had made a comment to a team member which was sex discrimination.

163. These fall within the potentially fair reason of conduct. Both JCB and AH genuinely believed the claimant to be guilty of these offences.

164. We move to the question of whether there were reasonable grounds for that belief which, in the present case, overlaps to a large extent with whether, at the time JCB and AH formed their respective beliefs, as much investigation as was reasonable in all the circumstances had been carried out.

165. We conclude that the respondent had not carried out as much investigation as was reasonable in all the circumstances at the time the decision to dismiss was made for the following reasons:

    a. The claimant argued that RA should have restarted the investigation and reinterviewed the witnesses who had been interviewed by MM, or at least validated the statements which bore no dates or signatures. RA's explanation for not doing so was that he didn't see a reason to do so. It wasn't an onerous task given the stage of the investigation and the relatively small number of witnesses. In principle, RA is correct that there needs to be a reason why he should do so. The mere fact that the claimant requested it and it wasn't onerous would not mean that it was outside the range of reasonable responses not to do so.

    b. However, we think that the failure to ask VK whether or not MM had told him that the claimant would not last long was outside the range of reasonable responses. In this it might be said that there were institutional failings rather than failings of RA alone. We refer back to para.83 where we found that RA was told by the claimant about this alleged comment and para.104 where we explain that the same matter was drawn to SS's attention in the grievance. However, merely focussing on RA's actions we think that no reasonable investigator – who interviewed VK about new allegations – would have failed to ask him whether MM had or had not said something to him which suggested that the claimant's dismissal was predetermined. This was a reason for reinterviewing at least that witness about that matter. Depending on what VK said, it would potentially have been the act of a reasonable investigator to ensure that the other witnesses' evidence was genuinely theirs and not affected by MM.

    c. JBC relied upon the grievance investigation of the allegations against MM (see page 607 2nd complete bullet point down) but SS had not interviewed a highly relevant witness for reasons which we consider inadequate (see para.104 to 109 above). The process as a whole was outside the range of reasonable responses.

    d. The point is made that the claimant admitted to arriving late and leaving early and did not dispute the CCTV transcript which particularised the occasions on which he had done so over about a month. That evidence would not be undermined by any influence over witness statements by MM. However, as we explain at para.125 above, JBC's conclusion that the claimant did this deliberately knowing that he was not working the hours he had certified on Fourth that he working, and therefore that it was fraud, was based on his knowledge of the email at page 777 which the claimant denied receiving and the 4 line email from PM.

e. The alleged notification is under the heading "COST", even if he did receive this email to the Hotel Manager's email address, it does not make plain that an employee will be regarded as committing fraud if he continues to work a pattern of hours he has been working up to that point, at least without dispute or concern. JBC (and RA) did not so far as we know look at the claimant's appraisal but there was no evidence before them that suggested that the claimant's performance was unsatisfactory or suffering because he was (allegedly) working so many fewer hours than contracted.

f. The only document evidence of a change in procedure that the respondent put forward was, we accept, fundamental to JCB's conclusion that the claimant was not, as he said, working a pattern which fulfilled the hours in contract but not in the way recorded. There is not sufficient evidence in this that he was explicitly told he cannot work this pattern that the inference of *fraud* could reasonably be drawn from the available evidence.

g. There is a further matter which the claimant urged upon the investigator relevant to this. There was no investigation of the claimant's defence that he was working his contracted hours – from home. The finding is of fraud. This was not something the claimant could have looked into himself as he was excluded from the system once suspended. It was possible for RA to look at a selected period to see whether there was evidence which supported the claimant's defence; to see whether there was evidence that he was or was not actually working his contracted hours. Had the allegation merely been that of failure to record, then that might have been different but the allegation was of failure to work the contracted hours and fraud. Reasonable steps to investigate the claimant's defence about this were not taken.

h. That was compounded by the absence of clarification from the line managers both PM and ASd. As we explain above there are two matters which ASd might have given relevant evidence about yet RA did not pass onto JBC the information put before him by the claimant about what ASd might say if asked. (see our findings at para.103.c. on this point).

i. We accept that JBC would have been entitled to rely on his own knowledge about the communication of the change in practice considering the opportunity for the claimant to found out about the change at regional meetings, the email page 777 and PM email page 258. However, the claimant's defence was not fairly investigated, in particular PM was not asked about the claimant's assertion that he had not been told about the change and his reliance on what ASd said in Page 750. Overall, the result was that JBC did not have before him all of the relevant information as the basis of his decision.

166. We recognise that CCTV transcript showing days and times when the claimant attended at the hotel was admitted by him (page 727). There is no dispute but that the claimant was not working the hours on Fourth, the time management

system. Therefore he is not in the hotel when Fourth says that he is. There was a consequence to this that the other staff might reasonably be unaware when the Hotel Manager was in. His evidence was that he was always available to them.

167. In relation to Allegation 3, that of discrimination, we consider whether no reasonable employer would have relied on what was said about this incident in the absence of an investigation into the allegation that that MM was, in our words, making a case against the claimant. It was an incident mentioned in the original complaint by KY (see para.26 above) and other witnesses spoke about it (Angie at page 242 and Valerie at page 254 – although she was asked directly whether she recalled the specific incident). The claimant admitted to the comment itself. The claimant told RA that he apologised on 23 February, when he was made aware of the allegation (page 393). Part of the reason JBC treated it seriously was that he reject the claimant's account that he had intended to say something different. The question therefore narrows to whether he had a reasonable basis for doing so.

168. We do not think that there was a reasonable basis for rejecting the claimant's evidence that he apologised and showed remorse. He said in the fact find and in the disciplinary that he apologised to Angie and that had been seen by Valerie. They were not re-interviewed. No reasonable employer would have failed to re-interview those key witnesses had reasonable steps first been taken to interview VK which would have uncovered his account that MM encouraged him to think the claimant would be dismissed. For that reason, the failure to reinterview Valerie and AS is outside the range of reasonable responses.

169. However JBC was also concerned because he considered the comment to be inherently discriminatory and because the claimant did not appear to think the comment to be discriminatory because he had not intended it to be so. We accept that JBC was entitled conclude on the basis of what he knew that the claimant appeared not to understand or accept that words were discriminatory. He said as much in the discrimination hearing. JCB was entitled to conclude that they were and to take seriously the claimant's inability to understand that. As Mr Profitt argues (RSUBS para.41(iii)) that is relevant to the apology because, had Mr Burleigh-Carson accepted that it had been made, then it would be open to JBC to conclude that any apology was for the upset caused rather than because he understood that what he said was discriminatory.

170. Before us the claimant relied on a letter from AS saying that she was not offended. This is an email (page 611) dated 7 July 2023. It was not information available to JBC. It was available at the appeal on 7 July 2023 (page 612). However the later letter (page 639) is dated 18 August and therefore was before neither JBC nor AH.

171. Although the respondent would no doubt argue that Allegation 3 was something JBC would have dismissed for at the same time in any event, that is a remedy question. Findings about the claimant's credibility and honesty in relation to the working hours allegation may have been read across into JBC's findings in relation to the discrimination allegation. There are parts of his reasoning which

are affected by the investigation being outside the range of reasonable responses.

172. JCB's conclusions on Allegations 1 and 2 are directly affected by the respondent's failure to carry out as much investigation as was reasonable in all the circumstances. We conclude, because of that, that no reasonable employer would have upheld those allegations and decided to dismiss because of those allegations. There were failings in the investigation in relation to Allegation 3 in particular because JBC rejected the claimant's account that he had apologised without asking Angie and Valerie whether he had done so. As we say above, some of his conclusions were open to him in any event but the question of whether or not he would have decided to dismiss the claimant in any event is a remedy issue. Different findings in relation to allegations 1 and 2 might have affected the findings in allegation 3 and might have affected JBC's view on appropriate sanction.

173. It is not the view of the tribunal that no reasonable employer could dismiss for what JBC found to have occurred in relation to allegation 3. It is that no reasonable employer would have failed to analyse the evidence on allegation 3 in the light of the evidence in the other allegations.

Direct disability discrimination

174. The respondent has accepted that the claimant's son was disabled and therefore we do not need to consider LOI 4.

175. LOI 5.2.1: The claimant has not shown that, on 9 February 2023 MM refused to meet with the claimant regarding his work pattern. The first time that the claimant raised the question about his work pattern in any way was made on 18 February.

176. She did cancel his appraisal due to take place on 9 February 2023 but that was entirely because a complaint had been made which included matters relevant to his management of his staff which would potentially have affected his appraisal rating. This was appropriate and sensible managerial action. We are satisfied that it was the entire reason why the appraisal was postponed.

177. Lest it be thought we are taking a pedantic approach to the first part of the allegation, the reasons why MM did not meet with the claimant to discuss working hours following his text of 18 February 2023 (page 317) was that the question of what hours he was authorised to work had become part of the disciplinary investigation. Furthermore, before MM held a fact find with the claimant (which would have discussed working hours) he raised a grievance which meant that the investigation was handed over to RA. She never *refused* to meet him and the reasons why no meeting took place were entirely non-discriminatory ones.

178. For the avoidance of doubt, the claimant has not shown facts from which disability discrimination could be inferred. However had the claimant shown facts which caused the burden of disproving discrimination to transfer to the respondent, the respondent has proved non-discriminatory reasons for any actions within LOI 5.2.1 which we have found took place.

179. LOI 5.2.2: The claimant did not make a formal flexible working application within Part 8A ERA; he simply emailed her and said they had never "had a chat as of why I may work flexibly". She replied that they would talk about that the following week. When they met, the action taken by MM on 23 February 2023 was to suspend the claimant because she was investigating serious complaints into his behaviour and performance (in terms of time keeping or working time). Whether or not it had previously been agreed that he should work those hours was the subject of accusation and defence in the investigation. The claimant has not shown the alleged facts which amount to this allegation. There is nothing from which to infer that MM would have acted in any other way in respect of someone who did not have a disabled son. In the alternative entirely non-discriminatory reasons for her actions have been shown.

Direct sex, race and age discrimination

180. Although we take all three of Sections 6, 7 and 8 in the List of Issues together, we bear in mind that not all alleged unlawful acts are said to be discrimination on grounds of all three protected characteristics.

181. The allegation in LOI 6.2.1 (sex only) is that MM did not receive a proper briefing from PM and this was less favourable treatment on grounds of sex. We have found that MM did receive a briefing about all of the hotels PM was handing over to her when she took over as District Manager. However, they did not have a joint visit to the Enfield hotel where the claimant was manager. The claimant's evidence was that PM had been supposed to be present at their first meeting but wasn't because of illness.

182. Furthermore, PM's email at page 258 is some evidence that there was nothing formal about the claimant's working arrangement which should have passed on. He accepted that there had been no formal contract variation under the flexible working provisions of ERA. The claimant has not shown in any detail that anything was omitted which meant MM didn't receive a "proper briefing"; his case on this rested on:

    a. his evidence that he had informally arranged flexibility with ASd and was judged on his merits,
    b. his evidence that this was handed over to PM who was well aware of it so
    c. the fact that MM claimed to be unaware of it led, he argued, to the inference that she did not have a proper briefing.

183. This is a weak basis for the allegation. Specifically, he has not shown that there was no proper process for a transition in management because his oral evidence was that there had been a process which was frustrated by illness. The evidence before us shows that to the extent that information was not provided to MM which was known to PM the reasons were entirely to do with PM's illness on the day when they were due to meet with the claimant jointly at the hotel and the fact that the claimant did not mention it directly with MM himself. There is no reason to think that would have been different for a woman and the sex discrimination complaint on this point fails.

184. LOI 6.2.2 (sex) is the same factual allegation as LOI 7.2.1. (age) and LOI 8.2.1 (race). The claimant's statement evidence (page 19 para.2) states that the claimant's belief is that the statement that he was a difficult customer was made due to his "Arabic background, age and experience" and he confirmed in oral evidence that this incident was not relied on as sex discrimination. We take this allegation together with LOI 6.2.3/LOI 7.2.2/LOI 8.2.2 because although it is not said that the "difficult customer" comment was made on 1 February 2023, there is a common theme of alleged reaction to behaviour that MM is said to have regarded as challenging, or questioning. LOI 7.2.3 is, we conclude, a rewording of the same allegation about the alleged 1 February 2023 incident.

185. The alleged repeated references to "difficult customer" are denied by MM. There is next to no detail provided about when this might have happened or the context; no detail about the incidents which might give weight to the bald allegation. We have found that MM did not react angrily when the claimant disagreed with her about the use of an ionising machine. That finding gives support to a finding that MM did not in fact make the alleged "difficult customer" comments.

186. Furthermore, there is nothing the context to the 1 February 2023 discussion about the ionising machine as described by the claimant that suggests that anyone else who (for example) said their District Manager should not order an ionising machine would not have been responded to by MM in any different way to that directed towards the claimant.

187. This leads us to consider the alleged comparators. In oral evidence, the claimant reconsidered his argument in relation to them and accepted that he only relied on their treatment by MM in relation to his sex discrimination because they were women and he was a man. He confirmed that they did not provide relevant evidence about how a person of a different age group would be treated or how someone who was not of Arab origin would be treated.

188. The was only one part of the evidence which even had the potential to show a difference in treatment. This was that EE was acting Hotel Manager at Enfield during the claimant's suspension. KY had been reinstated as Assistant Hotel Manager after the claimant dismissed him for failing his probation and his appeal was successful. After he was reinstated he subsequently complained about EE but she was not suspended or investigated as the claimant had been.

189. However MM said, and we accept, that, unlike in the claimant's situation, there was no supporting evidence of wrongdoing against EE. There was no corroboration of KY's complaint. There had been a number of pieces of corroborating evidence about both KY's allegation that the claimant did not work correct hours and the alleged sex discrimination. There were witnesses who provided evidence from Angie, VK and there was the objective evidence that CCTV footage of the claimant arriving and leaving did not match the rotas he had certified that he had worked. There was a lot of evidence that suggested the allegations merited investigation and that, given his position as Hotel Manager, the suspension was necessary to enable that to take place. A witness alleged that they were being pressured. Any superficial similarly with EE does not stand up to scrutiny. The respondent's reaction to the complaint against EE does not

support an inference that had a woman been in the claimant's situation she would have been treated any differently to the way he was treated. EE was not in a sufficiently similar situation to him to make her treatment something it is right to draw inferences from.

190. Other than that, there was no specific and detailed evidence put forward that any of the women named had been in a comparable position with the claimant. HM and KP arose in the evidence in connection with the allegation that MM had not taken issue with their comments said to relate to discontinuing water and electricity to guests. KP was also said to have been treated differently as a carer of an ailing husband (C statement page 25). DG was an Assistant Hotel Manager said to have been treated differently in relation to support for her caring responsibilities. However we accept MM's evidence (her statement para.100) that DG had a formal part-time flexible working pattern. This makes her situation completely different to the claimant's. The alleged wrongdoing by HM and KP had not been the subject of a complaint (so far as we have been told in evidence). Had the height of what the claimant alleged against them been shown, then it is potentially a matter of concern for the respondent; however the lack of a complaint by a co-worker (who alleged that their own training was being mismanaged) is a difference which the respondent genuinely took account of. There has not been sufficient evidence about the situation of the alleged evidential comparators that we could draw conclusions of less favourable treatment about.

191. LOI 6.2.4 – this allegation is the only one to be made against BW and it is said to be direct discrimination on grounds of sex, age (LOI 7.2.4) and race (LOI 8.2.3). The claimant's own account of what he alleges (were we to accept that it is true) puts forward nothing from which it might be inferred that his statement had anything to do with age, sex or race. The incident was said to have occurred in February 2023 but the claimant did not complain about it at the time and the February 2024 particulars (which were the subject of the successful amendment application) were the first time the allegation was made. Not only was this not in the original claim, it was not mentioned in his defence during the dismissal process or the appeal process. It was not included in his grievance. His explanation for not doing was that he had so much on his mind with caring for his son and the threat to his job of 15 years that he did not think to include it and wanted to resolve things amicably. We do not regard this as a good or sufficient explanation. We reject his evidence that the statement was made at all. The complaint fails because he has not shown that the incident occurred as alleged. In any event, a complaint based on this allegation would be out of time and it is hard to see any connection with the allegations against MM.

192. LOI 6.2.5 (sex), LOI 7.2.5 (age) and LOI 8.2.4 (race) are based on the same alleged factual matter as LOI 5.2.1 (disability). Our reasons for rejecting that complaint should be read across. This request was never made and MM's reasons for cancelling the appraisal were entirely non-discriminatory.

193. We note that, in general, where we have been able to identify events and what happened, MM has given satisfactory non-discriminatory explanations for her actions.

194. However, LOI 6.2.6 and 6.2.7 require more detailed consideration. The allegation is that on 16 February 2023, MM told VK that the claimant would not remain in his position and said "he won't last here and he will be removed". This is also raised as age discrimination (LOI 7.2.6) and race discrimination (LOI 8.2.5 and 8.2.6). LOI 6.2.7 (and the equivalents) allege that MM called the claimant when he was on annual leave to ask about CCTV. In fact it was VK who called the claimant at MM's request in order to obtain the CCTV password because only the claimant had it. It is true that he was on annual leave but the only reason he was called on annual leave was because he was the only person who could give access to the CCTV password. The second part of the allegation in LOI 6.2.7 is that MM told staff that the claimant wouldn't last there and would be removed. In fact the only member of staff MM spoke to about the claimant was VK so there is no difference in substance between the two allegations.

195. We refer back to our findings in paragraphs 36 to 43 above. MM crossed the line in what she said on 16 February 2023 from the neutral manager trying to reassure someone that they could contact her directly if they had any concerns to someone whose words led the claimant's direct report to think she was on his "side". Something was said by MM which led to the wording in email from VK on 22 February 2023 (para.39 above).

196. On balance of probability she said something to the effect that the claimant would not remain in his position. Her account was that she was trying to reassure nervous potential witness. She was in the hotel because she was investigating what genuinely appeared to her to be a situation where the Hotel Manager was not working the hours expected and there was good reason for her to suspect that. VK did not know anything about the arrangement and only knew she was viewing CCTV footage because she needed the password to access the system, which ultimately had to be obtained from the claimant.

197. It was ill-advised to be drawn that far into the discussion. However we find that whatever she did say in the moment was a reaction to the reality that she was investigating an apparently substantiated serious potential misconduct matter. In that context there is no reason to think she would have said anything different to encourage a nervous potential witness regardless of the sex, race or age of the hotel manager concerned.

198. It is true that MM's original account of the reason for her presence in the hotel on 16 February was inaccurate (para.43 above). These two matters (her probable statement and inaccurate account) are matters which call for an explanation. There is nothing in the context or any comparator information which points to a particular protected characteristic as being the grounds for the action. The claimant appears to point to ways in which his protected characteristics differ from MM's own. However, in these circumstances it is right to treat the burden of proof as having transferred to the respondent.

199. We are aware that unreasonable behaviour and difference of protected characteristic is an insufficient basis for a finding of discrimination. In general, MM's explanations for her actions are credible and entirely non-discriminatory. Although she does appear to have overstepped the mark here, she was reacting

to a fast moving situation. We accept that she originally misremembered the diary entry for 16 February as evidence that a meeting had taken place whereas the claimant had actually been on leave. Her longer visit to the hotel viewing CCTV footage was on a different day. It is understandable that she should have forgotten the earlier visit which did not have the same significance for her as it did for the claimant. Her first inaccurate account was not dishonesty but a mistake so it does not adversely affect her credibility (see also para.204 below). We are persuaded that MM's explanation for her ill-advised comments is the genuine one and it is a non-discriminatory one.

200. The allegations based upon MM's conduct on 16 February 2023 fail as all types of discrimination complaint because, to the extent that the allegations are made out, even presuming that the burden of disproving discrimination transfers to the respondent, we accept that MM's explanations for her actions are entirely non-discriminatory.

201. LOI 6.2.8 (sex); LOI 7.2.7 (age) and LOI 8.2.7 (race) are based on the same factual allegation as LOI 5.2.2 (disability) and fail for the same reasons as we have set out in para.179 above.

202. LOI 6.2.9 (and LOI 7.2.8 (age) and LOI 8.2.8 (race)): MM did revoke the claimant's access to his work emails and the work system when she requested that his IT access be suspended (see para.54 above). She did not request that his email be deleted or eliminate his access to manager communications. This was, we have found, a routine consequence of his suspension. Doing so was following a reasonable (and commonplace) procedure rather than a decision in itself. There is no basis for thinking that a woman or someone of a different race of age would have been treated any differently if they were suspended.

203. It is common ground that MM did not know that the claimant had been arriving after his rota'd time and leaving before the end of his allocated shift. The claimant avers that he had not previously discussed what he alleged were his agreed working practices with her. Based on what she saw on the CCTV (the transcript is at page 727), she had a valid and non-discriminatory reason to start the investigation and to suspend the claimant – indeed to take the steps in the investigation that she did.

204. The allegation in LOI 6.2.10 (sex); LOI 7.2.9 (age) and LOI 8.2.9 (race) is that MM made false allegations to the ER team, claiming that she was with the claimant on 16 February 2023. As we say in para.43 above, it is true that when, about six weeks after the event, MM was asked about 16 February within the grievance investigation, she initially said that she had met with the claimant for a regular meeting at the hotel when she had not. She had a diary note of a meeting with the claimant on that day; however the claimant had been on leave and the diary note showed a meeting which did not take place. MM trusted that diary note and misremembered the meeting which had in fact taken place about a month earlier. It is unfortunate, because part of reason why grievance didn't focus on the important issue of whether MM had led VK to believe that the claimant would not "last long" was that MM had got her dates confused and SS did not take reasonable steps to investigate the allegations (see para.104 to 106). This clouded the issues in the grievance. However we accept that this was a mistake.

It was an understandable one given that her longer visit to the hotel had been on a different day. It is a bit of a stretch to call that a false allegation but, in any event, it was a simple error, there is no basis to think it would have been different with any other person and we are quite satisfied that it had nothing to do with sex, age or race.

205. LOI 6.2.11 (sex) is also alleged to be age discrimination (LOI 7.2.10) and race discrimination (LOI 8.2.10). The claimant confirmed at the outset of Day 1 that his allegation of discriminatory fabricated comments was based on comments said by MM when she was interviewing or being interviewed during the disciplinary process. The alleged comments were particularised in the claimant's statement page. 24 para.12.

206. At the relevant point in the chronology, MM was the investigator. She went where the investigation took her and the reasonable manager is required to look at things which arise. The matters referred to are the employment of the claimant's son allegedly without prior approval (potentially in breach of the respondent's young workers policy), sanctioning payment of his father-in-law for work which was not carried out, and manipulating the allegation of sex discrimination towards AS (which was an allegation made by a witness not by AS herself). The claimant also accuses MM of making false allegation in relation to his promotion of CK which allegation ignores that both CK and other staff allege that she had been told she was promoted rather than, as the claimant alleged, acting up for particular shifts.

207. All of the allegations were ones which it was reasonable for MM to investigate. If there is one instance (in the interview of Valerie) in which MM asked a closed and leading question it is still a question not a false allegation. The tribunal accepts that allegations can in some cases appear to have expanded without proper cause. However, if – as in the present case – the investigator uncovers evidence that a young person might have been employed for night work contrary to the respondent's policy then it is plainly proper to investigate it by asking about that allegation. Similarly, when two family members are employed in the hotel managed by a third family member and some of the evidence suggests that third family member is not working the hours they should be and has misstated his own hours on Fourth, that plainly needs looking into. Even though we accept that, once she started the investigation, MM should have distanced herself rather than encourage VK, she did not fabricate the original complaints by KY. The rest of the matters she investigated (and that RA subsequently investigated) flowed from there. There is no reason whatever to think that her actions would have been any different had the claimant been any other sex, race or age.

208. LOI 6.2.12 is the allegation about the bonus and it is said to be sex discrimination and race discrimination (LOI 8.2.11). We refer to our findings at paras.55 to 57. Our findings are that the probably was the Food & Beverage's bonus which was paid quarterly. The contemporaneous evidence (page 499) is more consistent with that than the claimant's assertion that it was the performance bonus. The claimant has not shown that he was deprived of something which was properly payable. He has not shown that it was clearly covered by the performance bonus

policy of that, in practice, that meant that payment would be unaffected by disciplinary matters in the following bonus year.

209. We accept the respondent's case that this was the Food & Beverages bonus which would not be paid while there were ongoing disciplinary proceedings and that provides a complete and non-discriminatory reason for their actions.

Detriment on grounds of dependants leave

210. The claimant has not shown that he took time off to care for his dependant or made a request for dependants leave which comply with s.57A of the Employment Rights Act 1996. A notification of the requirement to take dependants leave is one to take a reasonable amount of time off during working hours in order to take action which is necessary to provide assistance on a variety of occasion such as when a dependant falls ill or where arrangements for the care of a child have broken down.

211. In the present case, the claimant's evidence is that his normal working pattern was that he worked many of his hours from home, attended at the hotel at times which fitted around his childcare obligations and that this was agreed with his line managers on a long term basis. Dependants leave, as Mr Profitt argues, has to meet a narrowly defined formulaic test. The claimant's situation does not on any view fall within s.57A ERA.

212. His claim that he has suffered a detriment because of taking such leave therefore fails. In any event, the two allegations of detriment are the failure to conduct the appraisal (see para.176 for our conclusions on the entire cause of that) and the failure to discuss the claimant's working pattern after he sent the text of 18 February 2023 (page 317). See para.177 to 178 above for our conclusions on the entire cause of that. A complaint presented on 22 September 2023 (where early conciliation started on 19 July 2023) is manifestly out of time because it was not presented within the time limit in s.57B ERA.

Remedy Issue - Conduct

213. The conduct relied on by the respondent is set out in RSUBS para.57:
    a. That his approach to working hours connoted an arrogant attitude. Even if doesn't amount heights of fraud, his failure to work his designated working hours falls within the definition of culpable conduct;
    b. That the comment to Angie, even to the extent he admitted it, was foolish which meets the test for culpable contributory conduct;
    c. His treatment of CK was serious mistreatment which caused financial detriment to the respondent.

214. The claimant denied that any of his conduct was culpable.

215. We reject the argument that the respondent has shown conduct within RSUB 57 i. in connection with the claimant's working hours. There is an element of foolishness in the claimant not having proactively raised the alleged flexibility

arrangement with MM when she took over but that is not precisely the conduct relied on. In any event we do not think it just & equitable to make any deduction from the basic or compensatory awards in light of out criticisms of the investigation. Our view is that there was insufficient investigation of the extent to which the claimant's working pattern had been agreed by the managers in past. There was insufficient investigation of whether or not he had in fact been working at least 40 hours a week. There was also insufficient investigation of whether the claimant was fairly put on notice that the historic ability for Hotel Managers to manage their own time was changing as notified in December 2020 and that it would be regarded as misconduct in the future. In those circumstances, the respondent has not shown that it is just & equitable to make a deduction for that conduct.

216. The claimant's conduct in relation CK in failing to ensure that there was no confusion about her job role was blameworthy. He could easily have sought advice about how to appoint someone to act up for particular shifts. He should plainly have confirmed the arrangement in writing to avoid her confusion and upset. There was contradictory evidence about what was the correct way to record the arrangement in the system to reflect that CK was doing different jobs on different shifts. However we accept that when the claimant marked her up as a supervisor and then changed her back to her original role to manipulate the shift pay that was clearly not right. As the Hotel Manager he should have made sure it was right. He should have taken advice from HR and he failed to ensure that he communicated to CK clearly the terms on which she was acting up temporarily for particular shifts.

217. However this conduct was not taken into account into and was not part of reason for dismissal (see page 609 for those allegations which were substantiated and which did cause the dismissal). The claimant's conduct had a financial impact because of the way the respondent felt obliged to handle it to support CK as their employee. They approved her appointment as supervisor (despite the informal way it had been done) and paid her back pay for all missing hours. The fact that this did not contribute to dismissal means that it is just and equitable to take it into account under s.122(2) ERA when making a deduction from the basic award but not just and equitable to take it into account when making a deduction from the compensatory award.

218. The final aspect of conduct is the comment to AS. Her account is at para.46 above; that her Hotel Manager told her that she should know how to clean a particular mark because she was a woman. It was remarked on by at least two other members of staff who thought it unacceptable. The claimant's account was that he had intended to say something else – but he did not correct himself at the time.

219. We accept that that comment is blameworthy because it is discriminatory on grounds of sex because of the association with historic and outdated attitudes that women have a domestic role. It was said by someone in authority in front of other people which would be more likely to be embarrassing for the person it was directed at. The bystanders would rightly have been made at least uncomfortable.

220. The claimant's evidence was that he apologised when he knew a complaint had been made and relied upon subsequent letters written by AS at his solicitation saying that she had not been offended. We do not think that we can place much weight on those letters when set against her near contemporaneous statement that she hadn't liked the comment. In any event, at least two others thought the comment unacceptable. We consider it to be culpable and it contributed to the decision to dismiss.

221. However, the greater part of JCB's reason for dismissal were his conclusions on Allegations 1 and 2. For that reason, we think that the appropriate deduction from compensation to reflect that culpable conduct is 20%. The question of whether there should be any further adjustment to compensation to reflect the prospect that a fair dismissal would have taken place at the same time, at a different specific time or to reflect the chance of a number of variables will be considered at the remedy hearing.

222. Since the appointment and demotion of CK was itself culpable conduct which caused the respondent financial harm and CK understandable distress, we think it just and equitable to make a total 25% deduction from the Basic Award because of the two different culpable acts combined. The treatment of CK adds an additional 5% to the adjustment it is just & equitable to make.

223. The remaining remedy issues are LOI 2.1.1 to LOI 2.1.8 and LOI 2.1.11 in the List of Issues. These will be considered at the hearing on 8 September 2025 (see notice of hearing in paragraph 10 of the Reserved Judgment).

Approved by:

Employment Judge George

Date: …22 July 2025……..

Sent to the parties on: 23 July 2025

For the Tribunal Office