EMPLOYMENT TRIBUNALS

Claimant:	**Bethan Littlewood**	
Respondent:	**Nuffield Health**	
Heard at:	**Cardiff**	**On: 23, 24, 25, 26, 30 June and 1 July 2025**
Before:	**Employment Judge S Moore**	
Members:	**Mr A Fryer** **Mr C Williams**	

Representation:
Claimant: In person
Respondent: Mr Bownes, Solicitor

JUDGMENT having been sent to the parties on 11 August 2025 and written reasons having been requested in accordance with Rule 60 of the Employment Tribunals Rules of Procedure, the following reasons are provided:

REASONS

Background

1. The first claim 1600573/2023 was presented on 15 March 2023 following ACAS Conciliation starting on 5 January 2023 and ending on 16 February 2023. The second claim 1603104/2023 was presented on 18 December 2023 with ACAS Conciliation starting on 1 December 2023 and ending on 18 December 2023.

2. The Claimant brought the following claims:

a) Constructive unfair dismissal (s98 ERA 1996);
b) Automatic constructive unfair dismissal (s103A ERA 1996);
c) Detriments contrary to S47(b) ERA 1996;
d) Unauthorised deductions from wages (s13 ERA 1996);
e) Holiday pay (Working Time Regulations 1998).

3. There have been a number of Preliminary Hearings in these proceedings. On 15 January 2024 when the Claimant was given permission to amend her claim to increase the sums she was seeking with regard to the unauthorised deduction from wages. After a preliminary hearing on 4 July 2024 the Claimant was ordered to provide further particulars of her claims which she did on 31 July 2024. There then followed a preliminary hearing before Judge Brace on 27 September 2024 and the agreed list of issues was set out in Judge Brace's order dated 27 September 2024 which is appended to these written reasons.

4. The final hearing took place on 23 to 26 June, 30 June and 1 July 2025 at Cardiff Employment Tribunal before Judge Moore and non legal members Mr Williams and Mr Fryer. There was an agreed bundle with an additional small bundle prepared by the Claimant of clearer documents that were in the main bundle but illegible. The Respondent applied to admit new documents on 30 June 2025 which was agreed. The Tribunal heard witness evidence from the Claimant and then from the Respondent's witnesses Mr Wilcock, Mr Crichton, Mr Ives, Mr Morris and Mr Cheadle.

Findings of Fact

5. We have made the following findings of fact on the balance of probabilities. The Claimant commenced her employment on 2 March 2015 as a personal trainer with Virgin Active Limited. We had sight of a contract of employment between the Claimant and Virgin Active Limited. This was the only evidence setting out the rates of pay for Personal Trainer ("PT") sessions and class sessions. Schedule 1 of the contract provided that the pay would be based on the rates of pay for the personal training determined by the banding of the club. There were the current rates (as of 2015) in Schedule 3. The holiday entitlement was pro rated dependent upon the number of hours worked based on FTE 40 hours per week and was 30 days per year including bank holidays and public holidays. After working for 5 years this would increase to one day each extra year up to a maximum of 33 days.

6. In 2016 the Claimant's employment was TUPE transferred to the Respondent. A change of terms letter from February 2017 amended matters in relation to holiday entitlement and also the company sick pay scheme. In respect of holiday pay, the entitlement "now started at 25 days and increased to 27 days after 5 year's service" plus bank holidays. It ring fenced the former 33 day increase to 30 days. There was no indication of

how holidays would be calculated. The clause in respect of Company sick pay provided for it to commence at 1 week and increase to 26 weeks up to a maximum of ten years. At the time the Claimant commenced sick leave she had 7 years complete service entitling her to 16 weeks company sick pay. It stated as follows:

"company sick pay is discretionary pro rata to hours worked and based on a 12 month rolling contract. Please refer to the Sickness Absence Policy for further information on the rules and conditions surrounding reporting absence and payment of CSP and SSP."

7. The Sickness Absence Policy provided that company pay would be paid on employees' basic salary for the contractual hours and includes statutory sick pay.

Holiday Pay

8. The Claimant's holiday pay claim was set out in her further particulars. It clearly states that the claim is based on her understanding that her holiday pay should be calculated on an average pay based on 52 weeks pay. The Claimant quoted the average weekly pay she had calculated and then applied the calculation to the number of hours holiday she maintained she was entitled to. The Claimant had omitted some weeks where she had received monies under the furlough scheme. We reserve such matters to the remedy hearing as we have not been able to understand the Respondent's position.

9. The following findings have been made from documents in the bundle as the response does not assist the Tribunal in how holiday pay is calculated claiming the Respondent has *"no idea what the claim is about"* and even in the amended response (following receipt of the further particulars) merely states that Claimant has changed her approach and a bare denial of owing sums. According to a document titled "Workday fact sheet PT Holiday and entitlement & pay", the holiday entitlement and balance are calculated on basic contracted hours in Workday. The Workday fact sheet then states "*Your holiday pay is calculated based on your average earnings of basic hours, plus PT sessions and other variable pay, over the previous 52 weeks at the time annual leave is taken. These earnings are then applied to your hourly rate of pay and Workday will calculate an accurate figure for your holiday pay".*

10. The Claimant had historically been raising issues about her pay and holiday pay calculations. In the 2021 grievance, most of the grievances were dismissed save one element was upheld in respect of the pay slips where it was found that the pay slips lack some transparency and a commitment of a review was made, but there was no evidence before this Tribunal that

such a review was undertaken. Whilst nothing turns on this grievance, we find generally it reflects the very great difficulty this Tribunal has had in understanding how the Claimant's wages have been calculated, how the holiday pay has been calculated and moreover how that is then reproduced onto pay slips. In numerous cases there are payments paid and then deducted on the pay slips with a minus symbol with no explanation.

11. Mr Ives is the Respondent's Assistant Payroll Manager who was called to explain the Respondent's position on the monetary claims. In a theme reflected in all of the Respondent's witness statements, his was extremely sparse running to 2.5 pages and did not refer to any documents in the bundle nor did it set out any reasoning as to why the Claimant's comprehensive calculations and records were incorrect. It did not even refer us to the Respondent's documents regarding how holiday pay was calculated that would have been relevant to the Claimant. Mr Ives told the Tribunal that there are two elements to holiday pay. The first he describes as "Annual Leave" where an employee takes a holiday based on their annual leave entitlement which is based on their length of service and prorated if they are part time. The second is called "holiday top up" which is based on variable pay over 12 months prior to the date on which the leave is taken. In the Claimant's case the variable pay would therefore be in respect of her PT sessions and classes. Mr Ives described the calculation is as follows; the variable pay is divided by 52 then divided by the contractual hours which gives an hourly rate, this is then multiplied by the number of hours of annual leave taken and is paid in the month that leave is actually taken. This differs from the way the calculation is described on the Workday fact sheet above. The Respondent were ordered to set out an explanation as to how holiday pay was calculated by Judge Brace. In that document the Respondent asserts that a document setting out a full explanation is within disclosure and had been supplied to the Claimant at that time. as the only document this could relate to is the Workday fact sheet, we find that the contractual term in respect of how holiday pay is calculated is as per the Workday fact sheet namely based on average earnings of basic pay, plus PT sessions and other variable pay over the previous 52 weeks.

12. Mr Ives accepted that if there had been underpayments later identified no retrospective correction of holiday would be made.

<u>Holiday Pay 2021</u>

13. The Claimant's claim is for holiday pay from June, August, October, November, December 2021 and July, August, November and December 2022. We had sight of pay slips from June 2021 onwards but no pay slips before then. The Claimant provided the Tribunal with her records of all of

her hours worked, classes taken as well as personal training sessions delivered from June 2020 – June 2021. The Claimant kept meticulous records which have been of assistance to the Tribunal, in particular in respect of the period of holiday pay for 2021 given that the calculation must be based on 52 weeks preceding June 2021. There was no evidence from the Respondent about how their figures had been arrived at. We would have expected to have seen pay slips between June 2020 and 2021 given the way the holiday pay is calculated. In the circumstances we accepted the Claimant's evidence as to her gross weekly average pay over each preceding 12 months prior to each holiday pay claim.

14. On the basis of the Claimant's figures, the Claimant received no holiday pay for June 2021 and maintains there were various shortfalls of the other holiday pay payments as the holiday pay was not calculated on a true average of gross pay or in accordance with government guidelines. To take an example, the Claimant took two weeks holiday on 11 – 18 and 18 – 25 July 2022. Her gross weekly average wage for the preceding 12 months was £431.99 which should have provided for £863.98 holiday pay. The Claimant was paid £778.17 leaving a shortfall of £85.81, if a payment was made on a true average the preceding 12 month's pay. The Claimant raised the issues about her pay as early as August 2021 and eventually raised a grievance. There was an internal email with unexplained redactions dated 2 December 2021 which said that the Claimant's calculations were wrong as she had based her calculations of variable pay on gross pay instead of holiday top up pay only. In other words, the top up holiday pay is based not on gross total pay but on the previous 12 months holiday top up pay. The Tribunal has not had any explanation as to how the Respondent's system of calculating holiday pay described by Mr Ives complies with their own requirement for holiday pay to be based on an average. This also does not accord with the Workday fact sheet which says that holiday pay entitlement will be calculated on an average of basic pay, plus PT sessions and other variable pay over the preceding 12 months, which is how the Claimant has calculated her figures. The situation becomes more opaque when we consider how holiday pay is described on the pay slips. The "Annual Leave" payment described by Mr Ives is not even described as holiday pay but as basic pay. The "top up" pay element is described by holiday pay but on multiple pay slips this is paid and then reversed.

<u>August 2021 agreement regarding Les Mills classes</u>

15. Les Mills is the name of a series of nationally well known fitness classes that can be subscribed to by fitness providers to offer within fitness clubs. Instructors learn the routines which change every three months or so then teach the classes. The Claimant's case, which we find has been consistent from the outset of her grievance and maintained consistently throughout these proceedings was as follows. The Claimant's contract only provided

for 5 basic hours per week and she had been seeking an increase for some time. She needed to be at 8 hours per week to hit the ”iconic” model which was a performance target where PT’s who were working less than 8 hours per week were expected to deliver 20 or more PT sessions per week. By agreeing an 8 hour basic hours the Claimant would only have to hit 8 PT sessions per week.

16. In August 2021 the Claimant had a meeting with Mr Cheadle who at that time was the Fitness Manager. The Claimant says that it was agreed that she would be paid an additional 3 hours per week to practice the Les Mills classes. It was not the usual practice for personal trainers to be paid for practicing the routines.

17. From August 2021 until June 2022, the Claimant submitted these hours on Work Day (the Respondent’s system for logging all work and holiday requests) and they were fully authorised and paid initially by Mr Cheadle then later by Ms Thomas who became the Claimant’s line manager. In February and March 2022 Ms Thomas queried why the Claimant was claiming the three hours for practice classes. The Claimant’s evidence, which was not challenged, was that she then spoke to Ms Thomas and explained her agreement with Mr Cheadle. Ms Thomas continued to authorise those payments until the end of June 2022.

18. Mr Cheadle’s witness statement denied this arrangement. In his witness statement he said as follows:

“The conversation I had with the Claimant regarding Les Mills training was that if she needed to block out time she was already being paid from one shift to learn, that then let me know I did not and would not have been able to authorise overtime or additional pay to learn some classes. I explained my position on this during one of the grievance investigations.”

19. Mr Cheadle was asked about this during a grievance investigation into the Claimant’s grievance when the payments were stopped from June 2022. He was directly asked whether he had made an agreement with the Claimant about paying her for practicing Les Mills and replied as follows

“Definitely not an agreement. I remember 121, I said I am pretty sure we can’t do this Beth, over 50% of your hours taken up. I think I showed her the Les Mills business rules. There was definitely wasn't an agreement that she could be paid for the training.

And

“No, I definitely not agreed to three hours of her shift”

And when asked if there was an informal agreement:

"Maybe a one-off basis, I may agreed, where she said she had nothing booked in.

Just this once kind of thing.

So no ongoing agreement.

JC-No."

20. It was put to him that the Claimant had been claiming the hours since August last year his response was *"Declan has been talking about it and the previous GM. I'm aware of that but I didn't know it was for that period of time."*

21. When Mr Cheadle was asked about this under cross-examination his evidence changed significantly. His evidence that he gave to the Tribunal was as follows. The Claimant put her case to him about the agreement and he told the Tribunal the following,

    "When I was Fitness Manager in August 2021 you were contracted to 5 hours and you were requesting 3 for Les Mills. My initial reaction was 'no' it goes against Les Mills policy and is not normal policy. I manage a team of 11 PT's, if I gave you the 3 hours practice someone else would have asked questions and it could have opened a can of worms. From memory I then had a conversation with Ms Thomas. There were other external factors such as the situation with the Claimant's grandmother. Beth delivered 3 hours body balance, grit and core, this would have been 36 hours in 3 months. I'm realistic, I couldn't approve it. Then had a conversation with Rhian, we were under budget, we agreed as a temporary measure until we recruited a new PT, we had lost one and a job ad was out, those hours could be take as a favourable decision to help Beth. In hindsight maybe that wasn't the best decision."

22. Mr Cheadle therefore told the Tribunal something completely different and new as to what had been maintained by the Respondent as far back as the grievance outcome. He accepted it had been agreed the Claimant would be paid an additional three hours per week for Les Mills Practice classes by him and Ms Thomas. There was no mention of an end date specified as part of the agreement. The Claimant reasonably understood that this agreement was permanent. It is extremely unfortunate that Mr Cheadle's witness statement maintained the position that it did up until he gave his oral evidence. The Respondent did not attach appropriate weight to the evidence that two managers including Mr Cheadle had consistently paid the

Claimant for the 3 hours until June 2022 it had been authorised by two managers and evidenced by over 50 pages of work day submission sheets.

Protected disclosure

23. The Respondent has a contract to undertake pre-screening fitness tests for the Ministry of Defence. There are two stages to this test, the first is various health checks on the individual including blood pressure. Provided that the individual passes the first stage test effectively, they then go on to do a fitness test. In June 2022 the Claimant was inputting a test result of a test that had been undertaken by Mr Morris who had just started employment with the Respondent as the Fitness Manager. She noticed that the individual had a blood pressure reading that meant he should not have gone on to perform the fitness test, but notwithstanding that Mr Morris had incorrectly processed the individual onto the next level and undertaken the physical part of the test. The nearest contemporaneous record of what the Claimant says then happened was in her grievance that later followed. The Claimant says that she raised this with Mr Morris and he reacted in a hostile manner towards her in such a way that she did not have confidence that he had taken on board what she had explained about the problems with the test. On that basis she decided to contact Lydia Pidduck who is the individual within the Respondent who is in charge of the MOD testing.

24. The Claimant emailed Miss Pidduck on 21 June 2022 at 11:42am. The original email was not in the bundle nor was the attachment which the test record the Claimant raised a concern about. This was unfortunate and unexplained nor was there a record of any reply by Ms Pidduck. We had an extract of the email, which stated as follows;

"Recent Concerns, Hi Lydia, I was given this report by a new manager to upload onto our tracker, after one glance at it I could clearly see he did not understand the correct way to complete an MOD. In trying to discuss this with him his response has raised quite a bit of concern. If possible can you give me a call so I can explain my conversation and for your advice on what is best to do next…"

25. It was not disputed the email was sent and received. There was no documentary evidence from the Respondent about what then happened to follow up the Claimant's concerns. It was surprising for there to be no other emails surrounding this issue between anyone.

26. After the Claimant had sent the email she spoke with Ms Pidduck on the telephone that afternoon. She explained the blood pressure reading had been too high and when she spoke to Mr Morris about it he did not seem concerned and was adamant he had done nothing wrong. Ms Pidduck told the Claimant not to worry and she would deal with it directly.

27. In the Claimant's grievance raised on 27 October 2022 the Claimant said Mr Morris reacted badly to her challenging him on this and was hostile towards her. The notes also record she told the grievance investigator that his attitude towards her was sour when they discussed it, he had said to her "*you didn't have to go and tell on me*", or words to that effect.

28. The Claimant also said in her grievance that she had understood the outcome of her conversation with Ms Pidduck was that Mr Morris had to undertake retraining to ensure that he was undertaking the tests in the compliant way.

29. The only evidence we have from the Respondent about all of this was in Mr Morris's witness statement at paragraph 9. We consider this to be important in terms of our findings on causation insofar as the detriments for the protected disclosure. Mr Morris told the Tribunal he was aware the Claimant had gone to Ms Pidduck about the test and that the Claimant had claimed he had done a blood pressure incorrectly. (This was incorrect as the Claimant had not raised a concern about the blood pressure test itself but that the blood pressure readings meant that the physical test should not have followed). Mr Morris goes on to say, "Lydia followed this up. I had spoken to my general manager, it was looked into and I had done it all correctly. The general manager at the time dealt with it. Lydia was told she was welcome to come and see how we did things but she was happy with the response. The Claimant was not happy about that. The general manager was not happy with how the Claimant was speaking to me, particularly as I was a manager. This was a couple of weeks after I started. I had no impact on anything else." We note at this time the general manager was Ms Thomas who was aware of and had approved the Claimant's three hours Les Mills practice on Workday.

30. Having regard to the evidence before us; the Claimant's account and the near contemporaneous records of the grievance we find that Mr Morris and Ms Thomas were annoyed with the Claimant for having raised the issue with Ms Pidduck. We also find it unlikely that given such an important contract to the Respondent that it would have been simply dismissed or not actioned. Mr Morris acknowledges that Lydia Pidduck dealt with the blood pressure issue with him and we prefer the Claimant's account that there were some consequences for Mr Morris in that he had to undergo some training and was spoken to about her concerns.

<u>Refusal / Withdrawal of 3 hours pay from June 2022</u>

31. On 30 June 2022 Mr Morris started to send back the 3 hours the Claimant was claiming on Workday for the Les Mills practice that had been agreed with Mr Cheadle and authorised by him and Ms Thomas since August 2022.

The problem is with the Workday system (this was not disputed), is that on the mobile version of the App it is not possible for the employees to see any "sent back" comments. Sent back comments would be reliant upon the Claimant either logging onto a work or personal computer or the manager raising this verbally with the Claimant. She was therefore unaware that the 3 hours pay was being withheld and queried by Mr Morris until August 2022 when her pay started to drop. There was no evidence that Mr Morris brought this to the attention of the Claimant other than sending it back on Workday until later in August 2022.

32. There was a discussion with the Claimant on 30 August 2022. Mr Morris accepted during cross-examination that there had been this discussion but he did not deal with it in his witness statement. The Claimant's witness statement dealt with this discussion and again her grievance set out what she says the conversation. We have accepted the Claimant's version of events on this as the Claimant has dealt with it and is backed by the near contemporaneous grievance documents a few months later.

33. The Claimant says that during a conversation about another issue Mr Morris told her that there was no budget for the Les Mills classes any longer. The Claimant says that she specifically then told Mr Morris about the agreement that had been reached with Mr Cheadle the previous year and he agreed that he would go away and speak to someone. Mr Morris agrees that he went and spoke to Mr Holt but the focus of that discussion appeared to have been around whether any other personal trainers were receiving that additional payment and Mr Holt confirmed that they were not. Mr Morris's witness statement said that he also spoke to the general manager who at that time was Ms Thomas and was specifically instructed by Ms Thomas to stop paying the Claimant the 3 hours. Mr Morris offered to set up a meeting between the claimant and Mr Holt but due to a combination of the Claimant not checking her emails and misunderstandings between the Claimant and Mr Morris this did not take place.

34. Mr Morris's statement did not address whether or not he told Ms Thomas or Mr Holt what the Claimant had told him about the previous agreement in August 2021. He was asked about this when he gave his evidence and his response was as follows; *"a conversation took place with Ms Thomas and Mr Cheadle regarding the 3 hours. To the best of their recollection there was no formal agreement. I was informed at the time no contractual agreement was put in place by Rhian Thomas and Mr Cheadle's part of that conversation. I was informed she had been approved some hours and submissions approved but in terms of the timeline Ms Thomas instructed me to stop approving it."*

35. Mr Morris's reasons for refusing the 3 hours was therefore that he was instructed to do so by Ms Thomas. Mr Morris was still in training as a new fitness manager, workday had been handed over to him and he queried the 3 hours as it looked like an unusual arrangement. However what remained unexplained was why it was decided to stop paying the Claimant given both Mr Morris and Ms Thomas knew of the agreement that had been reached the year before.

36. In August 2022 the Claimant's pay was reduced to her basic pay of £217.54 gross. No additional class payments of PT sessions were paid.

37. On 15 September 2022 Mr Morris emailed the Claimant advising he had "*sent back the workday submissions once again because you keep submitting hours for Les Mills. You have been informed in several meetings you are not able to claim for those hours. If you keep submitting these hours they will have an impact on you for pay as I cannot approve the additional hours. As your line manager you can carry on submitting the hours I will remove the following additional 3 hours so at least you can get paid for the work you have done. Please resubmit the following weeks minus the Les Mills."*

38. The Claimant replied on 20 September 2022 reiterating her account of the agreement with Mr Cheadle from the year before and saying she did not accept that she should have to take a pay cut because of previous poor management.

39. In September 2022 pay some additional payments were made for classes. There is also an entry for "Additional Basic" which had previously been how the three hours Les Mills payment had been described but this was for ten hours. There was a payment of £749.49 for holiday pay but this was reversed with a minus entry below. Her gross pay was £522.98.

40. In respect of October 2022 pay we have set this out below for ease of reference. In November and December 2022 nothing above the Claimant's additional basic pay was authorised. This resulted in a significant reduction in her pay. Mr Morris was asked about this as his email referred to above said he would remove the three hours pay so at least the Claimant could be paid for the work she had done. Mr Morris told the Tribunal that at the time he sent the email he had understood that he could remove the 3 hours and not withhold the rest of the pay but he later discovered that that was not possible. We do not accept this explanation because the September 2022 pay slip does show that some payments were made for classes even though the Claimant had submitted the three hours per week claim. There are contradictory and unsatisfactory explanations before the Tribunal as to why the Claimant's pay for her PT sessions and classes was subsequently withheld for months, only being paid basic pay.

October 2022 grievance

41. On 27 October 2022 the Claimant raised a formal grievance that Mr Morris was bullying her and withholding her wages. Mr Toomey was appointed to hear the grievance. She specifically cited the MOD test situation as reasons she considered Mr Morris was behaving in the way alleged stating:

This incident was causing me too much concern and resulted in me ringing Lydia. I spoke to her about my concerns to try and mitigate the issue before we had a complaint. By me trying to prevent an issue, and raising my concerns this resulted in Declan having to undergo further training. Since this incident, he has held it completely against me and has been particularly unpleasant and unfair, sending back most weeks of my workday, resulting in unlawful deductions of my wages. I feel that I'm treated unfairly compared to my colleagues.

Staff rota

42. The Claimant had regularly worked every Tuesday 11am to 4pm. On 26 September 2022 Mr Morris sent an email about changing rota. The email said as follows, "*I have made some changes to the fitness rota, the individuals this affects I have already spoken, if you have not spoken to me then nothing has changed."* As Mr Morris had not spoken to the Claimant, on reading this email, she reasonably assumed that the rota for her had not changed. She therefore did not open the attachment and look at the actual rota until late October 2022 and after one of the shift changes that had been implemented. The rota had changed the Claimant's hours from 11am to 4pm to 10am to 3pm for 25 October and the following first week in November. The Claimant had established PT clients which she had always seen at 10am on Tuesday. After she realised that she should have been on a 10am to 3pm shift on 25 October 2022, she raised this with Mr Morris.

43. The Claimant was later subjected to a disciplinary allegation that she had delivered PT training at 10am on 25 October 2022. This was the regular PT slot she had always delivered and the Claimant was unaware at that time of the change in her rota start time from 11am to 10am. Although this was later not upheld because the finding was then poor communication, Mr Morris accepted that he made this allegation against the Claimant to Ms Morgan which we will turn to below, which in part led to the investigation meeting that followed.

Staff photographs

44. The Claimant's staff and PT profile photograph that had been displayed since 2018 in reception was one of her having won a silver medal at the World games holding the medal and Union Jack flag. When she returned from leave in or around July or August 2022 she discovered that this photograph had been taken down and a photograph of her from 2016 had replaced it. It was a strange enough event or process for another personal trainer to comment to the Claimant how strange it was to do it during her absence.

45. The Claimant emailed Mr Morris about this on 14 September 2022, sending an alternative photograph as she did not want the 2016 one used. She expressed disappointment that she had not been notified of the intention to remove her photo. Mr Morris did not address this in his witness statement. As part of the later grievance investigation Mr Morris was asked about this. He told the investigation he had sent the team WhatsApp messages on 12 and 15 July 2022 when the Claimant was on holiday advising them photos would be changed to ensure all PT profiles were changed to a new profile format. Apparently the Claimant had not been in the correct staff uniform in the 2018 photograph which is unsurprising given it was taken at the World games after she had just won her silver medal. Insofar as we are to make a finding about this, it was discourteous and on top of the other issues must have been discombobulating to return and find the photograph replaced in this way.

Queries with payroll

46. The Claimant had been raising queries with payroll following the significant reduction in her pay from September 2022 as a result of the withholding of all but basic pay. The Claimant displayed a degree of frustration in her emails for which she was criticised by the Respondent both in their response and on cross examination. We find this criticism was not reasonable in circumstances where the Respondent was failing to respond to the Claimant having reduced her pay substantially with no proper explanation and had failed to respond to multiple emails in a cogent manner. The Claimant was placed into financial hardship. Payroll instructed the claimant to raise the query with Mr Moris who committed on 19 October 2022 to have an update for her the next week. Payroll were evidently frustrated with the Claimant and told Mr Morris they had all previously "spent days and weeks looking over the things" and nothing was owed. This also was not fair criticism given the Claimant was only being paid basic pay and was in financial hardship. Payroll asked Mr Morris to go over and make sure her time had been entered correctly.

47. Mr Morris's reply to the email was telling and corroborates that covert investigations into the Claimant were starting to happen. Mr Morris told payroll on 23 October 2022 that the Claimant *"has an ongoing issue with*

submitting incorrect workday submissions which have been addressed on several occasions, the Claimant was said to be completely aware of reason and this issue has now become a sensitive matter which is currently being looked at by HR and higher management for further investigation."

48. Following this Mr Morris was sent a breakdown of all payments to be paid if approved which included the disputed 3 hours on 24 October 2022 and payroll offered a call with Mr Morris on 25 October 2022. He did not reply and was chased by payroll again on 3 November 2022.

49. The Claimant was then paid in October 2022 an "additional basic payment" described on the pay slip of £1,971.00. There was no explanation on the pay slip or provided to the claimant that this represented the backdated PT and class payments that had been outstanding due to Mr Morris withholding all but basic pay. We are only able to make this finding as the Respondent first described what the payment was for in their counter schedule of loss ordered by Judge Brace. This stated that the payment was made up of 56.5 class payments of £15 per hour, 38 PT sessions and 18.5 hours outstanding additional basic hours pay. These match the Claimant's figures for those periods on the Schedule of Loss save the Claimant says she was due 22 hours as opposed to 18.5 hours.

50. We do not know who authorised that payment, why it was made (given payroll were still chasing Mr Morris on 3 November 2022). No breakdown was ever provided to the Claimant and she had no ability to know what the payment represented.

Class rates

51. On 10 October 2022 Mr Morris sent an email to staff advising them how to complete new class sheets explaining the reason was to monitor class numbers on the premise that there had been low attendance.

52. On 10 November 2022 the Tribunal saw an email exchange with Ms Gostling which very clearly shows that the purpose of these class sheets was not to check on class numbers but to monitor the in-house instructors and make sure that classes were being submitted correctly. Ms Gostling told Mr Morris she had identified that the Claimant had been incorrectly submitting her 2 x 1 hour body balance classes per week as 4 x 30 minute classes. This was later used to discipline the Claimant. Mr Morris forwarded this to Ms Morgan, now General Manager as an allegation. The Claimant was subsequently investigated and disciplined for falsely claiming inflated pay for classes as 1 hour classes are paid less than 30 minute classes.

Member complaint

53. On 1 November 2022 there was an incident between the Claimant and Mr Morris at reception in front of a member. The member sent an email to complain about Mr Morris's behaviour on 2 November 2022 to Mr Cheadle. This email contained serious allegations against Mr Morris in respect of his behaviour towards the Claimant who stated;

    "he proceeded to tell the Claimant off in front of me saying she should know better, repeating to her what he had said to me but in a menacing and even threatening voice, belittling and humiliating her in front of me."

54. The member went on to say they considered Mr Morris had chosen the moment to maximise his need to demonstrate power, she was shocked by his behaviour and felt compelled to write the letter, describing it as verbal aggression.

55. The Respondent has policies on Managing Violence and Aggression At Work and Bullying and Harassment. Neither of these policies were in any way followed by Mr Cheadle on receipt of this email. Mr Cheadle did not address this issue in his statement. On 23 November 2022 just a few weeks after this complaint Mr Cheadle was interviewed as part of the grievance investigation into the bullying allegations made against Mr Morris. He was asked by the grievance officer if he had witnessed behaviour that could be construed as bullying and did not mention the member complaint. When he was asked if he had anything to add he told the grievance officer about the conversation in the staffroom (see below) yet still withheld the member complaint information, which would have course provided a degree of corroboration from a third party that the Claimant had experienced bullying behaviour.

56. Mr Cheadle was asked about what action he had taken on receipt of the complaint from the member and was taken to the above policies. His evidence was vague and contradicted Mr Morris's version of events. Mr Morris said that there was no one at reception apart from the Claimant, the member and Mr Morris but Mr Cheadle said he decided to investigate it by speaking to a receptionist although he could not remember her name. Mr Morris did not think that Mr Cheadle had spoken to him about it at all, whereas Mr Cheadle said that he spoke to Mr Morris and told him not to have conversations like that on reception. Mr Cheadle told us that the member felt sufficiently strongly about the matter to come and knock on the management office door the following day after sending the email. Ms Morgan instructed him to then speak with the member to deal with the complaint. Mr Cheadle did not tell the Claimant about the complaint nor did he discuss with her or provide any welfare check on the Claimant following receipt of the complaint.

    <u>Conversation in the staffroom</u>

57. On 10 November 2022 we saw that Mr Cheadle had requested a witness statement from a Ms Mellor regarding a conversation she had with the Claimant in the staffroom. Ms Mellor alleged that the Claimant was disparaging about Mr Morris and the management team and said that she wanted to get him dismissed. This then subsequently formed a later disciplinary allegation against the Claimant who subsequently denied Ms Mellor's version of events. At this time the Claimant had raised the grievance against Mr Morris and was having her pay withheld so it is likely that she may have made some remarks about her difficulties. This contrasts completely and in an unfavourable manner as to how Mr Cheadle dealt with the member complaint against Mr Morris which was far more serious.

Mobile phone poolside allegations

58. Also at this time there was also some behind the scenes investigations going on into events concerning the use of the swimming pool by the Claimant. There had initially been an email query raised by Mr Cheadle on 2 November 2022 copied to Ms Morgan, Mr Morris and the swimming pool manager about whether certain areas of the pool were booked by the Claimant who was delivering PT sessions/ classes/swimming lessons in the pool. This then turned into a general discussion about booking lanes. The swimming manager then commented:

May also be worth speaking to Andrew as he mentioned recently, he asked her to move coz it was busy in fast lane and she said no, so ignoring the LG who's trying to keep her client and pool users safe"

59. On 10 November 2022 Mr Morris replied to all and asked the swimming manager to obtain more detail; this was the same day Mr Cheadle asked Ms Mellor for a witness statement about the staff room conversation. There must have been some further investigation by the swimming manager as on 11 November 2022 he sent an email stating a lifeguard had told him that on 17 October 2022 the Claimant had been caught using her phone on poolside and was told not to. He did not say the claimant had been rude to him or behaved inappropriately. Another lifeguard said that the Claimant had had a session in the pool before she took a class which as far as she was aware (the lifeguard), is not a scheduled class. She was asked if she had booked the lane and the Claimant had ignored her. This lifeguard did not mention anything about the Claimant using the mobile phone. Mr Morris then forwarded this email chain to Ms Morgan on 11 November 2022.

60. Mr Middlewood did not interview the lifeguards until 30 January 2023 and 2 February 2023 but we did not have sight of those investigation notes. Nothing turns on this as in the later investigation reports Mr Middlewood

sets out the contents of the email of 11 November 2022 as grounds to proceed to a disciplinary hearing (see below).

61. It has transpired during these proceedings that the Claimant was not even in work on 17 October 2022 when it was reported that she was alleged to have used a phone by the pool.

Grievance outcome

62. The bullying grievance was not upheld by Mr Toomey and at the end of November 2022 the Claimant appealed. An appeal meeting was arranged with Mr Wilcox on 12 December 2022.

63. On 28 December 2022 Mr Wilcock emailed the Claimant with the outcome of the grievance. He concluded, in summary that that there was no evidence of any agreement about the Les Mills classes but as a gesture of goodwill would pay the Claimant for the outstanding amount up to his decision and not after. The site (presumably the Bridgend management) was supposed to then review the three hours but there was no evidence that any such review ever took place. Therefore as of this date the Claimant knew she would receive backdated pay but the situation moving forward was uncertain it being subject to a review.

64. In January 2023 a large payment was made to the Claimant (£6877.76 gross £5119.71 net) which we have understood to be on the instructions of Mr Wilcock but having had regard to that pay slip we have been unable to decipher what was paid specifically whether the wages that had been withheld had been correctly paid and reserve those matters to Remedy. This pay slip is incomprehensible with multiple entries paying and deducting sums. It pays SSP then reverses SSP. There are payments made for holiday pay then deductions for holiday pay in different sums.

Disciplinary proceedings January 2023

65. On 10 January 2023 the Claimant started work at 6.30am with PT sessions before her shift starting at 10.00am. Mr Morris called the Claimant up to the office on the pretext that she had to do some online learning but when she arrived she found that a senior manager called Mr Middlewood and an individual from HR Ms Knight waiting for her and she was informed that there were going to be an investigation meeting. The subsequent handwritten notes of this investigation meeting were all signed by the Claimant albeit under some protest given the finish time of the investigation meant it was rushed except for the checklist. The Claimant disputed that the checklist had been read to her and this contained important information about confirming that the purpose of the meeting had been explained and that she could request a break.

66. The checklist inaccurately recorded that the Claimant had had a one hour break at 1.00pm whereas in fact she had to leave the investigation meeting and go and deliver a yoga class and then return to the investigation meeting. No arrangements were made for the Claimant to cover the class. We do not accept Mr Morris was on stand by to cover the class, as if he had been, the Claimant would not have had to do this. By the time the meeting finished around 3.00pm the Claimant had not had a break since she started at 6.30am that morning. These were not reasonable arrangements to have undertaken in such circumstances.

67. There was no pre-warning of the investigation or what the allegations were. The ACAS Code of Practice does not provide for such for investigation meetings.

68. There was a complete absence of any evidence to this Tribunal as to who decided there needed to be a disciplinary investigation and who drew together the allegations. Mr Middlewood was certainly in possession of some written note of the allegations because he went through four allegations at that meeting. He was also quoting emails and putting matters to the Claimant from documents.

69. It was put to the Claimant that she had been incorrectly claiming 30 minute class rates for 60 minute classes. The Claimant explained that she had understood that the rates of pay were £15 for a 30 minute class and £19 for a 60 minute class. It was put to the Claimant whether she had any documents to support this. At that time and to the date of this hearing the Respondent has not produced any document explaining either what the rates should have been or when and how the Claimant or any other personal trainer was informed of the rates (save the 2015 addendum to the contract referenced above). If the Respondent did not have any record of what the rates were it is unsurprising the Claimant did not either.

70. The Claimant pointed out to Mr Middlewood that she had been making the claims in the way that she had on workday for many months, if not years, and they had always been authorised and no-one had raised those issues with her.

71. Following this investigation meeting the Claimant was signed off sick from 11 January 2023 and the Fit Note said it was stress at work. The Respondent's sick pay policy provides that there should be contact every day for the first 7 days and thereafter the frequency should be arranged and contact should be agreed with a manager. If there is long term absence contact plans should be agreed. A second Fit Note was submitted on 13 February 2023 and Mr Morris sent the Claimant some emails signposting her to welfare support.

72. On 22 March 2023 the Claimant was referred to occupational health by Ms Morgan but the basis of this referral was limited to see if the Claimant was well enough to attend a further disciplinary investigation hearing. This was later found to be the wrong approach by Mr Crichton (see below). The occupational health report confirmed the Claimant was well enough to attend a meeting but not face to face and suggested Teams. She was not well enough to return to work.

April 2023 grievance

73. On 4 April 2023 the Claimant raised a further grievance. The Claimant referred to further evidence she said backed her October 2022 complaint that Mr Morris was bullying her. This was the staff photographs, change in rotas, inconsistency in authorising / declining holiday requests, no praise for PT sales, the member complaint (which she had become aware of) lack of opportunity in respect of a new role / promotion, ambushed with the January 2023 investigation, lack of contact from management whilst off sick and failure to adhere to company sick policy. The Respondent decided to split the grievance into two; there is no explanation as to why and this was outside of the usual procedure. Mr Wilcock was given some of the grievance which related to the Claimant's claims she had more evidence to support the previous grievance that Mr Wilcock had had not upheld specifically the bullying allegation against Mr Morris. The other parts of the grievance were given to Mr Crichton which were deemed to be new matters involving a wellbeing role, being ambushed with the investigation meeting and lack of contact during her sickness absence.

74. Mr Wilcock did not meet with the Claimant. Mr Wilcock's witness statement said that instead he undertook a review. In Mr Wilcock's witness statement he described his involvement in the April grievance and questions being sent to witnesses. He stated; *"my decision at this additional stage was sent by letter of 3 May 2023. I set out the reasoning for each point within my decision letter in some detail. Ultimately I did not see any reasons to change the decision and her grievance was not upheld."* He goes on to say he could not agree with certain elements of the Claimant's case and that she had been unable to provide any evidence of the Les Mills agreement

75. What then transpired under cross-examination was that contrary to the witness statement Mr Wilcock told the Tribunal that he had done nothing himself personally to investigate the Claimant's grievance. All of the investigations had been done by the employee relations team, specifically a Ms Tracey including writing the report and the decision outcome letter he signed. He told the Tribunal he just signed the outcome letter.

76. At this point the Claimant had become very upset and evidence had to be concluded early that day. It was evident that Mr Wilcock had not understood the seriousness of what had just happened in that his written statement was at best very misleading and at worse untrue. Further, the person who had made the decision, Ms Tracey, was not called as a witness and the Claimant could not therefore question her on her decisions.

77. Judge Moore then spoke to the Respondents witnesses about the importance of the accuracy and truthfulness of their witness statements and asked them overnight to thoroughly review their statements and tell Mr Bownes if they needed to make any changes before they were subsequently sworn in. Notwithstanding this warning, Mr Cheadle's oral testimony substantially differed from his witness evidence (see above).

78. Ms Tracey had emailed Ms Morgan and Mr Morris about the customer complaint which the Claimant had relied upon as new evidence she had been bullied by Mr Morris. Ms Morgan told Ms Tracey that Mr Cheadle told her:

    a) he had spoken to other members of the team who were present at the time of the alleged incident and they had stated that the incident had not happened as it had been portrayed and;

    b) he investigated and then sat with the member, discussed her complaint and then the matter was closed;

    c) Mr Cheadle recalls the member was more concerned that she had been informed at reception by Mr Morris that she was incorrectly paying for PT;

    d) Mr Cheadle discussed the need with Mr Morris to ensure if discussions were to happen with the team that might be sensitive it should not happen at reception.

79. The grievance appeal outcome decision by Ms Tracey was to accept Ms Morgan's hearsay account of the incident at reception with Mr Morris over the Claimant's account. Ms Tracey does not appear to have asked for documents or ask why the bullying policies were not followed. It did not evaluate whether the new information presented by the Claimant about the member complaint changed this assessment of the reliability of the evidence. This was an unreasonable conclusion to have drawn given the email from the member which significantly corroborated bullying behaviour by Mr Morris from an independent third party. The employee relations advisor chose to accept what Mr Cheadle later via Ms Morgan about the member's concerns rather than the member's actual written concern. It also did not evaluate why there had been ongoing authorisation and payment of

the Les Mills agreed hours between August 2021 – June 2022 as evidence such an agreement had been reached, accepting Mr Cheadle's account that it had not.

80. There was a more thorough investigation by Mr Crichton who actually did do his own investigation and personally wrote the conclusions. He gave instructions for the questions to be followed up such as asking Mr Middletown and Ms Knight about the checklist. However Mr Crichton just accepted their word that it had been read to the Claimant and did not evaluate whether the record was unreliable denoting the Claimant having taken a break, even though he knew that this was not the case and that she had been made to take a yoga class during this very difficult meeting for her.

81. Mr Crichton upheld the part of the grievance regarding Ms Morgan's occupational health referral insofar as the occupational health focus had been on whether the Claimant was well enough to attend a disciplinary investigation rather than efforts to get her back to work. He also upheld the lack of contact during her sickness absence.

Disciplinary proceedings continued

82. The Claimant attended a second investigation meeting with Mr Middlewood on 25 April 2023. Around this time the Claimant made repeated requests to have a second occupational health referral, which was not actioned or replied to for a number of weeks by Ms Morgan.

83. The investigation report dated 4 May 2025 shows the allegations that had been investigated by Mr Middlewood. There is no evidence that these had been put in writing to the claimant before the report. There were five allegations that were within the remit (and again we do not know who decided the remit):

- Inappropriate comments regarding management team raised by Ms Mellor, Beauty Therapist, on 10 November 2022 (emanated from Mr Cheadle see above at paragraph 57);
- delivering Personal Training on shift (emanated from Mr Morris);
- Failure to follow Nuffield Health's protocols for financial gain; specifically, incorrectly logging of classes on workday, the claimant was alleged to have been inputting her two-hour body balance classes as 4 x 30 minutes sessions, as opposed to x2 1-hour sessions. Pay for an hour class is £19 and pay for a 30-minute class is £15, resulting in an overpayment of £11 per class (emanated from Mr Morris and possibly Ms Morgan)
- Rude and inappropriate behaviour on poolside towards lifeguarding and failure to follow Nuffield Health's health and safety protocols in

relating to using mobile phones on poolside on 17 October 2022 (emanated from Mr Morris);
- Rude and inappropriate behaviour towards members on 12 December 2022 (source unknown).

84. Mr Middlewood concluded that two allegations must go forward to a disciplinary hearing. The invitation to the disciplinary hearing set out the allegations:

a) "Falsification of the payroll records and failure to follow Nuffield Health's protocols for financial gain, specifically incorrectly logging classes;

b) "Rude and inappropriate behaviour and failure to follow Nuffield Health's health and safety protocols, specifically on 17 October 2022 Bethan was using her mobile phone on poolside and ignored instruction from the lifeguard on duty."

Disciplinary Hearing and outcome

85. Mr Holt conducted the hearing which took place on 16 May 2023 via Teams. The Claimant told Mr Holt she had never used a mobile phone by the pool but does use her Ipad. He accepted that Ipads are used for swim school. She also told Mr Holt and showed him evidence of the continued approval of her claims on workday by four separate managers for the class rates over two years and asked why they had been approved if they were wrong and she had never been told they were wrong.

86. On 19 May 2023 Mr Holt wrote to the Claimant advising he upheld the allegations. Regarding the phone use he relied on two witness statements from lifeguards confirming the Claimant was on her phone. Regarding the class rates Mr Holt concluded the Claimant did know there were different pay rates for 30 and 60 minutes classes. He relied upon a WhatsApp message from Mr Morris which he stated, "reiterated the payment for classes". This was not correct. The WhatsApp message in question was a response to a question from another employee asking what the rate was for a 45 minute class. It did not give class rates for 30 minute classes. The Claimant was deemed to be guilty of gross misconduct but a final written warning was given due to her length of service and clean disciplinary record.

87. At the relevant time, and as at these proceedings the Claimant was not taken to any policy or health and safety protocol prohibiting the use of phones by the pool, nor have we been taken to any protocol about logging 30 minute classes differently to 60 minutes. Mr Crichton was asked what health and safety protocol the Claimant had breached in respect of the alleged phone use. Mr Crichton told the Tribunal that staff were allowed an electronic device poolside as long as it is in safe casing and he was not

aware of any written policy regarding phone or Ipad use poolside although either could pose a risk of being misconstrued as taking photos. One of the lifeguards told Mr Middlewood he knew about the no phone rule as he had been told on his first day and there were signs by the pool. He also referred to it being in something called the NOP but we do not know what this is. The other lifeguard said the Claimant had an Ipad and a phone and was aware of company policy on phone use from her interview and sheets detailing what you can and cannot have by poolside and the claimant had done the lifeguard course so should have been aware.

Ongoing absence

88. On 7 June 2023 there was a second occupational health referral. The report advised the Respondent that the Claimant was not seeking advice from her GP (in other words not obtaining fit notes). The adviser stated the Claimant was unfit for work at present due to her sense of being overwhelmed by the disciplinary and grievance processes, although she could undertake work online. She stated that once the appeal was over she would be pleased to speak to the Claimant again and discuss a return to work. She recommended looking at a temporary adjustment to her work duties during an initial return.

89. On 13 June 2023 the final written warning was upheld on appeal. On 12 July 2023 the grievance appeal was not upheld.

90. The Claimant contacted Mr Cheadle on 31 May 2023 to explain she was working online (the Claimant classed working on her appeals as working online). Mr Cheadle did not raise any issue with this in his reply of 9 June 2023 but requested an up to date fit note as the last one had expired on 23 March 2023. On 22 July 2023 the Claimant replied and told Mr Cheadle the OH report said she could work online and she was available and willing to work. On 3 August 2023 Mr Cheadle told the Claimant there was no possibility of working online and in the absence of a fit note her absence was unauthorised. The Claimant replied on 8 August 2023 stating she was “lost and confused” as to what she should be doing and complained about the lack of contact. She highlighted she had requested leave in June that had yet to be approved. There was no proper investigation or engagement with the recommendations of occupational health at that time to see if the Claimant could return to work.

Annual leave request

91. On 7 June 2023 the Claimant submitted a request for annual leave on 5, 12 September 2023 and 19 December 2023. These were not actioned until Mr Morris declined them on 7 September 2023, reason stated as the Claimant being on sick leave.

92. The Claimant had travelled to Germany to compete in an event. She was open about this with Mr Cheadle. Mr Cheadle did not reply to the 8 August 2023 email until 6 September 2023. He stated; *"I've checked your workday and can see no annual leave for the time booked off in September."* This cannot have been correct because the workday record we saw quite clearly logged that the Claimant had made a request which had not, as of 6 September 2023, been refused. He then said "*unless you've got a GP note which we've been requesting, if you're away competing I need to understand how you are working from home or fulfilling the requirements of your role",* and he instructed her to attend saying he *"required her attendance on 12 September at 1.00pm"* which is within the normal day and time of working albeit, as noted above, the Claimant had requested leave.

93. The Claimant, very conscious she was on a final written warning, drove back through the night from Germany to make sure that she was at the meeting.

94. When she arrived at the club on 12 September 2023 and reported to reception she was advised that Mr Cheadle was not at the club but in Newbury attending some training. Mr Cheadle explained in his witness statement that he was aware he was double booked with training and meeting the claimant. The general manager instructed him to attend the training and "*in the worst case scenario*" the manager was in the club and available.

95. Mr Cheadle told the Tribunal that when the Claimant arrived for the meeting she was told the general manager was available and able to meet her but she said no and left. The Claimant disputed she was told the general manager was there to speak to her. We prefer the Claimant's account as Mr Cheadle told the Tribunal that he had not informed reception to pass any message to the Claimant so it is difficult to understand how the Claimant would have been expected to know she could have spoken or asked for the general manager. The Claimant, having requested leave three months earlier, had the leave declined 5 days earlier and instructed to attend on 12 September 2023 made considerable effort and under considerable duress to attend a meeting. Mr Cheadle did not have the courtesy to be at that meeting or to make arrangements for someone to meet with her in his place.

96. On 13 September 2023 Mr Cheadle emailed the Claimant sincerely apologising and introduced the new general manager who he said would be her lead contact moving forwards.

97. The Claimant regarded the failure by Mr Cheadle to attend the meeting as the last straw and on 19 June 2023 she submitted her resignation. Her reasons were:

"The consistent bullying with no resolution and refuse to acknowledge any issues being present. Fabrication of events to bully me into a final written warning.
Nuffield's failure to follow the companies sickness policy;

Declining annual leave requests out of legal time frames set on GOV.UK website this is a breach of the implied duty of mutual trust and confidence I have with Nuffield.

Repeated occasions of withholding wages and incorrect wages including but not limited to Holidays & SSP as per GOV.UK guidelines. Neglecting ownership and fault only through vigorous grievance process able to regain some of the financial loss.

Consistent miscommunication. Having been in contact throughout my sick leave.

Nuffield failing to provide me with suitable work. Taking two attempts of occupational health meetings after miscommunication from the first one. Followed by lack of care to get me back in work having waited over 5 months from the last day of sick to finally be invited to a return to work meeting, to which I attended to find you not present at club to host the meeting I was invited too, having rang and messaged you to find out from reception after the start time of the meeting that you were away on a pre organised training day, this creating a complete breach of confidence and trust making it impossible to return."

Wages / sick pay / holiday pay from February 2023

98. On 28 February 2023 the Claimant was paid £587.24 gross, £661.95 net. From January 2023 the pay slips had started to show a payment next to the gross amount for "PT iconic info only (if applicable)". There are two entries for SSP of £99.36 and £255.48 which are both then deducted. There are entries for the Claimant's usual basic pay of £217.54 plus 5 hours Additional Basic plus 11 hours of classes. There was no SSP paid in February 2023.

99. March 2023 pay slip. The pattern repeats here with basic pay of £217.54 and this time three different SSP payments made and then deducted.

100. April 2023. The basic pay was now £237.04 with no SSP entries and reversals.

101. May 2023 becomes even less clear with the Claimant only being paid £94.82 with multiple payments and reversal for SSP and a deduction of £142.22 for occupational sick pay.

102. June 2023 the basic pay is £237.04 and a payment of £142.22 for Occupational Sick Pay. The multiple payments and reversals for SSP continue.

103. July and August 2023 drops back down to one entry of £237.04 gross.

104. September 2023 is the most confusing pay slip before this Tribunal containing pro rated basic pay (as the Claimant had resigned) of £165.93 plus leavers holiday pay of £196.92. The remaining entries are payments and reversals of 14 or so payments and reversal payments variously described as SSP offset , Occupational sick and Statutory Sick pay. The actual payments received are £253.45 gross and £248.45 net.

105. On 18 September 2023 the Claimant emailed payroll to query why her pay slips showed SSP added and then immediately deducted meaning she had received no SSP at all. On 22 September 2022 Ms Harris of payroll sent an email explaining as follows:

Hi Bethan
I have had a look at your Workday Record and can see there have been a few corrections to your sick leave absence.
The SSP will only be due when you do not receive your normal Basic pay and your two pay packets before the sick leave period are above the Lower Earnings Limit of £533 per month. It is not in addition to your pay unless you have depleted your Company sickness entitlement (CSP/OSP)
The SSP entries you are seeing is the Workday calculations which ideally would be in the background and not on display but not something we can stop.
In September you will have unpaid sick leave for 10 hours as you will have depleted your Occupational Sick Leave on the 5th September. Your earnings for July and August are below the Lower Earnings Limit to be eligible for SSP I am afraid
Please find attached a SSP1 which you will need to send to the Job Centre to claim further support
The password is your DOB in reverse yyyymmdd

106. The Claimant replied on 27 September 2023 to say she was confused and the reason her pay was below the lower limit was that she had not been paid correctly. Ms Harris responded that as she had been in receipt of OSP (Occupational Sick Pay) she would not normally receive SSP until the OSP was depleted, confirming it had stopped as of 5 September

2023. SSP entitlement was £218.82 from 6 – 19 September 2023. She later confirmed that in respect of the September pay the Claimant had been deducted 10 hours unpaid sick pay of £109.40 and SSP in place of £218.82. she later confirmed that OSP had been paid @ £165.93 per month which would however be described as Basic pay on the pay slip. The Claimant queried how OSP could be lower than SSP on 12 December 2023.

107. The Claimant has been paid company sick pay based on her basic contractual hours whereas she should have been paid based on a 12 month rolling period. Further the sick pay paid was less than the amount for statutory sick pay. The Respondent's Counter Schedule does not set out how they have calculated the sick pay.

108. In an email dated 26 March 2024 the Respondent confirmed the 2023 holiday pay due on termination was 27 hours accrued up to 27 September 2023 and 9 hours had been taken, leaving 18 hours to be paid at the end of the employment. This was paid at £10.94 per hour. It is unclear how this has been calculated but what we are able to conclude is that it must be incorrect as the Claimant's pay during the preceding twelve months had been depressed due to both unauthorised deductions from wages and an unlawful detriment.

The Law

Protected Disclosures

109. s43B ERA 1996 provides:

> **(1) In this Part a 'qualifying disclosure' means any disclosure of information which, in the reasonable belief of the worker making the disclosure, [is made in the public interest and] tends to show one or more of the following—**
>
> **(a) that a criminal offence has been committed, is being committed or is likely to be committed,**
>
> **(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,**
>
> **(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,**
>
> **(d) that the health or safety of any individual has been, is being or is likely to be endangered,**
>
> **(e) that the environment has been, is being or is likely to be damaged, or**

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

110. In **Kilraine v Wandsworth London Borough Council [2018] ICR 1850,** the Court of Appeal held that the concept of information in S43B (1) was capable of covering statements which might also be allegations. In order for a statement to be a qualifying disclosure it had to have sufficient factual content and specificity such as is capable of tending to show one of the matters listed in subsection (1) and this was a question of fact for the Tribunal. The disclosure should be assessed in the light of the context in which it is made.

111. Where the disclosure is said to be a breach of a legal obligation (S43B (1) (b)), if the legal obligation is obvious then it need not necessarily be identified (**Bolton School v Evans [2006] IRLR 500 (EAT upheld by CA))**. If it is not obvious, the source of the legal obligation should be identified by the Tribunal and how the employer failed to comply with it. The identification of the obligation does not have to be detailed or precise but it must be more than a belief that certain actions are wrong **(Eiger Securities LLP v Korshunova [2017] ICR 561).**

Reasonable belief and public interest

112. In **Chesterton Global Ltd (t/a Chestertons) v Nurmohamed [2018] IRLR 837),** the following approach when considering reasonable belief was set out (per Lord Justice Underhill:

“26. The issue in this appeal turns on the meaning, and the proper application to the facts, of the phrase "in the public interest". But before I get to that question I would like to make four points about the nature of the exercise required by section 43B (1) .
27. First, and at the risk of stating the obvious, the words added by the 2013 Act fit into the structure of section 43B as expounded in Babula (see para. 8 above). The tribunal thus has to ask (a) whether the worker believed, at the time that he was making it, that the disclosure was in the public interest and (b) whether, if so, that belief was reasonable.
28. Second, and hardly moving much further from the obvious, element (b) in that exercise requires the tribunal to recognise, as in the case of any other reasonableness review, that there may be more than one reasonable view as to whether a particular disclosure was in the public interest; and that is perhaps particularly so given that that question is of its nature so broad-textured. The parties in their oral submissions referred both to the "range of reasonable responses" approach applied in considering whether a dismissal is unfair under Part X of the 1996 Act and to "the Wednesbury approach" employed in (some) public law cases. Of course we are in essentially the same territory, but I do not believe that resort to tests formulated in different contexts is helpful. All that

matters is that the Tribunal should be careful not to substitute its own view of whether the disclosure was in the public interest for that of the worker. That does not mean that it is illegitimate for the tribunal to form its own view on that question, as part of its thinking – that is indeed often difficult to avoid – but only that that view is not as such determinative.
29. Third, the necessary belief is simply that the disclosure is in the public interest. The particular reasons why the worker believes that to be so are not of the essence. That means that a disclosure does not cease to qualify simply because the worker seeks, as not uncommonly happens, to justify it after the event by reference to specific matters which the tribunal finds were not in his head at the time he made it. Of course, if he cannot give credible reasons for why he thought at the time that the disclosure was in the public interest, that may cast doubt on whether he really thought so at all; but the significance is evidential not substantive. Likewise, in principle a tribunal might find that the particular reasons why the worker believed the disclosure to be in the public interest did not reasonably justify his belief, but nevertheless find it to have been reasonable for different reasons which he had not articulated to himself at the time: all that matters is that his (subjective) belief was (objectively) reasonable.
30. Fourth, while the worker must have a genuine (and reasonable) belief that the disclosure is in the public interest, that does not have to be his or her predominant motive in making it: otherwise, as pointed out at para. 17 above, the new sections 49 (6A) and 103 (6A) would have no role. I am inclined to think that the belief does not in fact have to form any part of the worker's motivation – the phrase " in the belief" is not the same as "motivated by the belief"; but it is hard to see that the point will arise in practice, since where a worker believes that a disclosure is in the public interest it would be odd if that did not form at least some part of their motivation in making it. “

113. Public interest is not defined in ERA. The question is whether in the worker reasonably believed the disclosure was in the public interest, not whether objectively it can be seen as such.

Detriment claim

114. Under S47B ERA 1996 the employee has the right not to be subjected to any detriment by any act, or deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.

115. A detriment will exist if by reason of the act or acts complained of a reasonable worker would or might take the view that he had been disadvantaged in the circumstances in which he thereafter had to work. An unjustified sense of grievance cannot amount to a detriment but it is not necessary to demonstrate some physical or economic consequence

(Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] UKHL 11).

Causation

116. If the employee establishes that they made protected disclosures and there were detriments , S48(2) ERA 1996 provides it is for the employer to show the ground on which any act or deliberate failure to act was done, only by showing that the making of the protected disclosure played no part whatsoever in the relevant acts or omissions. The standard of the burden of proof required is if the protected disclosure materially influences (in the sense of more than a trivial influence) the employer's treatment of a whistle-blower **(Fecitt v NHS Manchester [2012] ICR 372).**

117. An employer will not be liable if they can show the reason for the act or failure to act was not the protected act but one or more features properly severable from it **(Martin v Devonshires Solicitors [2011] ICR 352, Panayiotou v Kernaghan [2014] IRLR 500).**

Time Limits – Detriments

118. S48(3) ERA 1996 provides that the Tribunal shall not consider a complaint unless it is presented before the end of three months beginning with the date of the act or failure to act to which the complaint relates, or where that act or failure is part of a series of similar acts or failures, the last of them. If the claim is presented out of time the test is one of reasonable practicability.

119. S48(4) provides that where an act extends over a period, the "date of the act" means the last day of that period and a deliberate failure to act shall be treated as done when it was decided on.

120. Time will start to run from the date of the act or failure to act, not the date on which the employee becomes aware **(McKinney v Newham London BC [2015] ICR 495). In Tait v Redcar and Cleveland Borough Council [2008]** All ER, disciplinary action was found to be capable of being classified as 'an act extending over a period'. There was also a finding that although there was no doubt that there had been an initial 'act' of suspension, the state of affairs thereafter in which the employee remained suspended pending the outcome of the disciplinary proceedings could quite naturally be described not simply as a consequence of that act but as a continuation of it.

121. It is important not to confuse the act with the effects of the detriment if they continue to be felt. Furthermore, the meaning of "series of similar

acts" in S48(3) (a) differs to the meaning of an act extending over a period of time in S48(4) (a). We have had regard to the guidance in **Arthur v London Eastern Railway Ltd [2007] ICR 193** (per Mummery LJ).

S103A Unfair Dismissal

122. An employee has the right not to be unfairly dismissed if the reason (or if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.

123. There is a different causation test to the detriment claim as the disclosure must be the primary motivation rather than a material influence.

124. In S103A constructive dismissal claims the question to be determined is whether the principal reason for the fundamental breach in contract was the protected disclosure.

125. The summary of Judge Eady QC of assistance when considering a S103A claim in a constructive dismissal case **(Salisbury NHS Foundation Trust v Wyeth UKEAT/0061/15)**:

[31] In such a case, the ET will have identified the fundamental breaches of contract that caused the employee to resign in circumstances in which she was entitled to claim to have been constructively dismissed. Where no reason capable of being fair for s 98 purposes has been established by the employer, that constructive dismissal will be unfair. Where, however, the reason remains in issue because there is a dispute as to whether it was such as to render the dismissal automatically unfair, the ET then has to ask what was the reason why the Respondent behaved in the way that gave rise to the fundamental breaches of contract? The Claimant's perception, although relevant to the issue why she left her employment (her acceptance of the repudiatory breach), does not answer that question.

126. Although not a case concerning constructive dismissal, in **Royal Mail Group Ltd v Jhuti 2019 UKSC 55, SC**, the Supreme Court held that if a person in the hierarchy of responsibility above the employee determines that she (or he) should be dismissed for a reason but hides it behind an invented reason which the decision-maker adopts, the reason for the dismissal is the hidden reason rather than the invented reason.

Wages claim

127. S13 Employment Rights Act 1996 provides that an employer must not make a deduction from the wages of a worker. The time limits for bringing wages complaints are in s23. Given the list of issues denotes any time point to be determined under s23 ERA 1996 and the respondent has

not pleaded any time point in relation to holiday pay as falling to be determined under Reg 30 WTR we have understood the holiday pay claim to be advanced as a wages claim under s13 ERA 1996, save for the claim for accrued but unpaid holiday due at the termination of the employment.

Holiday pay claim

128. The Working Time Regulations 1998 give workers a minimum entitlement to paid holiday. Pay is calculated in accordance with s221-224 Employment Rights Act 1996. For workers who do not have normal working hours, a week's pay is calculated by reference to an average of hours and remuneration over a 12 week period.

129. On termination of payment, a worker is entitled to receive pay in lieu of any unused annual leave (regulation 4).

Conclusions

Constructive automatic unfair dismissal

130. We consider each act relied upon as follows.

2.1.1.1 Declan Morris stopped approving the Claimant's wages when she submitted online timesheets for approval – from 6 June 2022 to the date of termination of the Claimant's employment

131. In our judgment there was a variation to the Claimant's contract of employment in June 2021 when Mr Cheadle authorised by Ms Thomas agreed to pay her an additional three hours per week, see paragraphs 15-22. It is not disputed that Mr Morris stopped approving this element of Claimant's wages when she submitted online timesheets for approval from 6 June 2022. Whilst the hours to December 2022 were subsequently back paid on instruction of Mr Wilcock, from January 2023 until the date of termination of the Claimant's employment the Respondent unilaterally varied the term of the contract by stopping this element of pay.

132. Not only did the Respondent withhold the additional three hours pay, they also withheld some PT and class payments for August and September and all of them for October, November and December 2022. See paragraphs 36, 39, 40 and 49 above. There are contradictory explanation that are not credible as to why the Claimant's pay for her PT sessions and classes was subsequently withheld for months, only being paid basic pay causing the Claimant financial hardship. Her attempts to resolve matters were met with obstruction and dismissive attitudes (see paragraph 46) to the extent she had to raise a grievance.

2.1.1.2 The conduct of Declan Morris complained of by the Claimant in her grievances of 27 October 2022 and 4 April 2023;

133. The Claimant alleged that Mr Morris had bullied her and was withholding wages. The focus of the October 2022 grievance was the withholding of wages. In the April 2023 grievance the Claimant relied upon other conduct by Mr Morris as further supporting evidence that she was being bullied. This is the conduct relied upon that we must consider. The main "non wages" matters relied upon in respect of the bullying were the staff rotas (see paragraph 42),staff photograph (see paragraphs 44-45) and the complaint from the member (see paragraphs 53-56). Factually there was no dispute about the photo and rota. The issue was whether this was part of the prohibited course of conduct.

134. The explanations by Mr Morris for the photo and rota change are on the face of it, reasonable explanations. All of the PT profiles were changed and the reason the old photo was used was that the Claimant had not replied to the What's app messages. On the other hand, the Claimant was a PT charged with selling PT sessions and it is reasonable to understand that a photograph of her winning a silver meal at the World games would not only be a photo she would be proud of, but also a good PR image for the Respondent. The change in rota was a management decision Mr Morris was entitled to take but his covering email specifically said if he had not had a discussion then there was no change and the Claimant reasonably relied upon this. These matters in our judgment show that communication by Mr Morris about important matters could have been improved, but if viewed in isolation would not amount to breaches of the implied term of mutual trust and confidence. See our conclusions below as out conclusions differ when we have stepped back and looked at all of the conduct.

135. Our conclusion differs in relation to the member complaint. This was a very serious complaint that corroborated the Claimant's allegation of bullying by an independent third party. In our judgment the Claimant is entitled to rely upon this conduct by Mr Morris as part of a course of conduct breaching the implied term of mutual trust and confidence.

2.1.1.3 Declan Morris made allegations against the Claimant which resulted in a disciplinary process and the Claimant issued with a final written warning. The Claimant is unable to supply the date that Declan Morris made allegations but the Claimant attended an initial disciplinary investigation on 10 January 2023 and received a final written warning on 19 May 2023

136. Mr Morris and to a lesser extent Mr Cheadle made a number of allegations against the Claimant. We address these in turn but in general, we have concluded that the timing of these allegations are telling and point towards a case being built against the Claimant. In particular the cover up of the member complaint compared to the "mining" of statements on the instruction of Mr Cheadle and Mr Morris against the Claimant on matters that had not deemed to be issues at the time they happened. The incidents were in the main caused by poor communication and of a trivial nature to the degree that we have concluded a reasonable employer would have dealt with as management issues. They should never have been escalated to the degree they were. Common sense was wholly departed from. Again we contrast this to how the member complaint was dealt with by Mr Cheadle.

Allegation that the Claimant was delivering PT sessions during shift (paragraphs 42-43 and 83

137. This allegation related to two sessions at the end of October 2022 and the beginning of November 2022 where the Claimant had not realised her shift had changed from 10am to 11am. As explained above the Claimant had established PT sessions at 10am every Tuesday morning and had not looked at the attachment changing her rota as Mr Morris had said in the covering email that if he had not spoken to the member of staff there were no changes. The Claimant herself raised this with Mr Morris when she realised her hours had been changed. The Respondent has not explained how this resulted in an allegation being made that the Claimant's behaviour in delivering two PT sessions warranted a disciplinary investigation. This was not a reasonable allegation to make given the confusion over the rota changes caused by the confusing working of Mr Morris's covering email. It was not reasonable to treat this incident as grounds to make allegations of dishonestly against the Claimant.

Allegation that the Claimant had made derogatory remarks about Mr Morris to Ms Mellor in the staffroom (paragraph 57)

138. This allegation was progressed by Mr Cheadle who asked Ms Mellor to make a statement about what Claimant had said. It is reasonable to assume Mr Morris was aware of the conversation from Mr Cheadle but it is unclear who actually decided this should form part of the disciplinary investigation in the following January. Whilst it is fair to say Ms Mellor had reported derogatory remarks, the context of the ongoing grievance and the withholding of wages was not considered. This Tribunal considers it was not reasonable in these circumstances to warrant a disciplinary

investigation especially when compared to how the member complaint was dealt with.

Allegations rude and inappropriate behaviour to lifeguards and use of the mobile phone poolside (see paragraphs 58-61, 83, 85-87)

139. The two lifeguards had not brought the incidents to the attention of the manager at the time, which makes us consider they deemed the incidents unremarkable. They only reported them when prompted by Mr Morris via the swimming manager. At its highest, the Claimant was seen by one lifeguard on her phone and told to put it away and ignored another lifeguard. Mr Holt later concluded that that two lifeguards had seen the Claimant on her phone. The Tribunal has not seen their later witness statements taken by Mr Middlewood. Even if the Claimant had been on her phone (which she denied) the Respondent has not produced any written policy or rule that this is prohibited. The Claimant's position at all material times was that she had used her Ipad and also did not know about any rule preventing phone use by the pool. If an employer is going to discipline an employee for breaching a rule or policy it is reasonable to assume that the said policy is published or communicated to employees. The Respondent did not call anyone involved in the disciplinary proceedings to be asked questions. Mr Crichton did not even know about the policy when he was asked and he is an experienced manager.

Allegations the Claimant had used the wrong class rates for financial gain (see paragraphs 51-52, 83-87)

140. The Tribunal found this to be a most perplexing course of conduct by the Respondent. It was wholly unreasonable to accuse the Claimant of dishonesty in these circumstances. It was wholly unreasonable to rely on one What's app message as evidence the Claimant should have known about the rates for classes when the class rate she was accused of as inflating was not even mentioned in that message. A reasonable employer accusing an employee of dishonestly for claiming incorrect class rates would:

a) Have had clear published rates communicated to staff and;
b) Taken into consideration when making the allegation and then issuing of the final written warning that four different managers over two years had authorised the claims on Workday and not raised any issue;
c) Not relied upon one What's app message that did not even mention rates for 30 minutes classes as grounds to conclude the Claimant knew what the correct rates were.

On 10 January 2023, the Claimant was subject to a disciplinary investigation which resulted in the Claimant working for 9.5 hours without a break (see paragraphs 61- 63

141. The Tribunal acknowledges the common practice of not providing notice of disciplinary investigation meetings. Although the ACAS Code of Practice does not require advance notification of investigation meetings, an employer should still act reasonably in conducting such investigation. We consider that the manner in which these investigations were conducted breached the implied term of mutual trust and confidence. The Respondent did not take proper steps to ensure the Claimant's welfare. It was not reasonable to ambush the Claimant with multiple allegations all put verbally about events that had taken place months before. It was not reasonable to keep her at a very lengthy meeting without an adequate break especially given the Respondent's policy does not permit the employee to be accompanied. It was not reasonable to make the Claimant then cover a yoga class in the middle of the investigation and falsely record on the meeting notes she had had a break. Proper steps should have been taken to ensure her classes were covered it should not have been incumbent on the Claimant to make those arrangements and in any event she was never even informed that Mr Morris was supposed to be on stand by.

Not accepting the Claimant's grievance evidence (witness evidence of two individuals witnessing Declan Morris bullying the Claimant) as events that could have been portrayed correctly, or was not believed or not taken as credible evidence. The Claimant compares this to how Declan Morris' allegations (see §2.1.1.3 above) and evidence from two witnesses (lifeguards) against in her disciplinary, was accepted

142. We did not know who the second witness was said to be but nothing turns on this. This referenced the member complaint. We agree that there was a significant disparity in the treatment of the weight of the evidence against the Claimant and how the member complaint about Mr Morris was handled. It was not reasonable for Ms Tracey to have accepted Ms Morgan's hearsay account of what the member had told Mr Cheadle at a meeting (for which no notes were taken) over the email the member took the time to send herself regarding Mr Morris' behaviour towards the Claimant. The Respondent failed to follow their own policies and procedures on bullying. An independent third party had provided direct corroborating evidence of Mr Morris bullying of the Claimant. The contrast in the way this was treated compared to the disciplinary allegations made against the Claimant were stark, unexplained and troubling.

The failure to pay the Claimant as set out in the First Claim (1600573/23) and failure to pay the Claimant as set out in the Second Claim (holiday pay and unlawful deduction from wages claim)

143. We conclude below that the Respondent has withheld and or underpaid wages sick pay and holiday pay. The Respondent withheld wages from the Claimant by only paying basic pay follow the disputes over the Les Mills classes causing the Claimant significant financial hardship and stress in trying to resolve matters. The back pay payments do not in our judgment ameliorate this course of conduct. The Respondent were not entitled to unilaterally withdraw payment for the 3 hours per week agreed by Mr Cheadle and Ms Thomas. This occurred when Ms Tracey decided that payment would be made to the date of her decision but not beyond, in January 2023.

Annual leave application made on 7 June 2023 by the Claimant in respect of a number of periods of leave (20 June, 11 July, 15 August, 5 September 19 September and 19 December 2023,), was left inactive and refusal of request was delayed to 7 September 2023 by Declan Morris which was not in accordance with guidelines set out on the GOV.UK website (paragraphs 91-92)

144. This allegation is proven factually. The reason given by Mr Morris on the refusal was that the Claimant was on sick leave. The Claimant was entitled to take annual leave during sick leave and therefore if this was the reason that was unreasonable. In any event the Claimant's position was she was fit for work and we found above that the Respondent had not properly engaged with the Claimant about making reasonable adjustments for her to return to work. It was also unreasonable for Mr Cheadle to assert there was no record of annual leave where plainly there was, and then require the Claimant to attend a meeting in the knowledge she was in Germany. The timing of the refusal of leave is suspect, coming only a day after Mr Cheadle instructs the Claimant to attend a meeting on 12 September 2023. We consider the leave was not refused for genuine reasons and was of mischievous intent.

Failing to adhere to the Respondent's sick policy regarding contact timeframes, miscommunication regarding occupational health appointments and failing to provide suitable work for the Claimant, from the date the Claimant commenced her sickness absence on 11 January 2023 (paragraphs 71, 72, 81, 88-90)

145. This was in part upheld by Mr Crichton. The claimant was off sick from 11 January 2023. The only meaningful progress to manage her long term absence was the occupational health report in June 2023 and that was not properly followed up or discussed with the Claimant. The suggestion of online work was dismissed by Mr Cheadle out of hand with

no discussion. The Respondents had been informed since June 2023 there was no fit note and the reasons why.

James Cheadle arranged a meeting to take place on 12 September 2023 when the Claimant was due to be on annual leave and then failed to attend (paragraphs 92-97)

146. If there was one act by the Respondent that demonstrated the contemptuous manner of the treatment of the Claimant, this was it. To refuse leave requested months earlier, knowing what competing meant to the Claimant, and require her to attend a meeting and then not bother to turn up was contemptuous and wholly unreasonable.

147. Having regard to the above we have concluded the Respondent in a course of conduct fundamentally breached the implied term of mutual trust and confidence entitling the Claimant to treat the contract as at an end. The Claimant resigned in response to the beaches, describing the events on 12 September 2023 as the last straw and reasonably so.

148. We further find that the withholding of wages amounted to a breach of an express term of the contract to pay the Claimant wages. Whilst this was not a specific argument before us, the fact that the Claimant was aware in January 2023 the Respondent were not going to reinstate the three hours pay does not mean in our judgment she affirmed this breach before resigning. The Claimant never actually returned to work under the breached term and remained off sick until she resigned. She continued to object to the breach in the disciplinary and grievance procedures which were not exhausted until mid July 2023. Furthermore given the other fundamental breaches which were not affirmed there can be no question of affirmation in our judgment.

Protected disclosure

149. Did the Claimant make a qualifying disclosure?

150. The findings of fact are at paragraphs 23-30. The Claimant was not asked any questions in cross examination about the disclosure. The Respondent disputed this was a qualifying disclosure and the response asserted that the Claimant had not pleaded an allegation that anyone's health and safety was endangered nor any public interest.

151. The ET1 had stated as follows:

claim 4- Subjected to a detriment
under section 47B of the Employment Rights Act 1996

After reporting my manager for health and safety concerns, I was subjected to bullying and financial loss as a direct result. I further reported the bullying to which my employer failed to investigate thoroughly and in fact allowed further bullying to occur.

152. The Claimant was ordered to set out further particulars of the detriments (see above) and gave the dates of the investigation and final written warning.

153. We do not accept that the Claimant failed to plead a health and safety related disclosure. It was clearly set out in the claim form. The Claimant is a litigant in person but the pleading is easy to understand. At no time has it been suggested that the Respondent did not understand how the disclosure related to health and safety concerns. If this had been the position it should have been put to the Claimant and it was not.

154. Turning now to examine the disclosure itself. The Claimant told Miss Pidduck by email and then on the telephone the MOD fitness report completed by Mr Morris had not been done correctly and when she raised this with Mr Morris, his response gave her concern. The specifics were that the blood pressure of the individual was such that this person should not have gone on to do the fitness test.

155. In our judgment this was obviously a qualifying disclosure in accordance with the requirements of the Act. The Claimant plainly had a reasonable belief that the health and safety of that individual had been endangered by permitting this person to do a fitness test with elevated blood pressure readings that had been denoted by the Respondent as unsafe to perform the fitness test. Further, given that the Claimant maintained that Mr Morris refused to accept there was an issue, she must have also reasonably believed the error had the potential to be repeated with other individuals.

156. We have considered whether the Claimant believed at the time she reported these matters to Ms Pidduck that the disclosure was in the public interest and whether, if so, that belief was reasonable. It is clear from the Claimant's actions that whilst at that time she may not have specifically equated this to a legal test of public interest, she believed the disclosure to Ms Pidduck was in the public interest. It was not at all self serving; the reason the Claimant made the disclosure was concern the test was not being performed correctly which she believed had put the individual at risk. Further, objectively it must be in the public interest that fitness entry level tests for the armed forces have not been performed correctly for a myriad of common sense reasons.

<u>The detriments</u>

157. These were alleged to be as follows:

> Declan Morris stopped approving Claimant's wages when she submitted online timesheets for approval – from 6 June 2022 to the date of termination of the Claimant's employment;

158. The key issue for this complaint was causation. It is for the Respondent to show the ground on which any act or deliberate failure to act was done, only by showing that the making of the protected disclosure played no part whatsoever in the relevant acts or omissions. The standard of the burden of proof required is if the protected disclosure materially influences (in the sense of more than a trivial influence) the employer's treatment of a whistle-blower **(Fecitt v NHS Manchester [2012] ICR 372).**

159. Our findings in respect of the reason Mr Morris stopped approving the wages can be summarised as follows:

160. The timing of the conduct. The disclosure was made on 21 June 2022. The three hours had been consistently authorised and paid since August 2021 by multiple managers including Ms Thomas. On 30 June 2022 Mr Morris first sent back the three hours wages on workday.

161. We took into account that a potential reason was Mr Morris was new in the role and in training which could explain why he sent it back. This lacked weight when balancing the following:

162. Both Mr Morris and Ms Thomas were annoyed with the Claimant for having raised the issue with Ms Pidduck. It was telling that Mr Morris told the Tribunal that Ms Thomas was "not happy with how the Claimant was speaking to me particularly as I was a manager". This must have been in connection with the qualifying disclosure as it comes within the same sentence in the statement. We accepted the Claimant's evidence that Mr Morris was sour with the Claimant and felt that she had gone behind his back or told tales on him effectively and gone above his head.

163. Mr Morris was instructed not to pay the Claimant by Ms Thomas, even though he became aware that Ms Thomas and Mr Cheadle had previously been authorising such payments.

164. Mr Morris' evidence regarding withholding some of the pay was inconsistent. He told the Claimant at the time that he could withhold just the three hours so at least she would be paid for everything else. When he was asked why in that case all pay apart from basis pay started to be withheld, he said he later realised he was unable to pay anything other than basis pay as the Claimant kept submitting the three hours Les Mills. We did not

accept this for the reasons set out above. We have drawn an inference from the contradictory and unsatisfactory explanations as to why the Respondent started to withhold all pay except basic pay.

165. The Respondent was required to show that the making of the protected disclosure played no part whatsoever in the decision to start withholding the pay. The Respondent has wholly failed to do so. They did not call Ms Thomas as a witness. Mr Morris' witness statement was very short (3 pages and 10 paragraphs) and lacked important detail. It dealt with causation in two sentences which included a fresh allegation against the Claimant put for the first time she had submitted workday fortnightly to inflate pay.

166. The inaccuracy of Mr Wilcock's witness statement and the false representation to date that he investigated and decided the grievance as well as the admission by Mr Cheadle for the first time, contrary to his witness statement, that there had been an agreement to pay the Claimant an additional three hours per week has caused the Tribunal to question the credibility of the Respondent's evidence. Mr Cheadle did not tell the investigating office this in fact he denied it. Nonetheless, the investigation failed to engage with the weight of evidence that there had been an agreement namely the consistent authorisation of the payment for many months.

167. It all leads back to a decision taken by Ms Thomas which Mr Morris double downed upon despite knowing the Claimant's position about the previous agreement. Mr Morris then further doubles down when he started withholding all pay.

168. For these reasons we find the protected disclosure materially influenced the decision to withhold the pay and that the Respondent has not shown that it played no part whatsoever.

169. We go on to consider whether this claim was presented in time. The Respondent did not assert in the amended response that this claim was out of time but it was identified as an issue in Judge Brace's order. In our judgment the claim was presented in time as the detriment – the withholding of the three hours pay was on ongoing deduction that continued until the Claimant's termination of employment. Further, the promised review by site did not happen. This combined with the Claimant's long term sickness does not lead us to conclude that limitation began to run any sooner. This claim succeeds.

Declan Morris made allegations against you which resulted in a disciplinary process and the Claimant issued with a final written warning. The Claimant is unable to supply the date that Declan Morris made allegations but the

Claimant attended an initial disciplinary investigation on 10 January 2023 and received a final written warning on 19 May 2023.

170. During submissions, Mr Bownes submitted that the claim form had asserted the issue was bullying and not the disciplinary itself and the Respondent should not be criticised for not addressing the disciplinary issue. Mr Bownes submitted that the Respondent had understood the detriment to be about the making of the allegations rather then the disciplinary itself.

171. We had no hesitation in rejecting this submission for the following reasons:

a) Both the list of issues drafted by Judge Sharp and Judge Brace had set this out as a detriment and no issue was raised about this until submissions;

b) The Tribunal observed on multiple occasions about the lack of evidence from anyone involved in the disciplinary and at no time did Mr Bownes raise this issue. This was to the extent that the Claimant on many occasions had to preface cross examination questions to a witness with an acknowledgement she had to put the question to that witness as the person who had made the decision had not been called (for example the questions about the policy of mobile phones had to be put to Mr Crichton);

c) The Claimant had provided further particulars about the dates of the investigation and final written warning as instructed – why would she have been ordered to provide this information if it was not understood to be a detriment;

d) The Respondent were fully aware from the resignation letter the Claimant regarding this as detriment.

172. The Respondent did not call anyone to give evidence (nor were there any documents) as to who made the decision to start a disciplinary investigation. Given this was a detriment set out in the list of issues this was a damaging omission by the Respondent and we have had to piece together facts finding from the documents and evidence under cross examination. What we do know is that from mid-October 2022 there were covert investigations into the Claimant's conduct by Mr Morris, Ms Morgan and Mr Cheadle. The allegations that ensued were baseless and any sensible review of the facts surrounding them would have resulted in a reasonable employer not pursuing them.

173. We have concluded that the decision to investigate the Claimant was materially influenced by the protected disclosure and that the Respondent has not shown that it played no part whatsoever. This claim succeeds for the following reasons:

a) The lack of evidence as to why a disciplinary investigation was deemed appropriate and why;

b) Mr Morris made most of the allegations and the disclosure created an animus on his and Ms Thomas's part towards the Claimant. The management team did not like being challenged and closed rank;

c) The timing of the allegations;

d) The baseless nature of the allegations and lack of sensible evaluation of the facts including the fact that most of the allegations emanated from Mr Morris against which the Claimant had a live grievance of bullying;

e) The mining of complaints against the Claimant;

f) The difference in treatment of the member complaint compared to the allegations that were made against the Claimant.

174. Regarding the actual decision to issue a final written warning, this was taken by Mr Middlewood from whom we have not heard. We can do no more than revert to s48 and the burden of proof and categorically conclude that the Respondent wholly failed to show that the protected disclosure did played no part whatsoever in the final written warning. This claim succeeds.

Time limits - Unauthorised deductions

175. Given the number of alleged deductions covering both wages and holiday pay, we firstly set out our conclusions in respect of these complaints before returning to our conclusions on time limits.

First Claim – Unpaid wages for July, August and September 2022

176. See our findings of fact at paragraphs 31-40, 49. The Respondent withheld the agreed 3 hours additional pay from the Claimant's wages between August to December 2022, and in addition withheld all PT and class payments[1] paying only basic pay. Although a payment was made at the end of October 2022 there is at least a shortfall of 3.5 hours. We say at least as we have not been provided a breakdown of that payment.

[1] Save for September 2022 where the Claimant was paid for 13 hours of classes)

177. The Claimant knew as of 28 December 2022 that Mr Wilcock had made a decision to backpay the 3 hours but had decided it was up to the site moving forwards as to whether that pay would continue. She was told this would be reviewed by the site but this did not happen. The 3 hours was never reinstated as can be evidenced by the subsequent wages based on 5 hours basic pay paid to the Claimant until her employment was terminated. The Claimant went off sick shortly after being told the site would review the three hours by Mr Wilcock. The Claimant's subsequent pay between January 2023 and the termination of her employment is set out at paragraphs xx above. To say this was confusing is an understatement. What we can conclude is that until the termination of the Claimant's employment, the three hours Les Mills wages continued to be withheld.

178. First Claim - Holiday pay

June, August, October, November and December 2021, July, August, November and December 2022

179. See findings of fact at paragraphs 8 - 14. We find in favour of the Claimant as the Respondent has not calculated holiday pay in accordance with their own procedure as specified in the Workday fact sheet. Further, the holiday pay has been depressed as it was not paid on the 8 hours per week but on 5 hours. The Respondent has failed to provide proper records, evidence or documents setting out how the holiday pay has been calculated whereas the Claimant has maintained records and provided cogent calculations.

180. Second claim – Holiday Pay (Working Time Regulations 1998)

181. See findings of fact at paragraphs 104-108. The Claimant has been underpaid holiday pay on the termination of her employment as her pay during the twelve months preceding termination had been unlawfully withheld and also because of an unlawful detriment. This claim succeeds.

182. Second Claim - Unauthorised deductions

183. This claim is in respect of sick pay. See findings of fact at paragraphs 6-7 and 98-107.

184. Mr Bownes submitted that the Tribunal did not have jurisdiction to hear this complaint pursuant to **Sarti (Sauchiehall St) Ltd v Polito [2008] ICR.** In this case, the Claimant was absent from work and alleged to have been working elsewhere. The employer refused to pay him statutory sick pay without authorisation from the then benefits agency and the Claimant brought a claim under s13 ERA 1996. The EAT held that whether a sum claimed to have been unlawfully deducted was SSP depended on the social

security legislation relating to entitlement, jurisdiction lay with HMRC. The Tribunal considered **Taylor Gordon & Co Ltd (trading as Plan Personnel) v Timmons [2004] IRLR 180** which distinguishes claims where a Respondent admits an employee is entitled to SSP but is withholding it which is precisely the situation in this claim. We do not consider the fact that the Respondent latterly asserted the Claimant was not entitled to SSP as her earnings had fallen below the lower threshold to take this case out of the ET jurisdiction. As the facts show, the reason the Claimant's earnings fell below the threshold was because of unlawful deductions and detriment. But for the unlawful deduction from wages and unlawful detriment the Claimant had met the threshold for SSP. It dropped below the threshold when the Respondent started to withhold all but basis pay even where the Claimant had undertaken PT sessions and classes. Had this not happened, the Claimant's company sick pay would have been higher and she would have qualified for SSP. For these reasons the claim succeeds.

185. Of general application we have concluded that that the Claimant was paid holiday pay and sick pay based on 5 hours per week whereas we have concluded her contract was varied so as to include a term that she would receive 8 hours per week. This will be relevant to remedy.

186. Under s23 ERA 1996 we have considered the limitation date for the wages and holiday pay claims. In our judgment the facts have now shown both to be ongoing deductions particularly in respect of the way in which holiday pay was calculated. As the second claim was presented within the required time frame from the last of a series of deductions the claims are not out of time.

187. Even if they had been we would have had no hesitation that concluding it was not reasonably practicable to have presented the claim sooner because the Respondent did not provide payslips that were capable of being understood.

188. Lastly the Tribunal acknowledges this is a very lengthy judgment because of the multiple complaints that had to be determined as well as the factual disputes.

Approved by
Employment Judge S Moore

Dated: 15 August 2025

REASONS SENT TO THE PARTIES ON

22 August 2025

Kacey O'Brien
FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS

Appendix 1

Agreed List of Issues (Judge Brace CMO 27.9.24)

The Issues

1. The issues the Tribunal will decide are set out below.

189. Time limits

First Claim

- Given the date the First Claim form was presented and the dates of early conciliation, any complaint about something that happened before **6 October 2023** may not have been brought in time.

- Was the unauthorised deductions complaints made within the time limit in section 23 of the Employment Rights Act 1996? The Tribunal will decide:

    (1) Was the claim made to the Tribunal within three months (plus early conciliation extension) of the date of payment of the wages from which the deduction was made?

    (2) If not, was there a series of deductions and was the claim made to the Tribunal within three months (plus early conciliation extension) of the last one?

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

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

Second Claim

- Given the date the Second Claim form was presented and the dates of early conciliation, any complaint about something that happened before **2 August 2023** may not have been brought in time.

- Was the detriment complaint made within the time limit in section 48 of the Employment Rights Act 1996? The Tribunal will decide:

(1) Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act complained of?

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

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

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

190. Unfair dismissal

- Was the Claimant dismissed?

(1) Did the Respondent do the following things:

(a) Declan Morris stopped approving the Claimant's wages when she submitted online timesheets for approval – from 6 June 2022 to the date of termination of the Claimant's employment;

(b) The conduct of Declan Morris complained of by the Claimant in her grievances of 27 October 2022 and 4 April 2023;

(c) Declan Morris made allegations against the Claimant which resulted in a disciplinary process and the Claimant issued with a final written warning. The Claimant is unable to supply the date that Declan Morris made allegations but the Claimant attended an initial disciplinary investigation on 10 January 2023 and received a final written warning on 19 May 2023.

(d) On 10 January 2023, the Claimant was subject to a disciplinary investigation which resulted in the Claimant working for 9.5 hours without a break;

(e) Not accepting the Claimant's grievance evidence (witness evidence of two individuals witnessing Declan Morris bullying the Claimant) as events that could have been portrayed correctly, or was not

believed or not taken as credible evidence. The Claimant compares this to how Declan Morris' allegations (see §2.1.1.3 above) and evidence from two witnesses (lifeguards) against in her disciplinary, was accepted.

(f) The failure to pay the Claimant as set out in the First Claim (1600573/23) and failure to pay the Claimant as set out in the Second Claim (holiday pay and unlawful deduction from wages claim);

(g) Annual leave application made on 7 June 2023 by the Claimant in respect of a number of periods of leave (20 June, 11 July, 15 August, 5 September 19 September and 19 December 2023,), was left inactive and refusal of request was delayed to 7 September 2023 by Declan Morris which was not in accordance with guidelines set out on the GOV.UK website;

(h) Failing to adhere to the Respondent's sick policy regarding contact timeframes, miscommunication regarding occupational health appointments and failing to provide suitable work for the Claimant, from the date the Claimant commenced her sickness absence on 11 January 2023;

(i) James Cheadle arranged a meeting to take place on 12 September 2023 when the Claimant was due to be on annual leave and then failed to attend;

(2) Did that breach the implied term of trust and confidence? The Tribunal will need to decide:

(a) whether the Respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the Claimant and the Respondent; and

(b) whether it had reasonable and proper cause for doing so.

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

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

(5) Did the Claimant affirm the contract before resigning? The Tribunal will need to decide whether the Claimant's words or actions showed that they chose to keep the contract alive even after the breach.

- If the Claimant was dismissed, what was the reason or principal reason for dismissal - i.e. what was the reason for the breach of contract?

- Was it a potentially fair reason?

- Did the Respondent act reasonably or unreasonably in all the circumstances, including the Respondent's size and administrative resources, in treating that reason as a sufficient reason to dismiss the Claimant?

- The Tribunal's determination whether the dismissal was fair or unfair must be in accordance with equity and the substantial merits of the case.

- Was the reason or principal reason for dismissal that the Claimant made a protected disclosure?

If so, the Claimant will be regarded as unfairly dismissed.

191. Remedy for unfair dismissal

- Does the Claimant wish to be reinstated to their previous employment?

- Does the Claimant wish to be re-engaged to comparable employment or other suitable employment?

- Should the Tribunal order reinstatement? The Tribunal will consider in particular whether reinstatement is practicable and, if the Claimant caused or contributed to dismissal, whether it would be just.

- Should the Tribunal order re-engagement? The Tribunal will consider in particular whether re-engagement is practicable and, if the Claimant caused or contributed to dismissal, whether it would be just.

- What should the terms of the re-engagement order be?

- If there is a compensatory award, how much should it be? The Tribunal will decide:

    (1) What financial losses has the dismissal caused the Claimant?

    (2) Has the Claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?

    (3) If not, for what period of loss should the Claimant be compensated?

    (4) Is there a chance that the Claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?

    (5) If so, should the Claimant's compensation be reduced? By how much?

    (6) Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

    (7) Did the Respondent or the Claimant unreasonably fail to comply with it?

    (8) If so, is it just and equitable to increase or decrease any award payable to the Claimant? By what proportion, up to 25%?

    (9) If the Claimant was unfairly dismissed, did they cause or contribute to dismissal by blameworthy conduct?

    (10) If so, would it be just and equitable to reduce the Claimant's compensatory award? By what proportion?

    (11) Does the statutory cap of fifty-two weeks' pay or £105,404 apply?

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

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

192. Protected disclosure

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

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

        (a) 21 June 2022 – the Claimant told Lydia Pidduck that Declan Morris was incorrectly completing MOD testing (pre-joining tests for the Ministry of Defence)?

    (2) Did they disclose information?

    (3) Did they believe the disclosure of information was made in the public interest?

    (4) Was that belief reasonable?

    (5) Did they believe it tended to show that:

        (a) the health or safety of any individual had been, was being or was likely to be endangered;

    (6) Was that belief reasonable?

- If the Claimant made a qualifying disclosure, it was a protected disclosure because it was made to the Claimant's employer.

193. Detriment (Employment Rights Act 1996 section 48)

- Did the Respondent do the following things:

    (1) Declan Morris stopped approving Claimant's wages when she submitted online timesheets for approval – from 6 June 2022 to the date of termination of the Claimant's employment;

    (2) Declan Morris made allegations against you which resulted in a disciplinary process and the Claimant issued with a final written warning. The Claimant is unable to supply the date that Declan Morris made allegations but the Claimant attended an initial disciplinary investigation on 10 January 2023 and received a final written warning on 19 May 2023.

- By doing so, did it subject the Claimant to detriment?

- If so, was it done on the ground that they made a protected disclosure?

194. Remedy for Protected Disclosure Detriment

- What financial losses has the detrimental treatment caused the Claimant?

- Has the Claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?

- If not, for what period of loss should the Claimant be compensated?

- What injury to feelings has the detrimental treatment caused the Claimant and how much compensation should be awarded for that?

- Has the detrimental treatment caused the Claimant personal injury and how much compensation should be awarded for that?

- Is it just and equitable to award the Claimant other compensation?

- Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

- Did the Respondent or the Claimant unreasonably fail to comply with it?

- If so, is it just and equitable to increase or decrease any award payable to the Claimant? By what proportion, up to 25%?

- Did the Claimant cause or contribute to the detrimental treatment by their own actions and if so, would it be just and equitable to reduce the Claimant's compensation? By what proportion?

- Was the protected disclosure made in good faith?

- If not, is it just and equitable to reduce the Claimant's compensation? By what proportion, up to 25%?

195. Remedy for discrimination

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

- What financial losses has the discrimination caused the Claimant?

- Has the Claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

- If not, for what period of loss should the Claimant be compensated?

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

- Has the discrimination caused the Claimant personal injury and how much compensation should be awarded for that?

- Is there a chance that the Claimant's employment would have ended in any event? Should their compensation be reduced as a result?

- Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

- Did the Respondent or the Claimant unreasonably fail to comply with it?

- If so, is it just and equitable to increase or decrease any award payable to the Claimant?

- By what proportion, up to 25%?

- Should interest be awarded? How much?

196. **First Claim - Unauthorised deductions**

- Did the Respondent make unauthorised deductions from the Claimant's wages and if so how much was deducted?

Wages: Classes, hours worked and personal training

(1) Were the wages paid to the Claimant on July 2022, August 2022 and September 2022 less than the wages they should have been paid?

(2) Was any deduction required or authorised by statute?

(3) Was any deduction required or authorised by a written term of the contract?

(4) Did the Claimant have a copy of the contract or written notice of the contract term before the deduction was made?

(5) Did the Claimant agree in writing to the deduction before it was made?

(6) How much is the Claimant owed?

Holiday pay

(7) Was the holiday pay, paid to the Claimant in:

(a) June, August, October, November and December 2021; and;

(b) July, August, November and December 2022

less than the holiday pay they should have been paid?

(8) How much leave had accrued by each date of annual leave taken?

(9) Were any days carried over from previous holiday years?

(10) What is the Claimant's entitlement to annual leave?

(11) What is the relevant daily rate of pay?

(12) How much is the Claimant owed?

197. **Second Claim - Holiday Pay (Working Time Regulations 1998)**

- Did the Respondent fail to pay the Claimant for annual leave the Claimant had accrued but not taken when their employment ended? The Claimant has confirmed that the claim is for £1,738.70 as set out in the further and better particulars.

198. **Second Claim - Unauthorised deductions**

- Did the Respondent make unauthorised deductions from the Claimant's wages and if so, how much was deducted? The claim in respect of sick pay covers the period between 11 Jan – 19 Sept 23.

- The Claimant calculates this as £2,136.92 (being SSP at the daily rate of £15.63 over 251 days (£3,923.13) less sick pay actually received of £1,786.21).

- The Claimant is also claiming £1738.70 for 2023 holiday pay as an alternative to the holiday pay claim above.

199. **Remedy**

- How much should the Claimant be awarded?

- Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

- Did the Respondent or the Claimant unreasonably fail to comply with it?

- Is it just and equitable to increase or decrease any award payable to the Claimant?

- By what proportion, up to 25%?

- When these proceedings were begun, was the Respondent in breach of its duty to give the Claimant a written statement of employment particulars or of a change to those particulars?

- If the claim succeeds, are there exceptional circumstances that would make it unjust or inequitable to make the minimum award of two weeks' pay under section 38 of the Employment Act 2002? If not, the Tribunal must award two weeks' pay and may award four weeks' pay.

- Would it be just and equitable to award four weeks' pay?