EMPLOYMENT TRIBUNALS

Claimant: Mr. G. D. Monroe

Respondent: Royal National Lifeboat Institution (RNLI)

Heard at: London Central Employment Tribunal

On: 23,24,25 & 26 September 2025

Before: Employment Judge J. Galbraith-Marten
Ms. D. Keyms
Ms. P. Keating

Appearances:

For the claimant: Ms. A. Amesu, Counsel
For the respondent: Mr. O. Fuller, Counsel

RESERVED JUDGMENT

The unanimous Judgment of the Tribunal is as follows:

1. The Unfair Dismissal claim is well founded.
2. The Wrongful Dismissal claim is well founded.
3. The Age Discrimination claim is not well founded and is dismissed.
4. A remedy hearing will be listed for 1 day on **Monday 15 December 2025**.

REASONS

Introduction

5. The claim was presented on 4 September 2024, and the complaints are unfair dismissal, wrongful dismissal and direct discrimination because of age. There is a single alleged act of discrimination, the claimant's dismissal.

6. The respondent denies the claimant was unfairly dismissed, wrongfully dismissed or discriminated against on the grounds of age. It contends the claimant was summarily dismissed for gross misconduct.

7. The claimant was represented by Ms. A. Amesu of Counsel and called two witnesses Ms. Rosemary Allen, volunteer crew member and Mr. Mark Turrell, Thames Commander. The claimant also gave sworn evidence under oath. The respondent was represented by Mr. O. Fuller of Counsel, and he called Ms. Katy Edge, Regional People Advisor, and Ms. Julie Rainey, Regional Communications Lead to give evidence. Each party had the opportunity to cross examine each other's witnesses.

8. The parties provided an agreed bundle of 444 pages. The Tribunal was also supplied with an agreed list of issues, a table of allegations produced by the claimant (and commented on by Ms. Rainey during the proceedings) and the respondent also provided a copy of the claimant's formal invite to the disciplinary hearing dated 12 April 2024. Each party provided written submissions which they supplemented orally.

The Issues

9. The parties provided an agreed list of issues, and they were as follows.

Unfair Dismissal

1. What was the reason or principal reason for dismissal? The Respondent says the reason was in relation the Claimant's gross misconduct.

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

3. Did the Respondent conduct a reasonable investigation. Tribunal are to consider the following:

    3.1. Whether the Respondent fairly investigated the allegations made against the Claimant.
    3.2. Whether the Respondent amended its 'Code of Conduct' during the investigation process.

3.3. Whether the Respondent had pre-determined its decision prior to the investigation.
3.4. Whether the Respondent permitted the Claimant's chosen companion to attend during the investigation and disciplinary process and the reasons for any refusal.

4. Whether the Respondent's decision to dismiss the Claimant fell within the band of reasonable response. The Tribunal are to consider the following:

4.1. Whether sufficient weight was placed upon the Claimant's length of service with the Respondent.
4.2. Whether sufficient weight was placed upon the Claimant's previous good disciplinary record with the Respondent.
4.3. Whether sufficient weight was placed upon the investigation report findings that the Respondent's management failed to ensure appropriate training an awareness for staff around issues of diversity, equality and inclusion.
4.4. Whether the Respondent sufficiently considered a lesser alternative sanction to dismissal.

Wrongful Dismissal

5. Did the Claimant receive notice pay in line with his contract of employment?

6. Was the Respondent justified in its decision not to pay the Claimant in lieu of notice?

Direct Age Discrimination

7. Did the Respondent dismiss the Claimant?

8. Did this amount to less favourable treatment? The Claimant relies on a hypothetical comparator under the age of 60.

9. If so, was the Claimant dismissed because of his age? The Claimant was 61 at the date of dismissal.

Remedy

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

11. If there is a compensatory award, how much should it be? The Tribunal will decide:
11.1. What financial losses has the dismissal caused the Claimant?
11.2. Has the Claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?
11.3. If not, for what period of loss should the Claimant be compensated?

11.4. 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?
11.5. If so, should the Claimant's compensation be reduced? By how much?
11.6. Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
11.7. Did the Respondent or the Claimant unreasonably fail to comply with it?
11.8. If so, is it just and equitable to increase or decrease any award payable to the Claimant? By what proportion, up to 25%?

12. If the Claimant is found to have been discriminated against, what injury to feelings has the discrimination caused the Claimant and how much compensation should be awarded for that?

13. Is the Claimant entitled to interest and, if so, at what rate?

Findings of Fact

10. The Tribunal's findings of fact do not seek to address every point about which the parties disagree. The Tribunal deals with the points that are relevant to the issues as agreed by the parties.

11. The respondent is a charity that works to end preventable drowning through rescue and lifeguarding operations as well as educational programmes.

12. The claimant is 62 years old and at the date of his dismissal was 61 years old. He was employed by the respondent as the Thames Commander of the Chiswick Lifeboat based at Chiswick Lifeboat Station.

13. The claimant has dedicated virtually all his adult life to service with the respondent starting first as a volunteer crew member in 1986 and becoming employed as a Helmsman on 19 November 2001. His performance and development review for 2008 was included in the bundle at page 78 and his manager commented, "*Glenn's loyalty to the RNLI is unquestionable*."

14. His employment was terminated without notice on the grounds of gross misconduct on 26 April 2024, after a total combined service of 38 years. At the time of his dismissal the claimant had a clean disciplinary record.

Job Role

15. The claimant's original and updated contract of employment were included in the bundle at pages 48 -61. With reference to conduct, the updated contract at page 60 of the bundle stated, "*you are required to comply with RNLI's rules, policies, procedures, Staff Handbook, (Code of Conduct) from time to time in force*."

16. The claimant's job description was included in bundle at pages 139 & 140. His role was to be responsible for the operational effectiveness and safety of the lifeboat, people and working environment through command duties, leadership and support duties both afloat and ashore, including working within the community. In his own words, as a Thames Commander, the claimant had the lives of his crew in his hands, and his key responsibility was to come home with a casualty alive or dead. In evidence the claimant stated he always maintained an emotional distance from his role, "*if someone is drowning in front you, I can't get emotional about it*."

17. His shift pattern was 4 days on and 4 days off. His shifts were 12 hours and during his 4 days on and whilst not on duty, he stayed in an adjacent flat to the Lifeboat Station provided by the respondent. His colleagues also stayed at the flat. There is no requirement to do so, but Ms. Rainey confirmed during evidence that employed crew members often travel to work from some distance, and they choose to stay there for convenience rather than commuting.

18. The claimant commuted to Chiswick from Norfolk, and that is why he stayed at the flat.

19. Both the station and the flat are small spaces, the station being 43 square metres when empty and 38 square metres when full as described by the claimant during his evidence. The station has a TV and two sofas, a room with bunks, and office and a bathroom. The flat is also small and the primary difference between behaviours of the respondent's staff at the station and in the flat according to the claimant, is they viewed their time at the flat as down time as they were permitted to drink alcohol etc. Those on duty and using the flat spent 24 hours a day with each for 4 days in close quarters.

Respondent's Standards

20. The respondent's Code of Conduct was included at page 140 of the bundle.

21. The Dignity at Work policy was included at pages 147 – 150 of the bundle. It states, "*being aware of how your own behaviour may affect others and changing it, if necessary -you can still cause offence even if you are only joking*". Page 156 provides specific examples of racial harassment, and they include *insensitive jokes or pranks related to race*.

22. Banter is described at page 157 of the bundle.

> *"Is good natured teasing, joking or repartee that doesn't offend anyone but it becomes harassment if it is unwanted and the comments are likely to offend someone, especially where they are linked to a 'protected characteristic' (defined in the Equality Act 2010 as things like race, sex, age, disability, religion, sexual orientation, gender reassignment).*
>
> *It is the impact that words or actions have, and not the intent of the person speaking or acting in a certain way, that makes it harassment and not banter. The fact that an individual did not intend to cause offence or hurt is not an acceptable excuse.*

Common sense, context, good taste and individuals' relationships with each other will normally dictate which remarks are, and which are not, enjoyable and acceptable."

Respondent Culture

23. During 2023 the respondent experienced negative publicity. On the 19 July 2023 it's Chief Executive, Mr. Mark Dowie, issued a letter to staff and volunteers regarding the organisation's culture. This was included at pages 313 & 314 of the bundle.

24. In his open letter Mr. Dowie stated.

"*The RNLI is a superb lifesaving charity, populated with extraordinary people, and driven by kindness and courage; but the events which have been reported in the newspapers demonstrate that we also have in our team those whose behaviour is unacceptable and damaging to our charity and its cause. The RNLI has a clear Code of Conduct for all to follow, and this simply must be lived and supported by everyone within the RNLI. Or we, on our watch, will fail to ensure the long-term success and sustainability of the Institution.*

To be clear, examples of behaviour that simply will not be tolerated include:

- *Bullying*
- *Racism*
- *Misogyny*
- *Unfair treatment*
- *Inappropriate communications.*

These failings do not have any place in our organisation and will not be tolerated. I want to assure anyone who has experienced anything of this nature within the RNLI that you can speak up safely, and the organisation will listen, treat your complaint seriously, and take appropriate action. Should you wish to bring anything of this nature to my attention you can via the safeguarding email address.

Some of the recent articles have also referred to the RNLI's failure to deal adequately with these cases when they have occurred. I want to assure you that every effort is made to deal fairly and professionally with every case. In most cases, the organisation is unable to make comments about individuals or specific details in the media due to legal or confidentiality restraints, and this sometimes makes it look like we are saying nothing in defence of the institution. I would ask you to trust us with this but in saying this, we are listening, and we are willing to learn and change.

I am absolutely committed to rooting out this behaviour across all levels. To be clear, it has no place in this organisation and, for the overwhelming majority of you, you will have had nothing to do with it whatsoever. As one crew we now need to take stock, make sure we are being kind and respectful at all times, and that we do not walk on by when we see or hear of this sort of behaviour. This is at the core of our values, and I expect every single person to live to these high standards in everything we do.

This is your RNLI–please make sure you are doing everything in your power to nurture each other and our charity and keep it safe.

Regards,
Mark

25. This letter was circulated across all the respondent's stations, and the claimant was asked by his line manager, Mr. Wayne Bellamy, Station Manager, to read the letter and tasked him with communicating it to other crew and volunteers by

reading it aloud during several shifts that followed its publication. The station has approximately 60 volunteers and 9 or 10 employed staff.

26. Following the open letter from Mr. Dowie, the claimant met with Mr. Bellamy a week later for a one to one and notwithstanding there had been no formal complaints about the claimant's behaviour, he was told to "*tone it down*" by Mr. Bellamy.

27. The claimant's performance during 2023 was also appraised by Mr. Bellamy and this was captured in his RADAR Form, (Review, Assess, Develop, Achieve, Record) dated 12 January 2024 and included in the bundle at pages 130 - 138. It stated, "*Be aware of your standing within the team and that your behaviour will set the standard for others. Lead by example and challenge negative behaviours constructively*." The claimant commented, "*I believe I still make a reasonable contribution to the station and crew, having almost 38 years' experience and try to move with the environment and working practices*." Mr. Bellamy's overall comment was "*Glen has had a great 2023! He continues to be a reliable and trusted member of my team, often uses his initiative and has effectively taken on responsibility for Afloat equipment*."

Suspension

28. On the 19 February 2024 the claimant was informed by Mr. Bellamy that he was suspended from work with immediate effect. He informed the claimant this was due to alleged discriminatory and unacceptable behaviours; namely allegations concerning the use of racially motivated language, the use of sexist language, the use of sexualised comments/comments about females, and the use of derogatory and belittling remarks.

29. This was confirmed in writing the same day and the letter of suspension from Ms. Laura Kill (now Robinson), People Adviser Manager, included in the bundle at pages 197 & 198 provided examples of the claimant's alleged conduct as below.

    - *The use of racially motivated language*
        - *Example: referring to the Mayor of London as a "terrorist"*
    - *The use of sexist language*
        - *Example: Speaking negatively about the Women in SAR event*
    - *The use of sexualised comments/remarks about females*
        - *Example: Referencing female crew member's bottom*
    - *The use of derogatory / belittling comments*
        - *Example: Use of inappropriate comments whilst viewing RNLI service call camera footage*

30. During her evidence the Tribunal asked Ms. Edge about the comment she made at paragraph 21 of her witness statement that the claimant was not placed at a disadvantage by not having the complainant's names or identifying factors. She couldn't recall whether the claimant was given dates or times with reference to the allegations but otherwise he did have context she submitted.

The Tribunal disagreed with Ms. Edge's assessment that the claimant was not placed at a disadvantage by not being provided with dates or times in respect of the allegations that had been made against him.

Whistleblowing/Safeguarding reports

31. Three individuals who worked with the claimant at Chiswick Lifeboat station had reported concerns about his behaviour anonymously through the respondent's whistleblowing process and via the safeguarding lead.

32. Person 1, a full-time crew member, had a conversation with Anithi Minhinnick, the respondent's designated safeguarding lead on Friday 2 February 2024 and her summary notes of that conversation were included in the bundle at pages 193 & 194.

33. Person 1 reported "*there has been constant racism, misogyny, bullying, sexism, sexual remarks.*" The examples cited included the claimant referring to the Mayor of London as a "*terrorist*" and using the "*N word*". The claimant had an argument with a volunteer about the women in Search and Rescue (SAR) conference and allegedly said it was a "*load of BS*". The claimant had referred to a female crew member as having a "*nice butt*" to person 1 and he had made a comment about colleagues whilst viewing camera footage at the station in front of other colleagues. The claimant also referred to a Polish colleague as "*they come from the local car wash*". Person 1 alleged these matters had been raised with Mr. Bellamy, but he had taken no action.

34. Whistleblowing reporter 005/24 also had a conversation with Anthi Minhinnick on 8 February 2024 and a summary of that conversation was included at page 195 of the bundle. The reporter wished to remain anonymous and confirmed the claimant had said "*homophobic, misogynistic and racist stuff*." The reporter's examples included calling people "*terrorists*" including the Mayor of London. The reporter stated the claimant said something like "*did you know the "terrorist" has changed the rules. It's because they allow more of them in to keep him in power. There was some news piece on "vermin" and the claimant said, it's the Mayor again*." This person also reported the claimant said to a new Polish colleague on their first shift and in the presence of another Polish colleague, "*with both of you together you can open up a car wash for the station*." There was a reference to homophobic abuse in passing and the witness expressed a view that when the claimant was required to read out the letter from Mr. Dowie, he regarded it as a "*badge of pride".* The reporter had never raised any formal complaint about the claimant but remarked "*many people think he will be gone soon and retired and so look towards that*." Finally, the reporter referenced a female crew member leaving with bad feeling and there was a suggestion that was related to the claimant.

35. Whistleblowing reporter 006/24 had a conversation with Anthi Minhinnick on 8th February 2024 and a summary of that conversation was included at page 196 of the bundle. The reporter also wished to remain anonymous. In respect of the Mayor of London they reported the claimant said, "*what does that fucking "terrorist" want now: I don't know why people vote for him*". The reporter also

referenced a news item on TV about "*vermin*" and the claimant said they were talking about the Mayor. The reporter stated the claimant referred to people as "*pakis" and he made a joke where he said, "I heard a joke, where is Pakistan… it's outside with Pakisteve."*

36. Reporter 006/24 also stated the claimant had spoken lewdly and graphically about a girlfriend with a colleague in front of others. He also said "*all black labs matter*" when he saw a black labrador dog. Finally, reporter 006/24 stated, "*GM is more racially motivated and often what he says is unacceptable. There is some level of misogyny and sexism, but I could not give examples as I have not seen this*."

Disciplinary Investigation

37. Upon receipt of the information from person 1 and reporters 005/24 & 006/24 the respondent produced terms of reference for the claimant's disciplinary investigation, and they were included in the bundle at pages 189 – 191. In the terms of reference, the respondent captured five areas of concern. The use of racially motivated language with six allegations, the use of sexist language with one allegation, the use of sexualised comments/remarks about females with two allegations, the use of derogatory/belittling comments with one allegation and general conduct and not altering behaviour following feedback with three allegations.

38. Although, the terms of reference captured the information that had been shared with Anthi Minhinnick, this information was not shared with the claimant. So far as he was aware the allegations against him were as set out in his suspension letter dated 19th February 2024 which referred to four areas of concern not five and he was only provided with one example in each area and not the totality of the allegations as set out in the terms of reference.

39. The respondent's disciplinary policy was included in the bundle at pages 161 – 172 and referred it to investigations at page 163, "*The employee who is subject to an investigation will be told of the allegations made against them*." At the point the claimant was suspended from duty and told of the investigation, he was informed of some but not all the allegations against him. The Tribunal viewed this as a fundamental failing on the part of the respondent that impacted the disciplinary process that followed.

40. The claimant was invited to an investigatory meeting with the investigating manager, Jacqui Irons, a member of the respondent's senior management team on 28 February 2024 at 10am. Ms. Irons was not called to give evidence by the respondent.

41. Minutes of the meeting were included in the bundle at pages 199 – 205. As above, the claimant was only aware of four allegations as set out in the suspension letter. The claimant was not provided with any context as to when those incidents took place, where they took place, or who witnessed those incidents. Ms. Irons had the benefit of the terms of reference.

42. Ms. Irons introduced the meeting by informing the claimant the purpose of the meeting was to go through the allegations against him, but she hadn't spoken to everyone yet, so a further meeting might be required. The claimant was the first person she interviewed during the investigation.

43. The claimant informed Ms. Irons "*I'm not racist… When I call the Mayor a "terrorist", as a driver, business with wedding cars. His whole manner is anti-motorist. I feel terrorised by his schemes around cars…..All his schemes, not about his race, about the way he enforces his will onto the motorist. Drove for five hours this morning to avoid paying TFL anything*." When asked whether he used the "*N word*" to describe the Mayor the claimant denied that he ever used that word. During evidence, the claimant reiterated his understanding of the word "*terrorist*", he had looked it up and he understood it to mean inflicting one's will on the masses.

44. Ms. Irons asked the claimant whether he called people "*paki*" and made a joke about it. This was the first time the claimant became aware of that allegation. His response was "*I do know that one. Never called anyone a paki. The joke was told to me on station and I repeated it later*." When asked whether that joke was appropriate in the workplace the claimant responded, "*No. In hindsight it wasn't appropriate."*

45. The claimant also informed Ms. Irons he had heard a lot more than that in the station given it's a small, enclosed workplace. He didn't believe that made his own behaviour acceptable, but he was not alone in that respect.

46. Ms. Irons also asked the claimant about the "*black labrador*" comment and comments about his Polish colleagues. Again, these were not allegations set out in his suspension letter. The claimant didn't recall the "*black labrador"* comment and he denied he told his Polish colleagues to open a car wash. His colleague had engaged in those references since Brexit, and he referred to a face book post shared by his Polish colleague showing a bucket and sponge for sale. The Facebook post by BA Trylski dated 24 June 2016 was included in the bundle at page 217.

47. The claimant was then asked whether he referred to the women SAR conference as "*bullshit*". He explained that Ms. Rosemary Allen, a volunteer crew member, was talking about the group, and he questioned why there was a need for a separate group. She told him he was already a member of a group being a privileged white male and therefore he didn't understand the need for equity for underrepresented groups. The claimant told Ms. Irons he felt offended by the suggestion that he was privileged, and he told the incoming crew on the next shift during handover that he and Ms. Allen had a heated argument. He denied using the term "*bullshit*".

48. Ms. Allen was not interviewed by Ms. Irons as part of her investigation, nor did the claimant request that Ms. Allen be interviewed. Nor did he request that she submit a witness statement or attend the disciplinary hearing on his behalf. Ms. Allen was unaware this conversation formed part of the case against the claimant until after his dismissal and she told the Tribunal in evidence that she

knows now he didn't approach her previously because he was hurt as he suspected she was one of the individuals who raised concerns about his behaviour.

49. During cross examination Ms. Allen described herself as loud and outspoken, an extrovert, what someone might interpret as an argument, she viewed as a discussion. In relation to that conversation, she saw it as an opportunity to converse. The claimant described it as a bit of a heated argument when interviewed by Ms. Irons on 28 February 2024, but Ms. Allen didn't accept that description of it, she appreciated the conversation, and it made her feel good and sad at the same time.

50. When asked whether the claimant failed to understand her viewpoint, she stated he understood her perspective, and he listened, but he also asked why it should be only championing women. There should be space for all people to have support when they need it. The claimant didn't dismiss her viewpoint, he was just asking "*what about other people*?"

51. Ms. Allen confirmed she was emotional following the conversation, but she was not crying or upset she was impassioned. However, she did appreciate that may have been open to misinterpretation but none of her colleagues sought her out if they did believe she was upset by the conversation. Ms. Allen could not recall the claimant using the word "*bullshit*" during the conversation. There was no basis for the Tribunal to doubt the sincerity of Ms. Allen's evidence in respect of that conversation.

52. Ms. Irons next asked the claimant about sexualised remarks about females. She referred to the two allegations as set out in the terms of reference, speaking lewdly and graphically about a girlfriend in front of others and using the term "*nice butt"* to describe a female crew member. The claimant was only aware of the "*nice butt*" allegation prior to the investigatory interview.

53. The claimant had no knowledge of the conversation regarding a girlfriend given he has been married for 35 years, and he asked Ms. Irons for more specifics about that, and she said she would follow that up and they could discuss it further. She then asked whether he said a female crew member had a "*nice butt*". Again, without any other context for the conversation, the claimant was unable to respond but he did offer that he is a car aficionado, and his idea of a "*nice butt*" is the rear of a car.

54. The claimant was next asked about commentating on CCTV footage in an open room. Again, there was no date for reference or what the footage was about, and the claimant asked Ms. Irons for more information.

55. Finally, she asked about the claimant's general conduct and whether he read the letter from Mr. Dowie to the crew. The claimant confirmed that he did, and he was laughed at by his colleagues. Ms. Irons also asked whether Mr. Bellamy had raised concerns previously with the claimant and he categorically confirmed that was not correct. However, we note that after the letter from Mr. Dowie was received and during a RADAR review meeting Mr. Bellamy informed

the claimant that "*what would have been close to, would now be well and truly over it. Just tone it down*."

56. The claimant believed this was a reference to his humour and he was telling him to watch what he said in front of other people. In evidence he explained he understood this to mean what was appropriate previously may now be considered over the line from that point onwards and to tone it down. Attitudes were changing but there had been no complaints regarding the claimant's behaviour raised with Mr. Bellamy.

57. Ms. Irons inquired whether the claimant had heeded that advice and whether the allegations were before or after the letter. Although the claimant was not provided with any dates in respect of any of the allegations, he offered that the comments about the Mayor of London and his Polish colleagues took place before the letter was received. In evidence he stated the ULEZ rules changed in 2021, and his comments may have been around that time. The claimant did not recall whether he used the word "*vermin*", he might have done but he was clear he did not use the "*N word*". The comments about his Polish colleagues were in the vicinity of the Brexit referendum which took place in 2016, and he confirmed the conversation with Ms. Allen took place in January 2024. Therefore, a potential mix of pre and post events but it was not possible to clarify that as none of the allegations were dated.

58. At the conclusion of the interview Ms. Irons made the following statement to the claimant, "*I understand there are some you recognise (the allegations), some we need to get more detail and some you deny. Do you understand this behaviour is unacceptable*?.... *And this is not in line with our policies?*" The claimant asserts the decision to dismiss him was made before the investigation commenced and this comment substantiates that view. The question posed by Ms. Irons was not a neutral one, and notwithstanding the lack of particularisation of the allegations or the claimant's notice of only some of the allegations, Ms. Irons appears to have formed the view the behaviour alleged was unacceptable and before she had completed her investigation. This was on page 5 of the investigatory interview minutes on page 203 of the bundle.

59. Ms. Irons also asked the claimant whether he understood the respondent's Code of Conduct and the respondent's expectations. He confirmed that he did. She also asked whether Mr. Bellamy had used the one crew document and the claimant responded strongly that he detested the RADAR system. This was also raised in cross examination and the claimant referred to having to "*prostitute*" himself when completing that document. The use of that term shocked the Tribunal as it is an inappropriate term to describe completing an annual appraisal document.

60. Ms. Irons met with whistle blower 005/24 later that day at midday. Minutes of that meeting were included at pages 211 – 213 of the bundle. Ms. Irons asked the individual to elaborate on their initial conversation. However, she then asked the witness whether the claimant referred "*to people as terrorists, more of an ongoing conversation rather than a specific incident*." That was not a neutral question. The witness confirmed they heard the claimant refer to the Mayor in

those terms but did not elaborate. The witness also confirmed they heard the comment made to Polish colleagues including a new starter regarding starting a car wash.

61. Also, during this interview the note taker, Laura Kill (now Robinson) asked the witness "*what makes Glen stand out?"* The witness responded that he was persistent, more frequent. She then asked, "*Shocking or persistent*". The witness confirmed both. Again, that was not a neutral question.

62. Whistle blower 006/24 was interviewed at 1pm the same day. The minutes of that meeting were included in the bundle at pages 218 – 221. The witness confirmed they heard the claimant refer to the Mayor of London as a "*terrorist*". The witness recalled there was an item on the station TV regarding the ULEZ charge, and the claimant stated, "*what does that "terrorist" want*?". The witness could not recall the date when the incident happened. The witness also recalled there was another item on the station TV about "*vermin*" and the claimant said, "*oh are we talking about the Mayor again*."

63. This witness also referred to the "*Pakistan joke*" but did not explicitly state it was the claimant who told the joke.

64. The witness was asked about the "*black labs matter*" comment and confirmed it was not the claimant who made that remark. It was another person. The witness then recounted another incident involving a puppy and stated, "*The difference is illustrated buy a puppy turned out to have been bought from the daughter of Bruce Grobbelaar. The comment was did he father the puppy? You did say it was a black Labrador."* The witness did not specifically attribute this comment to the claimant.

65. The witness was also asked whether the claimant spoke lewdly about someone's girlfriend and the witness was very clear that was not the claimant. Again, that was another individual. Furthermore, this witness informed Ms. Irons they had never heard anything overtly sexist or misogynistic. Also, the witness stated that the claimant is a nice man, that he and his wife foster children and all the crew who work at Chiswick lifeboat station give more than their contracted hours to the respondent and they take pride in their work. The witness specifically recounted an incident involving a visitor to the station who required support and the claimant was very kind and supportive in those circumstances. This witness also referred to the claimant as not being the youngest man and that there was talk that he would be retiring soon.

66. This witness was also asked about the culture at the station post the letter from Mr. Dowie. The witness confirmed the culture had changed and was generally moving in the right direction and there was some awareness from people of what is and isn't OK. This witness drew a distinction between behaviour at the station and behaviour at the flat.

67. The claimant made notes on this witness's interview, and they were included in the bundle at pages 222 to 225. The claimant commented on the "*black labs matter*" commentary from the witness and his note records "I *would have*

expected Anthi to record all allegations against me accurately as I was questioned on both days and had no clue what was going on. I was also not informed as soon as the mistake was picked up." Further, and because of the information contained in the witness's statement, the claimant was readily able to identify who this witness was, and he stated on page 225 of the bundle that his last shift with this individual took place on 20th of December 2023.

68. Person 1 was interviewed on the 5th March at 9:00 am and the minutes of that investigatory meeting were included in the bundle at pages 226 to 229. This witness referred to the claimant's ex colleague Natalie Sims. The witness was also asked to explain what they meant by constant racism, misogyny, sexual remarks and sexism and whether that was the claimant they were talking about or whether it also included others at the station. The response in respect of the claimant was "*he definitely tops the bar out of everyone*".

69. When asked whether person 1 had heard the claimant use the word "*terrorist*" or the "*N word*" in respect of the Mayor of London the witness responded yes multiple times. Person 1 elaborated and stated we watch the news every morning, whenever the Mayor is on TV, whatever he talks about ULEZ or other subjects he calls him those words.

70. Person 1 was also asked about the women in SAR conversation and whether they witnessed it and person 1 confirmed they did not witness it, they were not on the same shift, but they understood from colleagues the crew member on the other side of that conversation (Ms. Allen) was upset by it.

71. Person 1 also confirmed in this interview the claimant used the words "*nice butt*" when a crew member walked past to them directly. However, person 1 was not asked to confirm when or where this incident took place or who the female crew member being referred to was. Person 1 was asked whether the claimant thought his behaviour was acceptable and person 1 commented "*he does think it's the normal way to act I feel he doesn't know any better*".

72. This was followed by a question regarding expected levels of behaviour and person 1 commented the standards are set by the respondent in the Code of Conduct and in the volunteer Code of Conduct but in their opinion most crew don't even know about those policies. Finally, Ms. Irons at page 229 of the bundle asked person 1 whether they thought the clamant will change or is the claimant aware? Person 1 stated they didn't think the claimant would change, "*he thinks he's going to get away with it*" and person 1 confirmed they had not raised these issues with Mr Bellamy the claimant's line manager.

73. Again, the claimant commented on person 1's statement and his comments were included at pages 230 to 234 in the bundle. At page 231 the claimant referred to person 1's allegation regarding the word "*nice butt*". The claimant recorded in his notes "*absolutely not a thing I would say. I never say the word bum anyway it's just not a word I use. I feel like surely more information could have been given, it is worded comments but only this one incident spoken about I believe this to be fabricated*."

74. The next witness Ms. Irons interviewed during her investigation was Mr. Bellamy. She met him on 7 March 2024, and the minutes of their meeting were included in the bundle at pages 206 -209.

75. Mr. Bellamy accepted that he had heard of the Mayor reference in a Facebook post about the ULEZ charge, but he did not recall the claimant saying it. Mr. Bellamy stated he had spoken to the claimant about his performance, "*Glen very confident in his opinion. Not related to these four examples, there's been episodes in the past. His willingness to express his opinion, sails close to the mark*." Mr. Bellamy asserted that he spoke to the claimant during his RADAR review and during routine coaching because in his opinion the claimant was not "*wordly wise*". He took the claimant aside following Mr. Dowie's letter and had a chat specifically with him as he was someone "*who sailed fine to the wind because he shares his opinion freely and openly*. *More vulnerable to saying the wrong thing, unusual for there to be malice or intent. Lack of awareness in what he is saying and that they carry the potential to upset people*."

76. Ms. Irons questioned what he meant by sailing close to the wind and he said the claimant had a pattern of trying to be humorous or engaging in banter, and it could be misinterpreted. At times he lacked awareness of his impact on others and how it could be interpreted. He stated the reference to "*nice butt*", he knew automatically the claimant was talking about a car and therein lies the potential for misinterpretation. Mr. Bellamy also confirmed that Natalie Sims resigned, as she was being managed collectively by the team, who had concerns regarding her competency, and her attendance levels didn't meet the minimum required. That was not specific to the claimant.

77. Regarding the respondent's policies and the Code of Conduct, Mr. Bellamy informed Ms. Irons there was probably an awareness of them among his staff but not an embedding of understanding.

78. Again, during this interview Ms. Irons appeared to have adopted a closed mindset to the claimant's culpability as she categorised the claimant's behaviour as "*Glen's comments can be embarrassing and shameful*?" Mr. Bellamy refuted the suggestion the claimant was racist.

79. Following her interviews with the three witnesses and Mr Bellamy, Ms. Irons interviewed the claimant again. Notes of that meeting were included in the bundle at pages 235 to 238. Ms. Irons explained the purpose of the meeting was a follow up and she recorded there was an error in the original notes regarding the "*black labs matter*" comment and she confirmed that was not said by the claimant. She again asked the claimant whether he used the "*N word*" with reference to the Mayor of London. The claimant again denied use of that word. She asked the claimant again about the comments regarding Polish crew members and references to car washes. The claimant reiterated that he never instigated the car wash comments it followed from the Brexit referendum. He was further asked whether he could recall making that comment in front of others who weren't aware of the context of the discussion. The claimant said he couldn't remember.

80. During the interview the claimant talked about regional banter and what generally goes on at the station. He informed Ms. Irons the station had been his home for 22 years and had spent more time at the station than in his own house and stated, "*I can't be on my guard 24/7 in a building that small*".

81. Regarding the women's SAR conference and the claimant using the term "*bullshit*", Ms. Irons stated that had been played back to the person multiple times. The claimant responded again with, "*I never said it. Question why it was necessary. No discrimination. Having a separate group creates discrimination. She explained it made her feel empowered. I expect men and women to do the same. As a family as a crew, treat them the same*." This accords with the evidence provided to the tribunal by Ms. Allen that she felt impassioned by the conversation, and she could not recall the claimant using the word "*bullshit".*

82. Notwithstanding whistle blower 006/24 told Ms. Irons it was not the claimant who was speaking lewdly about a girlfriend in front of others she questioned the claimant about it during her follow up interview. She put to the claimant it was the other person's girlfriend they were discussing, and it was not an appropriate conversation in an open forum notwithstanding whistle blower 006/24 did not assert the claimant was part of that conversation.

83. Regarding the "*nice butt*" comment Ms. Irons put to the claimant that person 1 was present when the claimant said it but as there were no other details provided, he said it still didn't ring any bells with him.

84. Again, the tone of the questions from Ms. Irons was accusatory rather than neutral for example she asked the claimant "*do you recognise how your conduct yourself is different to how others do?*" The claimant responded with "*no I've heard a lot worse than I've said or you've reported me saying*." She also put to the claimant that it was suggested he brought the conversation back to race despite the original point. When she suggested the witnesses did not believe the claimant could change, he replied "*I've changed so much since 1986. Don't get it. I will change. I've never been approached to say what I do or how I act is wrong. No one at all*."

Disciplinary Investigation Report

85. Ms. Irons completed her investigation report, and it was included in the bundle at pages 239 – 243.

86. The report made no reference to the terms of reference setting out the original five areas of concern and the allegations in each area, the matters she was tasked with investigating. As a result, Ms. Irons did not set out her findings regarding each allegation with reference to the evidence she had gathered. Rather, she summarised and recorded her personal opinions of the claimant's behaviour.

87. Her summary was three witnesses referred to the claimant's regular use of racist or derogatory language at the station. Two of the witnesses felt uncomfortable introducing new volunteers into the station due to the claimant's

behaviour. Three of the witnesses said they did not believe the claimant would change his behaviours. The claimant's behaviour was described as embarrassing and shameful targeting individuals in a bullying nature offensive crossing a line and persistent. (There was no reference to bullying in the terms of reference.)

88. Ms. Irons found there was no record to show the claimant had been given any training relating to the respondent's Code of Conduct, Dignity at Work or safeguarding policies.

89. As she conflated the evidence she recovered, Ms. Irons concluded that it was her reasonable belief the claimant had used inappropriate language and behaved in a way that was not in line with respondent's Code of Conduct or Dignity at Work policy. She found the claimant's level of what he deemed to be acceptable language and rationalised why he can use it did not align with the respondent's behaviours and expectations of staff.

90. Further, she found there was a failing on the part of line management to ensure the right training and awareness were in place around expected behaviours which allowed the claimant to continue to behave in the way that he had and she believed the claimant had breached the respondent's Code of Conduct in respect of four areas and she recommended that formal action be taken.

91. Ms. Irons also recommended an investigation into the behaviour of the station manager, Mr. Bellamy and the Area Lifesaving Manager, to investigate the relationship and understand how the breakdown of acceptable behaviours at the station had been allowed to develop.

Disciplinary Hearing

92. On 2 April 2024 the claimant was informed by Ms. Irons via teams that she had concluded he had breached the respondent's Code of Conduct, and the allegations would proceed to a disciplinary hearing.

93. Ms. Edge wrote to the claimant on 12 April 2024, and she invited him to attend a disciplinary hearing. The letter stated the meeting would focus on his alleged breaches of the RNLI's Code of Conduct specifically:

2.11 Abide by work within the spirit of and demonstrate the RNLI's values.
2.15 Maintain the trust and confidence and uphold the reputation of the Organisation at all times.
2.22 Participate in any form of inappropriate behaviour or activity at work, for example sexual activity, unprofessional conduct, practical jokes that cause embarrassment or offence to colleagues.
2.26 Commit any act or omission which might (or does) bring the organisation into disrepute.

94. The investigation report and associated interview notes were provided to the claimant. The respondent stated it didn't intend to call any witnesses at the hearing, but the claimant was entitled to call witnesses if he wished to do so.

95. Again, the only written allegations the claimant was put on notice of were as set out in the suspension letter. As the investigation report didn't refer to any specific allegations, notwithstanding the terms of reference and although the claimant was asked about the allegations as set out in the terms of reference of which he had no notice, there was nothing in the invite to the disciplinary hearing that made this clear to the claimant. No examples of the alleged breaches were provided.

96. The Tribunal found this remarkable given the claimant was informed the allegations amounted to gross misconduct and one of the outcomes of the disciplinary hearing could include summary dismissal.

Companion

97. During his suspension, and the confidential nature of the investigation, the claimant was only allowed to communicate with his line manager, Mr. Bellamy or his Channel rep, Chris Gaskins during the investigation. Channel reps are manager volunteers employed by the respondent to provide support during formal processes. Mr. Gaskins was based in Manchester and the claimant stated in evidence he was of limited support to him.

98. The claimant was entitled to have a companion present at the disciplinary hearing and the email exchanges between himself and Ms. Edge regarding the companion took place the day before the disciplinary hearing on 25 April 2025 and their emails were included in the bundle at pages 304 – 307. Ms. Edge asked the claimant at 1.12pm to confirm who his companion for the hearing was going to be. The claimant replied at 2.12pm providing his notes on the witness investigatory meeting minutes and his own witness statements. He confirmed that four of his witnesses could attend the hearing and that he had asked Mr. Bellamy to be his companion.

99. Ms. Edge replied at 2.54pm and she confirmed in evidence that she took advice from her superior Laura Kill (now Robinson) and informed the claimant he could not have Mr. Bellamy as his companion as he had been interviewed as part of the process and that was inappropriate. In evidence, Ms. Edge stated she felt he would be biased. The claimant confirmed in evidence that he had already asked Mr. Bellamy, and he had agreed to be his companion.

100. The respondent's disciplinary policy included at the bundle at page 170 states "*the organisation reserves the right to refuse to accept an individual as a companion in the event that there is a conflict of interest or unwarranted expense incurred*." Ms. Edge did not explain the conflict.

101. Ms. Edge advised the claimant he had three options; (a) attend with no companion or channel rep, (b) attend with a channel rep online or an alternative companion in person or (c) reschedule when the channel rep was available in person.

102. The claimant decided to proceed with an alternative companion, and Mr. Turrell informed the Tribunal he was contacted by the claimant after his shift at around 10pm on 25 April 2024 the night before the disciplinary hearing. He has known the claimant for many years, respects him and considers him a good friend, and he didn't hesitate to provide support as a companion. Mr. Turrell is also a Thames Commander with the respondent. Mr. Turrell confirmed in evidence the claimant was "*in a bad place and he just couldn't go on any longer, he didn't want to prolong the agony any longer*" which is why in Mr. Turrell's opinion he decided not to postpone the hearing.

103. Mr. Turrell confirmed in evidence that he had not acted as a companion previously and was unsure what to expect but he was told by Ms. Rainey at the hearing what his role was. This is recorded in the minutes of the disciplinary hearing at page 282 when she states, "*Mark's role here is to support you, can't answer questions for you but he can say if he thinks you need a break*". In evidence Mr. Turrell accepted he didn't raise any concerns regarding that as he was not aware that he could. Had he been aware he told the Tribunal he would have interjected on occasion and asked that questions were rephrased to ensure the claimant understood what was being asked. Mr. Turrell expressed he felt he had let the claimant down by not appreciating the full extent of his role as a companion.

104. The role of the companion is set out at appendix 1 of the respondent's disciplinary policy included at page 172 of the bundle and it states.

> *What is my role as a companion?*
>
> *Your main role as a companion is to support the worker whom you are accompanying. You will be allowed to address the hearing in order to:*
>
> - *put the worker's case*
> - *sum up the worker's case*
> - *respond on the worker's behalf to any view expressed at the hearing*

105. This is at odds with the information provided to Mr. Turrell by Ms. Rainey. Therefore, not only was the claimant's first choice of companion refused by the respondent, but his alternative companion was given incorrect information by Ms. Rainey regarding the role.

106. The Tribunal was provided with two versions of the disciplinary hearing minutes. A version produced by the respondent at pages 271 – 290 and the second version was an annotated copy of the respondent's minutes produced by the claimant and included in the bundle at pages 291 - 302.

<u>Disciplinary policy procedure</u>

107. Ms. Rainey chaired the disciplinary hearing, and the procedure and role of the disciplinary chair is provided in the respondent's disciplinary policy included at pages 165 &166 of the bundle. It states.

> *The employee is entitled to be accompanied at a hearing by a companion, please refer to the*

companion information contained within this procedure for further details.

The employee will receive a letter inviting to the disciplinary hearing which will provide details of the incident and/or allegation(s) and any witness statements being relied upon will normally be made available to the employee in advance of the hearing. If relevant witnesses are intended to be called the employee will be given advance notice.

The employee will be entitled to call witnesses and/or provide written witness statements and relevant supporting documents at the disciplinary hearing, if they wish, but they must submit this additional evidence and details of witnesses at least 24 hours prior to the disciplinary hearing.

Audio tape or any electronic recording of the disciplinary hearing will not be allowed by either party. Any such conduct maybe subject to disciplinary action.

At the hearing the procedure will be as follows:

- *the hearing manager will open the hearing by explaining who is present and their role, the reasons why the hearing has been arranged and give details of the incident and/or allegation(s)*
- *the findings of the investigation will be presented and discussed. Relevant documents, including those produced as part of the investigation will be presented as necessary*
- *any witness statements will be discussed*
- *the employee will then be given the opportunity to respond to the allegations and, where appropriate, may produce documents or, where essential, ask for witnesses to attend*

The hearing will then be adjourned whilst the manager decides whether there are reasonable grounds to believe the employee has committed the alleged misconduct. The hearing manager may decide further investigation is required. The hearing manager has the responsibility for making the disciplinary decision and must act reasonably.

The hearing manager may consider the following:

- *that the level of investigation has been reasonable in the circumstances*
- *any relevant RNLI policies and/or procedures*
- *that the explanation put forward by the employee has been paid sufficient regard*
- *whether on the balance of probabilities there are reasonable grounds to believe that the employee has committed the alleged misconduct/gross misconduct*
- *penalties imposed in similar cases in the past*
- *if applicable, the employee's disciplinary record*
- *whether training would be appropriate*
-

When determining what action should be taken the hearing manager should consider the following:

- *the level of severity of the misconduct*
- *the mitigating circumstances put forward by, or on behalf of, the employee*
- *whether the action taken will, in the circumstances, be considered to be a reasonable response by a reasonable employer*

After this adjournment the hearing manager will inform the employee what has been decided and what disciplinary action, if any, is being taken and explain the appeals procedure. If the hearing manager deems. it appropriate to do so, the hearing may be adjourned pending further investigations. In such circumstances the employee may be invited to attend a further hearing.

108. The hearing commenced at 11am on 26 April 2024. Present were the claimant, Mr. Turrell, Ms. Rainey, Ms. Edge and a note taker Louise Crichton was present remotely. The respondent called no witnesses to attend the hearing, and the claimant produced eight witness statements and called four witnesses to attend in person. He also produced a statement, and those documents were included in the bundle at pages 247 – 265.

109. In evidence Ms. Rainey confirmed she conducted the hearing based on the investigation report and the statements, she did not ask for the claimant's disciplinary record as she didn't believe it was appropriate. Nor did she equip herself with knowledge of penalties in similar cases.

110. Ms. Rainey spoke to the claimant's witnesses first and they included, Johan Allerton, Steve East, Ed Hall and Mr. Turrell his companion. The claimant was not present during that part of the disciplinary hearing. It was not lost on the Tribunal that Mr. Turrell was therefore interviewed as part of the disciplinary process like Mr. Bellamy who the respondent deemed inappropriate as a companion as a result.

111. During his interview with Ms. Rainey Mr. Turrell stated, "20 *years never heard really bad racist stuff, if I'd heard it, I'd pull them up*." This was included at page 281 of the bundle. It was suggested to Mr. Turrell in cross examination that comment meant he had heard racist stuff just not *REALLY* (Tribunal emphasis) bad racist stuff. Mr. Turrell stated that was an error it should read that he hadn't REALLY (Mr. Turrell emphasis) heard bad racist stuff. When asked why he didn't query that he said it was because the hearing made him unwell and he didn't want to relive the experience. The emotional toll acting as a companion had on Mr. Turrell was clear to the Tribunal during his evidence, and it accepted he didn't seek to rectify the minutes for that reason.

112. Mr. Turrell did not accept in evidence that referring to the Mayor of London as a "*terrorist"* was likely to cause offence as the claimant explained what he meant by that, and it was not related to the Mayor's race or religion. Mr. Turrell accepted the "*Pakistan joke*" could be racially offensive and was in poor taste. Mr. Turrell also explained the comments regarding the Polish crew members, and he stated they were started by the Polish crew members themselves. During cross examination Mr. Turrell accepted the reasons for the claimant's dismissal didn't appear to be age related but he maintained there was a conversation during the disciplinary hearing regarding whether the claimant could be a 21st century lifeboatman.

113. Ms. Rainey spent 1 hour and 38 minutes with the claimant's witnesses (11am – 12.38pm) and after a short break he joined the disciplinary hearing at 1.06pm accompanied by Mr. Turrell.

114. She first asked the claimant why Mr. Bellamy had a conversation with him about toning it down. The claimant responded, "*my sense of humour is old school 1970s 1980s not the best joke teller younger generation wouldn't get them. Be aware if someone misinterprets who I am. No examples given you said this on such and such date nothing given*." Ms. Rainey then asked the claimant whether he thought he should change and if he in fact toned it down and he stated, "*Yes read the room. Conversations should be tailored to those in the room… toned it down*." She also asked at page 286 whether he could put himself in their shoes (the complainants) or how he could have done things differently. The claimant stated "*I'm not great at putting myself in other shoes, don't know what's going on in their lives…"*

115. Ms. Rainey pointed out the claimant had been able to identify the witnesses and she asked the claimant if he returned to the station how would he move forward. He replied "*Person 6 more station culture, happy to have conversation with him. Willing to work with him, female I'm not 100% sure on*

yet it could be one of three females at the station. 90% idea who that person is, I could probably have a talk with her to see what I did wrong and how it led to this. Selective phrase is being investigated most of which could be put to bed that it never happened one thing I don't recall. To do with a girlfriend. I don't recall this story I don't know where it came from."

116. The claimant was asked about the "*Pakistan joke*", and his response was "*Yeah joke was wrong my old school humour shouldn't have been brought into the workplace. Pakistan comment would have never said it to the person's face or in earshot I should have never said it no malice in it*."

117. Ms. Rainey's next question was "*Not for you to live like a monk or not say anything but for you to have an understanding that some things you have said to people have made them feel really awful and made them not want to be there. It's about you getting that and that understanding that I don't want you to not be you but how you move from still being you the person that comes through and supports the future of Chiswick. Can you make enough change for that person to be functional on this station. You've acknowledged it, it's a big change and you need to think about if you can make that change. Do you want to take a minute to think about how achievable that is*."

118. The claimant and respondent disagreed regarding the claimant's response to this question. The respondent's version of the minutes record that the claimant said "*Um, well I've thought about it a lot part of that is - do I continue and can I continue. Honestly don't know. Think it's a case of if I go back, I'll owe a lot to the guys that have given statements and my wife that I owe it to them I'm honestly not sure how it could work*." This respondent's minute with this answer was included in the bundle at page 287.

119. The claimant's version of this question was included in the bundle at page 298. His annotated version of the minutes record that Ms. Rainey included at the end of her question "*can you be a 21st century lifeboatman*".

120. In respect of the claimant's response to the question, his version of the minutes reflects the same reply, but the claimant added the following "*I'm honestly not sure how it could work. I can work with the two volunteers; they can also choose not to book shifts with me. The full timer I don't know how I would feel with that because I have no choice, I would have to work with him.*"

121. Regarding the phrase 21st century lifeboatman, both the claimant and Mr. Turrell maintained in evidence Ms. Rainey used that term. In evidence she denied using that term. The Tribunal accepts the claimant and Mr. Turrell's evidence on this point because at page 301 of the bundle the claimant's version of the minutes was annotated and it reads; "*I would like to add that there were longer conversations about being 21st century lifeboat crew/ generation/ at my age can I change? This has been confirmed with Mark Turrell. But neither of us can remember where in the statement it was discussed but would like it noted*."

122. Ms. Rainey in her evidence maintained the claimant replied "*no*" to the question about whether he could change and "*that was the point the decision was made… I didn't think he would say no*".

123. The claimant relied on the account as provided in the respondent's minutes and his annotated version i.e. "*honestly don't know*". When questioned about that Ms. Rainey maintained as the note taker was remote and she is softly spoken, which she was before the Tribunal, the minute taker recorded that answered incorrectly. She recorded "*honestly don't know*" when it should have been "*no*".

124. The Tribunal accepted that is what Ms. Rainey believed she heard but it was not the claimant's answer. Given the importance Ms. Rainey placed on the claimant's answer to that question, she would have made sure the minutes reflected that and both the respondent and the claimant's version of the minutes record the claimant said, "*honestly don't know."* Ms. Rainey believing she heard the claimant say he was not willing to change was symptomatic of the respondent's closed mindset to the claimant and the Tribunal finds she was not prepared to give the claimant the benefit of the doubt.

125. During cross examination Ms. Rainey accepted, that the "*black labs comment*" was not attributable to the claimant and he had not been asked about the "*Bruce Grobbelaar*" comment. She also accepted that each allegation was witnessed by 1 or 2 witnesses but not "*necessarily corroborated"* and some of the allegations had been retracted. Furthermore, Ms. Rainey accepted none of the allegations were dated so it was not clear whether they pre or postdated the letter from Mr. Dowie or whether they took place at the station or at the flat.

126. Ms. Rainey was asked whether the person who the claimant heard the "*Pakistan joke*" from was investigated and her answer was no. In relation to the Polish crew comment she accepted that Ms. Irons had not in fact spoken to the Polish crew members. Nor was the individual who had spoken lewdly about a girlfriend investigated nor was the witness who complained that the claimant made derogatory comments about online footage asked to provide any specifics in relation to that allegation. In respect of the concerns regarding the claimant's general conduct Ms. Rainey accepted that Mr. Dowie's letter followed a staff survey, and the claimant was not mentioned in that survey. It related to the respondent's culture generally and she went further and stated she wasn't sure what the reference to badge of honour that formed part of allegation 5a related to.

127. When asked whether the allegations in the round against the claimant were baseless, she refuted that but said it was more an overall picture of the claimant's behaviour and not a specific list of allegations. She further accepted no time frames were supplied to the claimant regarding the allegations, she didn't know whether they pre or postdated Mr. Dowie's letter, she did not know who the alleged comments were said in front of, when or where, she did not know whether the comments were directed at any individuals, and finally she stated in evidence that she could not attribute intent regarding the alleged comments being malicious.

128. It was put to Ms. Rainey by the claimant it was a cultural problem rather than individual problem she was seeking to address in dismissing the claimant. She stated it was elements of both. She didn't accept there was an inconsistency in staff understanding of the respondent's policies despite that being reflected in the witness interviews.

129. The disciplinary hearing was adjourned at 2.06pm. There was a break of 30 minutes during which Ms. Rainey and Ms. Edge walked to the riverbank close to their location. During that break, Ms. Rainey and Ms. Edge confirmed in evidence they spoke to Laura Kill (now Robinson) and Ryan Hall, Head of Interim Support, to sense check Ms. Rainey's decision. She informed them what had been said during the hearing. Ms. Rainey accepted the decision to dismiss was her own but in evidence she confirmed that both Ms. Robinson and Mr. Hill have far greater experience than her and if they disagreed, she would have reconsidered.

130. Ms. Edge confirmed in evidence that prior to the hearing the decision was likely to be a final written warning. In evidence Ms. Rainey stated that dismissal was a decision she considered but she hadn't considered it likely. However, Ms. Rainey formed the view that dismissal was her only option as she believed claimant had informed her that he would not change. She stated in evidence if "*someone is not willing to change I don't know if there any other opportunities for the*m". As above the Tribunal did not accept that was the claimant's response to that question and in fact earlier in the hearing the claimant maintained that he had changed after the conversation with Mr. Bellamy and he would read the room, and conversations should be tailored to those in the room. Therefore, Ms. Rainey's decision to dismiss was predicated on a mistaken belief the claimant was unwilling or unable to modify his behaviour.

131. The time taken from conclusion of the disciplinary hearing, until the claimant was informed that he was to be summarily dismissed after 22 years' service (38 years including his volunteer service), took a total of 30 minutes and this included according to Ms. Rainey and Ms. Edge, two phone calls that lasted in the region of 10 minutes and consideration of all the options. Neither was able to provide the Tribunal with the range of options they considered, Ms. Edge confirmed they only considered a final written warning, and the Tribunal finds that is because there was no consideration of any option other than dismissal and this was based on Ms. Rainey's own evidence that she believed she only had one option when she erroneously believed the claimant would not change and that was to summarily dismiss the claimant. Ms. Edge's evidence at paragraph 22 of her witness statement accorded with that as she stated that she did not believe the claimant had understood or empathised with the impact of the comments he made, nor did she believe he would be able to integrate himself back into the station.

132. Ms. Rainey informed the claimant at the conclusion of the disciplinary hearing that "*Having heard the breaches of the Code of Conduct and how they were broken, this to me constitutes gross misconduct. Taking these breaches*

into account, I've reached the decision that you should be summarily dismissed." Again, this conclusion was extraordinary to the Tribunal given Ms. Rainey failed to explore any of the allegations as set out in the terms of reference with the claimant during the disciplinary hearing. Her questions were again premised from a place of the claimant having committed gross misconduct and her inquiries were limited to understanding whether he understood the impact of that behaviour, albeit the allegations were not spelt out to him, and whether he could change. Ms. Rainey confirmed in evidence she accepted the investigation findings produced by Ms. Irons and did not seek to go behind them. The Tribunal finds that was a fundamental flaw in her role as a disciplinary hearing chair.

133. Ms. Rainey denied the claimant's age was a factor in her decision to dismiss the claimant. She refuted his ability to change was in any way connected to his age and she doesn't "*correlate between age and behaviour*". During cross examination the claimant accepted that humour is not attached to age. However, he referred to the references to his impending retirement in the witnesses' investigation meetings and the 21st century lifeboatman reference.

134. The claimant stated he felt Ms. Rainey viewed him as "*too old, too stubborn, and set in my ways*" this is why she didn't feel he could change but when reminded those traits do not necessarily correlate to age in cross examination he agreed.

Dismissal letter 7 May 2024

135. The claimant was provided with a letter from the respondent confirming his dismissal on 7 May 2024 and that was included in the bundle at pages 308 – 310. It records: -

> *On the 19th February 2024, we wrote to you explaining that the specific allegations made against you were:*
>
> *• The use of racially motivated language*
> *• The use of sexist language*
> *• The use of sexualised comments/remarks about females*
> *• The use of derogatory / belittling comments*
>
> *The above allegations are considered breaches of the Code of Conduct as follows:*
>
> *• 2.11 Abide by work within the spirit of and demonstrate the RNLI's values.*
> *• 2.15 Maintain the trust and confidence and uphold the reputation of the organisation at all times.*
> *• 2.22 Participate in any form of inappropriate behaviour or activity at work, for example sexual activity, unprofessional conduct, practical jokes that cause embarrassment or offence to colleagues.*
> *• 2.26 Commit any act or omission which might (or does) bring the organisation into disrepute.*
>
> *Based on the information available to me and my reasonable belief, the four allegations outlined above have occurred and are not in line with the RNLI Code of Conduct and Disciplinary Policy/Procedure. Consequently, the appropriate action is dismissal for gross misconduct without notice pay (summary dismissal).*

The rationale for this decision is as follows:

• Upon review of the allegations raised by individuals through whistleblowing, it is evident that your behaviours and comments were deemed inappropriate and had the potential to cause upset and offence.
• You have demonstrated a lack of understanding regarding the impact of your actions on others within the station.
• Furthermore, your response to the racially inappropriate joke you made, wherein you justified it by stating you found it amusing and would never say such things to the person's face, is unacceptable.
• It is my belief that your actions were intended to provoke discomfort and tension among others.
• Furthermore, I have doubts, which you also expressed, regarding your ability to amend your behaviours to align with the standards expected by the RNLI for all its staff and volunteers.
• At the hearing, we heard testimonies from witnesses who attended to present their statements. Their passion was very evident as they expressed their sentiments about working alongside you and the behaviours they have observed from you. While it was evident that they hold you in high esteem, none of the witnesses were able to provide any mitigating evidence against the allegations.

136. The claimant was summarily dismissed on 26th April 2024, and he confirmed in evidence that he gained employment as a cab driver on 3 June 2024 at a reduced rate of pay. He did not seek to appeal his dismissal because he had no further evidence to present and he was in a bad place mentally. When pressed whether he could offer his own witnesses regarding the allegations on appeal, he stated he didn't want to pick people, he was uncomfortable about doing that. In relation to his Polish colleague Mr. Tyrlski, he had also been dismissed by the respondent.

Misconduct Allegations

137. During re-examination Ms. Rainey was asked whether the terms of reference informed the investigation as opposed to the hearing. She stated the terms of reference governed the investigation.

138. After she had provided evidence Ms. Rainey was asked by the Tribunal to clarify with reference to the claimant's table of allegations, which she relied on in respect of her decision to dismiss the claimant. During cross examination when asked specifically whether all the allegations were proven she stated, "*two of them had and two had been reported*…. *I knew three had and I don't know about the 4th' I believe I had enough information*." This was not set out in her witness statement nor was it reflected in her outcome letter.

139. Therefore, it was not clear to the Tribunal given Ms. Rainey's evidence and the absence of any specific allegations in the disciplinary investigation report, the invite to the disciplinary hearing and the dismissal letter what allegations were relied by Ms. Rainey in respect of the claimant's dismissal. Therefore, and to understand the respondent's case, the Tribunal made the request and Ms. Rainey complied on 25 September 2025.

140. With reference to each allegation as set out in the terms of reference Ms. Rainey confirmed the below.

Area of Concern	Allegation	Claimant's response	Relied upon for decision y/n
1. Use of racially motivated language	1a: referred to the Mayor of London, when on TV, as a "fucking "terrorist""	Reference to ""terrorist"" is to the mayor being anti-motorist and is not related to his race.	Yes. He called the Mayor, a Muslim and Asian man, a "terrorist" when he made the comment. Did not believe his later explanation and post rationalisation this. Calling a Muslim man a "terrorist" is inflammatory, and it is reasonable belief that anyone hearing this would perceive this association.
	1b: Referred to the Mayor of London as "vermin" and also use the "N word".	Denied. I never use the "N word".	Yes. He did not deny the use of the term "vermin". This is a term that has long been used to denigrate people of minoritized ethnicities.
	1c: Call people "pakis". Made a joke where is Pakistan? .. he's outside with Paki Steve"	Denied. I have never called anyone a paki. The joke was told to me, and I repeated it. In hindsight, it was not appropriate.	Yes. He did not deny that he told the joke.
	1d: Racially motivated remarks are made open late in front of crew.	Denied. I'm not racist.	Yes, based upon his pattern of behaviour as outlined in the safeguarding reports and based upon 1B and 1C.
	1e: Saw a black Labrador	Denied. WBR 06 – "another guy	Accept you did not make the joke

	walking by and said all labs matter.	said"; error not GM.	but believe the whistleblower referenced the claimant when discussing the puppy and the comment "did he father the puppy."
	1f: Comment about a new Polish crew member; Alleged to have said "they came from the local car wash" and another time discussing two Polish crew members suggested "they could open a car wash together."	Denied. Did not instigate; Picture sent by Polish crew member.	Yes, believed he made the comment to the newer Polish crew member saying, "you can start a new car wash." Accept he did not create the Facebook post.
2: Use of sexist language	2a: argument about women SAR conference and said it was a load of BS.	Denied. Did not say BS- conversation with Rosie Allen. I'm not sexist.	Yes- believed that he felt women in SAR group was on warranted and struggled to understand why it was necessary.
3: Use of sexualised comments/ remarks about females	3a: speaking lewdly and graphically with a friend, about a girlfriend in front of others.	Denied; WBRO 6- "*that wasn't Glenn*."	No- did not make decision based upon that comment.
	3b: Made comments about female crew; Example of "nice butt."	Denied.	Yes. Whilst he denied it then he tried to say that if he had said it, he would have been talking about the rear end of a car which is implausible.
4: Use of derogatory/ belittling comments.	4a: Made derogatory comments when viewing camera footage of	Denied.	Yes- he admitted making comments on viewing the video but was not

	rescues, in the station in an open crew room.		primary reason for his dismissal.
5: General conduct, are not altering behaviour following feedback.	5a: Mark Dowie's letter sent last summer regarding acceptable behaviour which printed out and specifically given to Glen to read out. Regarded as a badge of honour?	Was instructed to read letter. Badge of honour- denied.	No.
	5b: Spoken to previously by station manager?	RADAR review. No concerns raised.	Yes- he was spoken to in his R ADR review. Both Glenn and his manager noted in the investigation that he was spoken to about his behaviour during this meeting and advised to tone it down.
	5c: A female crew member left with bad feelings related to something that happened with Glenn.	Performance-related reasons for leaving.	No.

141. Therefore, Ms. Rainey relied on allegations 1a, 1b, 1c, 1d, 1e, 1f, 2a, 3b, 4a & 5b in respect of the claimant's dismissal.

Claimant's submissions

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142. The claimant submitted he was dismissed due to political correctness and the claimant's actions did not amount to gross misconduct in the circumstances. Further, the respondent did not act reasonably in all the circumstances in treating that reason as sufficient to dismiss the claimant.

143. The presentation of the allegations and anonymity of the complainants did not allow the claimant to understand and address the complaints fully.

144. Furthermore, during the investigation, some of the allegations either fell away because they were retracted or simply do not stand up to scrutiny given that they were hearsay/no specific examples were given.

145. Significant emphasis was placed on whether the claimant had appreciated the impact of his actions on others and whether he would be able to move forward. However, that is at odds with the evidence provided by the claimant who accepted that the "*Pakistan joke"* '*wasn't appropriate'*, In response to the question '*did you ever think you should change*?' he responded *'yes, read the room. Conversations should be tailored to those in the room'*. He believed he had toned down his behaviour, and he appreciated the impact of his comments. The claimant also offered a suggestion regarding working with those who complained about him.

146. Therefore, there was no evidential basis for the assertion that the claimant did not appreciate the impact of his action or that there would be tension/issues if he went back to station.

147. In the disciplinary outcome letter dated 7 May 2024, Ms. Rainey states her decision to dismiss the claimant rested on the four allegations being proven. Ms. Rainey was asked in evidence whether she considered the four allegations to be proven. She first stated that '*two clearly had and two were reported'*, and then later said '*With the information I had, I believe I had enough information. I knew three had and I don't know about the 4th'*. Thirdly, she stated that the decision had in fact been made after the Claimant had allegedly said 'no' in answer to questions about whether he could change.

148. Ms. Rainey subsequently clarified her position by confirming which allegations she relied on in her decision to dismiss the claimant. The following can be noted with regards to the allegations she has confirmed she relied on:

a. 1a: The claimant was not asked about this allegation in the disciplinary hearing. It was not put to him that 'calling a Muslim man a "terrorist" is inflammatory' nor that it was 'reasonable to believe that anyone hearing his would perceive this association'.

b. 1b: The claimant did not use the word '"vermin"' nor was he asked about this specific allegation. It was not put to him that it was a 'term that has long been used to denigrate people of minoritised ethnicities.

c. 1c: The claimant acknowledged in the hearing that the joke 'was wrong, my old school humour shouldn't have been brought into the workplace' and 'play on words it shouldn't have happened'.

d. 1d: It was never put to the claimant in the disciplinary hearing that this allegation was in fact based on allegations 1b and 1c.

e. 1e: The additional comments about dogs that Ms. Rainey relied on was never put the claimant in either the investigation meeting or the disciplinary hearing.

f. 1f: The claimant was not asked about this allegation in the disciplinary hearing.

g. 2a: The claimant was not asked about this allegation at the disciplinary hearing. It was not put to him that 'he felt women in SAR group was unwarranted and struggled to understand why it was necessary'.

h. 3b: It was not put to the claimant that had it been a reference to a car, this comment was still inappropriate.

i. 4a: This allegation was not discussed in the disciplinary hearing. It was not outlined in the outcome letter that this was a reason but not the 'primary reason' for his dismissal.

j. 5b: This allegation was not carried forward from the investigation. Nor was the claimant aware that it would form part of or did form part of Ms. Rainey's decision to dismiss.

149. Ms. Rainey's reliance on these allegations was not set out in the dismissal letter. Ultimately, there are four potential positions adopted by Ms. Rainey regarding the allegations and whether they were proven and the claimant submitted that none are satisfactory. Either the claimant was dismissed based on allegations that did not take place, or Ms. Rainey decided to dismiss the claimant based on some proven allegations but failed to raise this in the disciplinary hearing itself or communicate this in the outcome letter.

150. The claimant further submitted the respondent's investigation failed to adequately investigate the allegations. Ms. Allen and Mr Trylski were not interviewed as part of the investigation, and it was open to Ms. Irons to do so.

151. The investigation report failed to differentiate between the allegations that Ms. Irons considered were proven and those that weren't.

152. In addition, there are notable inconsistencies between the initial complaints and the interviews conducted as part of the investigations. This includes the retraction of the 'Black Labradors' and lewd comment allegations, clarification that some complainants did not witnesses the alleged incidences first hand and confirmation that they had not personally complained to Mr Bellamy about the claimant's conduct. Upon hearing that 'Person 1' had not seen the SAR conversation and given that the claimant had named Ms. Allen in his first investigation meeting it was open to the respondent to interview the Ms. Allen as part of its investigation, but it did not.

153. The claimant submitted the investigation could not be considered reasonable in the circumstances. Furthermore, it was open to Ms. Rainey to further investigate matters, in accordance with the respondent's disciplinary policy, but she did not do so.

154. The claimant further submitted the respondent failed to follow the correct procedure in the disciplinary process. The disciplinary hearing invitation letter did not outline the allegations that remained following the investigation. The claimant was therefore unaware of what allegations remained 'live' and would be considered at the disciplinary hearing.

155. The claimant was not permitted to have Mr Bellamy as a companion in the disciplinary hearing. Mr Turrell was invited as a late replacement, and it was clear that he was neither prepared nor fully aware of what his role as a companion involved.

156. It is unclear why Ms. Robinson decided that the alleged bias towards the claimant would undermine Mr. Bellamy's role as a companion. This was communicated late in the day and given Mr. Bellamy's previous involvement throughout the claimant's suspension, an abrupt end. There is no reference to issues of potential bias with companions in the respondent's disciplinary policy.

157. In the disciplinary hearing itself, Ms. Rainey informed Mr. Turrell that '*Mark's role here is to support you, can't answer questions for you but he can say if he thinks you need a break.'***.** This directly contradicts the respondent's policy regarding the role of a companion. It is averred that in doing so, the respondent failed to follow correct procedure.

158. The claimant contends the outcome was pre-determined. In her evidence, Ms. Rainey stated that from the point the claimant allegedly said 'no' when asked if 'he could change' she was of the view that dismissal was the appropriate course of action. This is indicative of a pre-determined decision. She also made it clear that from that point onwards, there was no consideration of any training. The claimant was not asked if he wanted to undergo any further training and there is no evidence that Ms. Rainey considered the option of training during the adjournment.

159. Neither the respondent's nor the claimant's notes of that meeting contain the word 'no'**.** Even if the claimant had said 'no', notwithstanding the significance such a phrase had in influencing Ms. Rainey's decision, she did not ask any further questions/make any further enquiries on this point.

160. The claimant asserts the conversations with Laura Robinson, Ryan Hall were simply confirmation calls to affirm the proposed course of action, rather than an assessment of the evidence with reference to the original allegations. This is further supported by the length of the adjournment. Ms. Rainey only adjourned for 30 minutes, with 10 minutes of that time spent on the phone with Ms. Robinson and Mr Hall. It is submitted that the various allegations could not be meaningfully considered in that time.

161. In all the circumstances, the dismissal cannot be said to fall within the band of reasonable responses. The following factors support this assertion, the claimant's good and lengthy service, the respondent's culture and the findings of the investigation report.

162. Although the respondent's disciplinary procedure outlines that an employee's disciplinary record may be considered by a hearing manager, Ms. Rainey was unaware of the claimant's good service record when she made the decision to dismiss him. In her evidence she stated that she did not think it was useful.

163. The investigation report compiled by Jacqui Irons raised the following key points:

i. The claimant had not been helped to deliver the behavioural standards expected by the RNLI
ii. There was a failing on the part of line management to ensure the right training and awareness were in place
iii. The claimant was not given reasonable instruction by those managing his activities relating to Code of Conduct, Dignity at Work and Safeguarding policies.
iv. Management of the station is too passive. The key responsibilities of the ALM and station manager were not being carried out.

164. Ms. Irons recommended that there be an investigation into the behaviour of the station manager and ALM but also that all staff and volunteers re-read the policies.

165. This speaks to wider problems. that extend beyond the claimant's conduct. Ms. Rainey in her evidence accepted this showed failings within the organisation as certain behaviours were allowed to continue.

166. There is a clear difference between the respondent's written policies and the reality of work at the station. Practically, the station is a small space that is not fit for purpose. Staff members work 12-hour shifts, they are on call during breaks, and this is high pressured and stressful environment.

167. A flat is also available. This is not used by all staff members but is available so staff can avoid commuting back home. For the Claimant this allowed him to stay near the station, rather than journeying back to Norfolk. The claimant confirmed in his evidence that the flat is not a RNLI premises, it does not have the same restrictions as the station (e.g. alcohol is allowed) and it is a place for downtown away from work. It is unclear whether some of the alleged comments were made on station or in the flat.

168. There is clear discrepancy between the expected understanding of the respondent's policies and actual understanding of policies. There is no evidence that the Claimant had been sent the key policies during his employment (prior to the investigation). There is no evidence that the Claimant

had undergone any RNLI EDI training or that it was compulsory during his employment.

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169. The claimant was dismissed without notice; this is not disputed. It follows, that should the Tribunal find that the Claimant was unfairly dismissed he is entitled to notice pay. According to the Claimant's contract of employment, he was entitled to 12 weeks' notice.

170. It is the claimant's case that he was discriminated against because of his age. In the investigation interviews and complaints there are clear references to the Claimant's age.

171. The claimant also relies on his annotated notes of the disciplinary hearing in which he records that she asked whether at his age he can change i.e. whether his attitudes could be changed to align with '21st century' RNLI values (the inference being the claimant's were outdated).

172. In the outcome letter she stated '*Furthermore, I have doubts, which you also expressed, regarding your ability to amend your behaviours to align with the standards expected by the RNLI for all its staff and volunteers.'***.** Whilst age is not explicitly cited, the Claimant's willingness and ability to adapt to 21st century life was a significant factor considered by Ms. Rainey.

173. It is submitted that the claimant's age, and perceptions about his ability to change at that age, played a material role in Ms. Rainey's decision to dismiss him.

174. In conclusion the claimant submitted he was of good standing, had an excellent record, and the disciplinary process was flawed at every stage and as such the decision to dismiss him was outside the band of reasonable responses. The claimant invited the Tribunal to uphold all his claims.

<u>Respondent's submissions</u>

175. The respondent submitted it held a genuine belief that the claimant committed gross misconduct and it relies on the contents of the suspension letter dated 19 February 2024, the Investigation Terms of Reference undated, the investigation report dated March 2024, the invitation to a disciplinary hearing dated 12 April 2024, the outcome letter dismissing the Claimant dated 07 May 2024 and Ms. Rainey's response to the Table of Allegations.

176. In relation to paragraphs 2.15, 2.22 and 2.26 of the respondent's Code of Conduct, the Code makes clear that breaches of those standards are to be regarded as a serious breach and will normally constitute Gross Misconduct.

177. The respondent submitted Ms. Rainey's approach was consistent with her evidence that she relied upon the findings of the investigation report and did not seek to go behind the report and/or conduct any further investigations.

178. The investigation report findings omit mention of allegations 1(e) and 3(a) whilst expressly addressing allegations 1(a)-1(c), 2(a), all of which formed part of the decision-making process. The disciplinary hearing focused on the claimant's understanding and awareness as opposed to the specific allegations.

179. The claimant further accepted that his comments in respect of allegation 1(c) and the 'Paki-Stan joke' was an example of an "insensitive jokes or pranks related to race" under the subheading of examples of racial harassment. He further accepted this comment was not in good taste and common sense would dictate that it did not amount to banter.

180. Allegations 1(a) and 1(b) in regard to the Mayor of London the admission that he used the word "*"terrorist"*" likely on multiple occasions and may have used the words or referred to the Mayor as *"vermin"* are instances of which there are offensive connotations in respect of the Muslim faith which the claimant denies he intended and provide the explanation for the ULEZ policies. Again, it was a genuine belief this amounted to "derogatory nicknames or name-calling" with the potential to be offensive to others present

181. The Tribunal ought to take an objective approach and not substitute its own factual findings about events giving rise to the dismissal for those of the dismissing officer. In circumstances where the respondent's decision has been framed in terms. of gross misconduct, as is the present case, and the Tribunal concludes there has been no gross misconduct, the Tribunal must still consider whether the substantive reason it found for the dismissal was reasonably treated by the employer. The focus ought to be directed to the sufficiency of the conduct in which the employer found the employee to have engaged in as a reason for the dismissal. These are either rooted in admissions made and/or are supported by third-party evidence.

182. Paragraphs 2.15 and 2.26 Code of Conduct relate to upholding the reputation of the Respondent and not bringing the organisation into disrepute It is reasonable to regard the letter by the respondent's CEO as addressing concerns about behaviour which has caused reputation damage. The claimant accepted his behaviour was inappropriate and had caused offence and accepted that he had not always abided by the spirit and values of the Respondent. It was therefore reasonable on the evidence base to consider all four breaches of the Code to have been substantiated.

183. The adequacy of an employer's investigation must be analysed in accordance with the objective standards of a reasonable employer as to whether the investigation process was sufficient and reasonable in those circumstances. The Tribunal ought not substitute its own standards for that of the reasonable employer in the identification of other avenues of inquiry which may have been taken.

184. In considering the adequacy of the respondent's investigation, the Tribunal ought to have regard to the respondent's capacity and resources. Further, the adequacy of the investigation ought generally to be measured

against the seriousness of the outcomes facing the employee. The claimant confirmed in oral evidence that he did not request any specific witnesses to Ms. Irons to interview as part of the investigation on the basis he did not wish to single out any individuals. The claimant also expressed the view that he did not want to have any full-time staff involved nor Ms. Allen and Mr. Trylski.

185. It would have been unreasonable in the circumstances to expect the Respondent to conduct a quasi-phishing exercise to identify relevant witnesses in the absence of dates and times.

186. At all material times the respondent followed its own Disciplinary Process and acted in compliance with paragraphs 5 to 7 of the ACAS Code of Practice.

187. Ms. Rainey's clear oral evidence at the disciplinary hearing was that she considered all outcomes unless and until the claimant's response to whether he believed he could move on and support the future of the station where he responded: *"Honestly don't know….I'm honestly no sure how it could work"* whereupon Ms. Rainey confirmed *"mind was made up"* and summary dismissal was appropriate but remained open to being persuaded otherwise by colleagues during the subsequent adjournment and conversations with Laura Robinson (HR Operations Manager) and Ryan Hall (Head of Region for the South East Region).

188. Further, Ms. Rainey stated that until the frank and honest responses provided by the claimant that her first thought was the suitability of a final written warning, with a focus on reintegrating the claimant back within the respondent. Again, it was only until the response provided above where Ms. Rainey considered reintegration possible.

189. The respondent accepts it refused the claimant's nominated companion to accompany and support him at the disciplinary hearing. The respondent contends the refusal in the circumstances was reasonable, suitable alternatives were provided and that ultimately no unfairness or prejudice was caused to the claimant by this refusal.

190. The claimant made an informed decision to proceed with Mr. Turrell to act as his companion, informing Mr. Turrell the evening of 25 April 2024 (the day before). The claimant did not request an adjournment at any stage as he wanted matters concluded on 26 April 2024. Mr. Turrell, despite his own inexperience in acting as a companion did not seek an adjournment himself notwithstanding his own view that he did not have sufficient time to prepare. Notwithstanding Mr. Turrell confirmed he had accessed the Appendix 1 providing guidance as to the role, Mr. Turrell maintained that he was unsure as to the parameters of the role yet never sought clarification prior to or at the hearing from Human Resources or from the claimant himself.

191. The respondent's disciplinary policy provides the relevant criteria for summary dismissal. Unlike the other disciplinary outcomes, summary dismissal requires a finding of gross misconduct. Other categories are reserved for conduct falling short of gross misconduct. It would appear reasonable that

if a finding of gross misconduct is made, the starting point ought to be summary dismissal before consideration as to whether the other factors the hearing manager may consider reduce the seriousness of the conduct to the extent it is justifiable to fall within other outcomes, such as a Final Written Warning.

192. It was reasonable for the respondent to conclude in the circumstances that the claimant had committed gross misconduct. It would be open to the disciplinary chair to consider the appropriateness of a Final Written Warning taking account of whether training would be appropriate and compelling mitigation had been advanced to explain or contextualise the claimant's conduct to reduce the overall seriousness and the potential future impact. It is evident from the content of the disciplinary hearing that Ms. Rainey focused primarily on providing the claimant an opportunity to explain his behaviours, reflect, understand the extent of his awareness and his ability to change his behaviours in future.

193. As set out in Ms. Rainey's witness statement, she reflected on the potential impact of issuing a Final Written Warning as an alternative to summary dismissal. Her feeling was that it would have *"undermined the station's effective function and would have sent a clear signal that behaviours undermine and intimidate volunteers and staff on the basis of their sex or race are acceptable in our organisation".*

194. Ms. Rainey was aware of the claimant's length of service and absence of previous grievances or complaints**.** The disciplinary policy also provided for an employee's disciplinary record to be considered, if applicable**.** Ms. Rainey confirmed she did not request the claimant's disciplinary record as she did not consider it appropriate.

195. Ms. Rainey also sufficiently considered the failure of management to provide training. Whilst Ms. Rainey considered there to be failings within the Respondent which had allowed certain behaviours to continue unchecked, this was to be assessed in line with there is a personal responsibility of all employees to ensure they behave appropriately, employees have access to all the relevant policies on the intranet and the claimant had undertaken safeguarding and other training as part of the foster care application process.

196. The respondent vehemently denies that the reason for the claimant's dismissal was based on his age, but rather his conduct which amounted to gross misconduct.

197. The main thrust of the claimant's case in direct age discrimination has been to conflate and equate an antiquated and outdated 'sense of humour' with the claimant's age. The claimant has relied upon the phrase *"21st Century Lifeboatman"* as being suggestive of the claimant being unsuitable (although accepts not operationally) by virtue of his age to continue in his role going forward and having been dismissed because of this. It is noteworthy that these two instances are only mentioned in the claimant's edits to the disciplinary hearing notes.

198. It is important to detach the claimant's self-professed 70s-80s style humour from his age (61 at the time of dismissal). A person's interests and likes are not inextricably linked to their age. As Ms. Rainey pertinently described in her oral evidence, she does not equate attitude and humour with age. These behaviours are capable of change. Similarly, persons outside of the claimant's age group may share similar outdated 'humour' or conversely people of the claimant's own age group may have more 'acceptable' forms. of humour. The claimant accepted this in evidence, he further agreed that his age did not prevent him from complying with the ethos and policies of the respondent. Behaviour traits such as stubbornness and/or a perceived inability to change are not tied to or unique to a particular age or age group.

199. In conclusion, the respondent submitted the claimant was dismissed for the potentially fair reason of conduct, specifically for gross misconduct. Such belief was genuine, it was reasonable to rely upon such belief, and this was informed by a reasonable investigation. The decision to summarily dismiss was not pre-determined and fell within the band of reasonable responses as following the conclusion that the conduct admitted or found to be proven amounted to gross misconduct for which summary dismissal was the most appropriate sanction. Ms. Rainey considered all the relevant factors but did not consider it justified a departure from dismissal.

200. A fair process was followed by the respondent throughout the disciplinary process resulting in the decision to dismiss. Actions were taken in line with the respondent's disciplinary policy.

Law

201. The **ACAS Code of Practice on disciplinary and grievance m**atters dated 11 March 2015 provides.

4. *That said, whenever a disciplinary or grievance process is being followed it is important to deal with issues fairly. There are a number of elements to this:*

- *Employers and employees should raise and deal with issues promptly and should not unreasonably delay meetings, decisions or confirmation of those decisions.*
- *Employers and employees should act consistently.*
- *Employers should carry out any necessary investigations, to establish the facts of the case.*
- *Employers should inform employees of the basis of the problem and give them an opportunity to put their case in response before any decisions are made.*
- *Employers should allow employees to be accompanied at any formal disciplinary or grievance meeting.*
- *Employers should allow an employee to appeal against any formal decision made.*

9. If it is decided that there is a disciplinary case to answer, the employee should be notified of this in writing. This notification should contain sufficient information about the alleged misconduct or poor performance and its possible consequences to enable the employee to prepare to answer the case at a disciplinary meeting. It would normally be appropriate to provide copies of any written evidence, which may include any witness statements, with the notification.

13. Workers have a statutory right to be accompanied by a companion where the disciplinary meeting could result in:

- *a formal warning being issued; or*
- *the taking of some other disciplinary action*
- *the confirmation of a warning or some other disciplinary action (appeal hearings)*

14. The statutory right is to be accompanied by a fellow worker, a trade union representative, or an official employed by a trade union. A trade union representative who is not an employed official must have been certified by their union as being competent to accompany a worker. Employers must agree to a worker's request to be accompanied by any companion from one of these categories. Workers may also alter their choice of companion if they wish. As a matter of good practice, in making their choice workers should bear in mind the practicalities of the arrangements. For instance, a worker may choose to be accompanied by a companion who is suitable, willing and available on site rather than someone from a geographically remote location.

15. To exercise the statutory right to be accompanied workers must make a reasonable request. What is reasonable will depend on the circumstances of each individual case. A request to be accompanied does not have to be in writing or within a certain timeframe. However, a worker should provide enough time for the employer to deal with the companion's attendance at the meeting. Workers should also consider how they make their request so that it is clearly understood, for instance by letting the employer know in advance the name of the companion where possible and whether they are a fellow worker or trade union official or representative.

16. If a worker's chosen companion will not be available at the time proposed for the hearing by the employer, the employer must postpone the hearing to a time proposed by the worker provided that the alternative time is both reasonable and not more than five working days after the date originally proposed.

17. The companion should be allowed to address the hearing to put and sum up the worker's case, respond on behalf of the worker to any views expressed at the meeting and confer with the worker during the hearing. The companion does not, however, have the right to answer questions on the worker's behalf, address the hearing if the worker does not wish it or prevent the employer from explaining their case.

20. If an employee's first misconduct or unsatisfactory performance is sufficiently serious, it may be appropriate to move directly to a final written warning. This might occur where the employee's actions have had, or are liable to have, a serious or harmful impact on the organisation.

23. Some acts, termed gross misconduct, are so serious in themselves or have such serious consequences that they may call for dismissal without notice for a first offence. But a fair disciplinary process should always be followed, before dismissing for gross misconduct.

24. Disciplinary rules should give examples of acts which the employer regards as acts of gross misconduct. These may vary according to the nature of the organisation and what it does, but might include things such as theft or fraud, physical violence, gross negligence or serious insubordination.

203. Section ***98(1) of the Employment Rights Act 1996*** provides.

"(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show-

(a) The reason (or, if more than one, the principal reason) for the dismissal. and

(b) that it is either a reason falling within sub-section (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) *A reason falls within this sub-section if it… relates to the conduct of the employee….*

(3) …..

(4) *Where the employer has fulfilled the requirements of sub-section (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)-*

(a) Depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

(b) Shall be determined in accordance with equity and the substantial merits of the case."

204. If the employer cannot establish a potentially fair reason for dismissal, in this case conduct, the dismissal will be unfair. If a potentially fair reason is established, the general test of fairness in section 98(4) must be applied.

205. This was set out by the Court of Appeal in ***Turner v East Midlands Trains Limited [2013] ICR 525*** at paragraphs 16 -22 below. Lord Justice Elias stated.

"16. As I have said, since its origin in the judgment of Mr Justice Arnold in British Home Stores v Burchell [1980] ICR 303 at 304C-E, the range or band of reasonable responses test has been affirmed in numerous decisions. The most recent valuable summary of the relevant principles is contained in the judgment of Aikens LJ in the Orr case. As regards the fairness test in section 98(4), he summarised the position as follows (para 78):

"… (4) In applying that subsection, the employment tribunal must decide on the reasonableness of the employer's decision to dismiss for the "real reason". That involves a consideration, at least in misconduct cases, of three aspects of the employer's conduct. First, did the employer carry out an investigation into the matter that was reasonable in the circumstances of the case; secondly, did the employer believe that the employee was guilty of the misconduct complained of; and, thirdly, did the employer have reasonable grounds for that belief. If the answer to each of those questions is "yes", the employment tribunal must then decide on the reasonableness of the response of the employer.

(5) In doing the exercise set out at (4), the employment tribunal must consider, by the objective standards of the hypothetical reasonable employer, rather than by reference to its own subjective views, whether the employer has acted within a "band or range of reasonable responses" to the particular misconduct found of the particular employee. If it has, then the employer's decision to dismiss will be reasonable. But that is not the same thing as saying that a decision of an employer to dismiss will only be regarded as unreasonable if it is shown to be perverse.

(6) The employment tribunal must not simply consider whether they think that the dismissal was fair and thereby substitute their decision as to what was the right course

to adopt for that of the employer. The tribunal must determine whether the decision of the employer to dismiss the employee fell within the band of reasonable responses which "a reasonable" employer might have adopted.

(7) A particular application of (5) and (6) is that an employment tribunal may not substitute their own evaluation of a witness for that of the employer at the time of its investigation and dismissal, save in exceptional circumstances.

(8) An employment tribunal must focus their attention on the fairness of the conduct of the employer at the time of the investigation and dismissal (or any appeal process) and not on whether in fact the employee has suffered an injustice."

17. *As that extract makes clear, the band of reasonable responses test does not simply apply to the question whether the sanction of dismissal was permissible; it bears upon all aspects of the dismissal process. This includes whether the procedures adopted by the employer were adequate: see Whitbread plc v Hall [2001] IRLR 275 CA; and whether the pre-dismissal investigation was fair and appropriate: see Sainsbury's Supermarkets v Hitt [2003] IRLR 23 CA.*

18. *There are two important points to note about this test. The first, as the judgment of Aikens LJ makes clear, is that it must not be confused with the classic Wednesbury test adopted in administrative law cases whereby a court can interfere with the substantive decision of an administrator only if it is perverse. This point has been made on a number of occasions. In Post Office v Foley [2000] ICR 1283 the Court of Appeal had to consider the decision of the EAT in Haddon v Van den Bergh Foods Ltd [1999] ICR 1150 in which the EAT had concluded that the band of reasonable responses test subverted the statutory language and required the tribunals to adopt what was in effect a perversity test. Lord Justice Mummery trenchantly observed that this was a misunderstanding, and a dilution, of the proper test (p.1292D):*

    "It was made clear in Iceland Frozen Foods Ltd. v. Jones [1983] I.C.R. 17 , 25b-d , that the provisions of section 57(3) of the Employment Protection (Consolidation) Act 1978 (which were re-enacted in section 98(4) of the Employment Rights Act 1996) did not require "such a high degree of unreasonableness to be shown that nothing short of a perverse decision to dismiss can be held to be unfair within the section." The tribunals were advised to follow the formulation of the band of reasonable responses approach instead. If an employment tribunal in any particular case misinterprets or misapplies that approach, so as to amount to a requirement of a perverse decision to dismiss, that would be an error of law with which an appellate body could interfere.

19. *The band of reasonable responses test is not a subjective test, and it is erroneous so to describe it. It provides an objective assessment of the employer's behaviour whilst reminding the employment tribunal that the fact that it would have assessed the case before it differently from the employer does not necessarily mean that the employer has acted unfairly.*

20. *The second observation is that when determining whether an employer has acted as the hypothetical reasonable employer would do, it will be relevant to have regard to the nature and consequences of the allegations. These are part of all the circumstances of the case. So if the impact of a dismissal for misconduct will damage the employee's opportunity to take up further employment in the same field, or if the dismissal involves an allegation of immoral or criminal conduct which will harm the reputation of the employee, then a reasonable employer should have regard to the gravity of those consequences when determining the nature and scope of the appropriate investigation.*

21. *In A v B [2003] IRLR 405, para 60, when giving judgment in the EAT in a case involving alleged criminal behaviour by the employee, I said this:*

    "Serious allegations of criminal misbehaviour, at least where disputed, must always be the subject of the most careful investigation, always bearing in mind that the investigation is usually being conducted by laymen and not lawyers. Of course, even in the most serious of cases, it is unrealistic and quite inappropriate to require the safeguards of a criminal trial, but a careful and conscientious investigation of the facts is necessary and the investigator

charged with carrying out the inquiries should focus no less on any potential evidence that may exculpate or at least point towards the innocence of the employee as he should on the evidence directed towards proving the charges against him."

This dictum was approved by the Court of Appeal in Salford Royal NHS Foundation Trust v Roldan [2010] ICR 1457 para 13.

22. *The test applied in A v B and Roldan is still whether a reasonable employer could have acted as the employer did. However, more will be expected of a reasonable employer where the allegations of misconduct, and the consequences to the employee if they are proven, are particularly serious."*

206. In determining an unfair dismissal claim in respect of a conduct dismissal, Tribunals must have regard to the case of ***British Home Stores Limited v Burchell [1980] ICR 303*** which sets out a threefold test. The Tribunal must decide whether:

a. the employer had a genuine belief that the employee was guilty of the misconduct alleged.
b. it had in mind reasonable grounds upon which to sustain that belief; and
c. at the stage at which that belief was formed on those grounds, it had carried out as much investigation into the matter as was reasonable in the circumstances.

207. It is the employer who must show that misconduct was the reason for the dismissal. The employer need not have conclusive or direct proof of the employee's misconduct, only a genuine and reasonable belief, reasonably tested. It is only the first element of the ***Burchell*** test that the employer must prove. The burden of proof in respect of the other two elements is neutral as held by the Employment Appeal Tribunal (EAT) in ***Boys and Girls Welfare Society v Macdonald [1997] ICR 693, EAT*****, and** ***Singh v DHL Services Ltd UKEAT/0462/12LA****.*

208. If the three elements of the ***Burchell*** test are met, the Tribunal must then consider whether the decision to dismiss was within the band of reasonable responses.

209. The Court of Appeal held that the 'range of reasonable responses' test applies in a conduct case both to the decision to dismiss and to the procedure by which that decision was reached. The Tribunal must not substitute its own view for that of the employer as provided in ***Iceland Frozen Foods v Jones [1983] ICR 17*** and ***Sainsburys v Hitt [2003] ICR 111****.* The relevant question is whether it was an investigation that fell within the range of reasonable responses that a reasonable employer might have adopted. It is not an absolute standard.

210. Without falling into the substitution mindset referred to in ***London Ambulance Service NHS Trust v Small [2009] EWCA Civ 220***, the Tribunal is required to assess whether the conduct in question was capable of amounting to gross misconduct as this is necessary in order determine whether it was within the range of reasonable responses to treat the conduct as sufficient reason for dismissing the employee summarily.

210. Furthermore, where a claimant is dismissed for a first offence because it was gross misconduct, the Tribunal must not jump to the proposition that dismissal was the appropriate sanction and therefore it falls within the band of reasonable responses. There may be mitigating factors which mean the decision is not a reasonable one as in ***Britobabapulle v Ealing Hospital NHS Trust [2013] IRLR 854.***

211. In ***Sandwell & West Birmingham Hospitals NHS Trust v Westwood UKEAT/0032/09***, the EAT held that what amounts to gross misconduct is a mixed question of law and fact. Gross misconduct will depend on the facts of the case but generally it is an act which fundamentally undermines the employment contract as held by the Supreme Court in **Chhabra v West London Mental Health NHS Trust [2014] IRLR 227** reiterated that it should be conduct which would involve a repudiatory breach of contract i.e. conduct undermining the trust and confidence such that the employer should no longer be required to retain the employee in his employment.

212. The respondent referred the Tribunal to ***Uddin v Camden and Islington NHS Foundation Trust UKEAT/0151/18*** and if the Tribunal concludes there was no gross misconduct it must still consider whether the substantive reason it found for the dismissal was reasonably treated by the respondent. The respondent also relies on ***Weston Recovery Services v Fisher UKEAT/0062/10*** which is authority for the proposition that even where the conduct in question was not serious enough to amount to gross misconduct a dismissal may still be fair.

Breach of Contract

213. ***Article 4 of the Employment Tribunals Extension of Jurisdiction (England & Wales) Order 1994*** provides that complaints can be pursed before the Tribunal in respect of the recovery of damages or sums. if the claim arises or is outstanding on the termination of the employment of the employee.

214. The claimant asserts he was dismissed in breach of contract as he did not receive his contractual notice pay amounting to 12 weeks. It is not disputed the claimant was dismissed without notice.

Direct Discrimination

215. ***Section 13 of the Equality Act 2010*** defines direct discrimination as follows: '*A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others*.' In this matter the claimant relies on the protected characteristic of age.

216. To succeed with a direct discrimination claim a claimant must have been treated less favourably than a comparator because of the protected characteristic. The conventional approach to considering whether there has been direct discrimination is a two-stage approach: considering first whether

there has been less favourable treatment by reference to a real or hypothetical comparator; and secondly considering whether that treatment is because of the protected characteristic.

217. A comparator must not share the protected characteristic. **S.23(1) Equality Act 2010** provides there must be no material difference between the circumstances relating to each case. **In *Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337***, *HL* Lord Scott explained this means '*the comparator required for the purpose of the statutory definition of discrimination must be a comparator in the same position in all material respects as the victim save only that he, or she, is not a member of the protected class*'.

218. Tribunals are encouraged to address both stages of the test by considering a single question: the '*reason why*' the employer did the act or acts alleged to be discriminatory. Was it on the prohibited ground or was it for some other reason? Again, in ***Shamoon***, the House of Lords commented that by tying themselves in knots attempting to identify a comparator, Tribunals run the risk of failing to focus on the primary question, namely, why was the claimant treated as he was.

219. The question whether an alleged discriminator acted '*because of*' a protected characteristic is a question as to their reasons for acting as they did. This is the '*reason why*' question and the test is subjective in accordance with ***Nagarajan v London Regional Transport [1999] IRLR 572, HL*.**

220. This was confirmed recently in ***Gould v St John's Downshire Hill [2021]*** *ICR 1, EAT*, the Employment Appeal Tribunal stated, '*The question whether an alleged discriminator acted "because of" a protected characteristic is a question as to their reasons for acting as they did. It has therefore been coined the "reason why" question and the test is subjective… For the tort of discrimination to have been committed, it is sufficient that the protected characteristic had a "significant influence" on the decision to act in the manner complained of. It need not be the sole ground for the decision… the influence of the protected characteristic may be conscious or subconscious*.'

221. However, the fact the claimant has been subjected to unreasonable treatment is not, of itself, sufficient as a basis for an inference of discrimination to cause the burden of proof to shift. This was established by the House of Lords in ***Glasgow City Council v Zafar 1998 ICR 120, HL***. However, the position may be different if the conduct is unexplained, as held by the Court of Appeal in ***Igen v Wong [2005] ICR 931, CA***.

222. Furthermore, even if a claimant can establish unfair or unreasonable conduct, which may amount to less favourable treatment than that which was (or would have been) meted out to a comparator (whether real or hypothetical) a Tribunal must not automatically assume that such conduct was motivated by the protected characteristic relied on and was thus directly

discriminatory. There must be some evidential basis for drawing such a conclusion or adverse inference.

Burden of Proof

223. The standard of proof the Tribunal must apply is the civil standard that is the balance of probabilities. Something asserted by a party can only be a fact if it is shown by sufficient evidence to be more probable than not.

224. In relation to discrimination claims. the burden of proof rule is set out in ***s.136 Equality Act 2010*** which provides where a claimant proves facts from which a tribunal could conclude in the absence of an adequate explanation that the respondent has discriminated against the claimant (a prima facie case), the Tribunal must uphold the complaint unless the respondent proves that it did not discriminate.

225. How that works in practice was discussed in ***Igen v Wong [2005] IRLR 258, CA & Madarrassy v Normura International Plc [2007] ICR 867, CA***. In ***Madarassy*** the Court of Appeal stated: at the first stage the claimant must prove a prima facie case and, '*The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal "could conclude" that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination*.' If the claimant establishes a prima facie case, the second stage is the burden shifts to the respondent to prove it has not committed an act of unlawful discrimination.

226. Evidence of direct discrimination is unusual, and Tribunals can draw inferences from facts, all the relevant surrounding circumstances and an examination of the actions of the alleged discriminator but motive is not relevant as provided in ***Ahmed v Amnesty International UKEAT 0447/08***. However, clear findings of fact are required. As Lord Justice Peter Gibson stated in ***Chapman v Simon 1994 IRLR 124, CA***, '*a mere intuitive hunch… that there has been unlawful discrimination is insufficient without facts being found to support that conclusion*'.

227. However, the burden of proof rule should not be applied in too strict or a mechanical manner. In ***Hewage v Grampian Health Board [2012] UKSC 37***, the Supreme Court approved the obiter comments of Justice Underhill in ***Martin v Devonshires Solicitors [2011] ICR 352*** that there might be cases when there are clear non-discriminatory reasons for the treatment in question without the need to resort to the burden of proof rule. He stated while '*the burden of proof provisions in discrimination cases… are important in circumstances where there is room for doubt as to the facts necessary to establish discrimination — generally, that is, facts about the respondent's motivation… they have no bearing where the tribunal is in a position to make positive findings on the evidence one way or the other, and still less where there is no real dispute about the respondent's motivation and what is in issue is its correct characterisation in law*'. This was endorsed by the Supreme Court in ***Efobi v Royal Mail Group Ltd [2021] ICR 1263, SC***

Conclusion – Unfair Dismissal

Reason for dismissal

228. Turning first to what was the reason or principal reason for dismissal? The respondent asserts the reason was the claimant's gross misconduct. The claimant asserts he was dismissed for political correctness. The question for the tribunal to decide is what facts or beliefs were in the mind of the decision maker Ms. Rainey which caused her to dismiss the claimant.

229. The Tribunal was satisfied the reason or principal reason related to the claimant's conduct, the conduct in question being four breaches of the respondent's Code of Conduct and the allegations as set out in the table which Ms. Rainey clarified coupled with a belief that the claimant was not willing to change his behaviour.

Genuine Belief

230. Did the respondent have a genuine belief the claimant was guilty of misconduct as alleged, the Tribunal found Ms. Rainey did have a genuine belief the claimant was guilty of misconduct at the date of his dismissal.

Reasonable Grounds

231. Did the respondent hold that belief on reasonable grounds arrived at following a reasonable investigation? The band of reasonable responses applies to both the decision to dismiss and the procedure by which the decision was reached.

232. The Tribunal found the respondent did not have reasonable grounds to hold the belief the claimant had committed gross misconduct based on its failure to conduct a reasonable investigation and not least because during evidence, Ms. Rainey was unclear which allegations of misconduct were upheld.

233. This is precisely why the Tribunal had to seek further information from her to understand her decision making. In cross examination she informed the Tribunal that two or perhaps three of the grounds were made out but she was not sure of the fourth.

Reasonable Investigation

234. The respondent failed to conduct a reasonable investigation of the standard required of a reasonable employer.

235. The respondent failed to comply with the ACAS Code of Practice and its own disciplinary procedure in that it failed from the outset to inform the claimant in writing of the full allegations against him. The extent of the allegations he was provided with was as set out in his suspension letter on

19 February 2024. The claimant was subsequently told that he had breached the respondent's Code of Conduct, but he was never told why in any certain terms.

236. Furthermore, Ms. Irons' management of the investigation was confined to collecting the information provided by the witnesses, she did not in fact carry out any necessary investigation to establish the facts including e.g. speaking with Ms. Allen or Mr. Trylski. Even when the claimant sought further clarity, she did not provide it or seek to provide it, and this was reflected in her investigation report which was a broad-brush indictment of the claimant, his line management and the culture of the station without ever having tested the evidence she was presented with. It is impossible to say what analysis she carried out as none was provided in her investigation report. She simply recounted the evidence from the witnesses and her decision.

237. Although Ms. Irons considered the alleged behaviour amounted to gross misconduct as the breaches of the respondent's Code of Conduct fall into that category, there was no explanation why in the investigation report. Therefore, the respondent's categorisation of the claimant's alleged conduct as gross misconduct without clarifying the breach, the allegation, the evidence gathered, and the decision was not within the band of reasonable responses.

238. That is not to say the Tribunal found the claimant entirely blameless given he accepted that he referred to the Mayor of London as a "*"terrorist"*" on more than once occasion, he did repeat the "*"Pakistan joke"*" and discussed his Polish colleagues with reference to car wash facilities. He should not consider this judgment an exoneration of that conduct, but he was as a minimum entitled to know the allegations against him with a degree of particularity that would have enabled him to respond to them and that was absent from the respondent's investigation from the outset.

239. That failing was then compounded by Ms. Rainey who accepted Ms. Irons' findings without question and proceeded to dismiss the claimant. The claimant submitted the decision to dismiss him was prejudged and the Tribunal agreed as the respondent had a closed mindset regarding the claimant from the outset as was demonstrated by its failure to provide the claimant with the full details of the allegations that had been made against him, the questions Ms. Irons posed in her investigatory meetings, the outcome of her investigation and Ms. Rainey's management of the disciplinary hearing.

240. That infected the entirety of the respondent's procedure including refusing his chosen companion to attend the disciplinary hearing and limiting the role his substitute companion could play. Although the claimant was informed of the potential outcome of the disciplinary hearing, he could not prepare for that hearing adequately as only the respondent had knowledge of all the allegations, he and his last-minute companion did not. Furthermore, Ms. Rainey didn't explore with the claimant the allegations she clarified for

the Tribunal during the hearing, her focus was solely on understanding if the claimant could and was willing to change.

241. It was never suggested to the claimant at the disciplinary hearing that referring to a Muslim man as a "*"terrorist"*" was inflammatory, nor was he asked did he refer to the Mayor as "*vermin*" or that is a term that is used to denigrate people of minoritised ethnicities. The claimant was not told that allegation 1d namely racially motivated remarks made openly in front of the crew was about his use of the word "*"terrorist"*" to describe the Mayor or the *"Pakistan joke"*.

242. Ms. Rainey did not ask the claimant about the "*Bruce Grobbelaar*" comment nor the comments regarding his Polish colleagues. The claimant was not asked whether the women's SAR group was unwarranted, and he struggled to understand why it was necessary, the allegation as he understood it was that he referred to the group as "b*ullshit*". He was also not asked about making derogatory remarks when viewing footage in the station. Finally, the claimant was unaware the conversation he had with Mr. Bellamy following the publication of Mr. Dowie's letter in July 2023 formed any part of his dismissal.

Sanction

243. That being the position was the decision to dismiss the claimant within the band of reasonable responses? Ms. Rainey and Ms. Edge accepted that a final written warning and further training was the appropriate sanction prior to the disciplinary hearing and although it was not considered, the claimant's long service and clean disciplinary record would have supported that outcome. However, Ms. Rainey changed her mind during the hearing as she believed the claimant stated he was unwilling to change. In respect of the allegations, Ms. Rainey could not pay sufficient regard to the claimant's position as she simply did not ask him about it.

244. Both Ms. Edge and Ms. Rainey stated they considered all the available options, but no evidence was presented regarding that save for they had in mind a final written warning and training prior to the hearing. The Tribunal did not accept their evidence that all options were considered during the 30-minute adjournment in the disciplinary hearing, including alternatives to dismissal.

245. Also, Ms. Rainey accepted that she chose not to access the claimant's disciplinary record or verify similar penalties or consider the broader cultural issues the respondent was contending with. Nor did she consider she may have treated the claimant inconsistently to others as she accepted other comments made by the claimant's colleagues that had arisen during the disciplinary process were not investigated by the respondent. Nor did she consider whether the allegations were pre or post the letter from Mr. Dowie or in working hours or during off duty. Finally, there was no evidence the claimant was unwilling to change his behaviour or engage in further training had he been asked.

246. For all those reasons the Tribunal found the decision to dismiss was not within the band of reasonable responses. The Tribunal found the industrial experience of the members invaluable in reaching this decision.

247. Therefore, the claimant's unfair dismissal claim is well founded.

Conclusion - Wrongful Dismissal

248. The Tribunal considered the reason for and reasonableness of the claimant's dismissal for conduct in respect of the unfair dismissal. The Tribunal considered the evidence available regarding the claimant's alleged gross misconduct in respect of the wrongful dismissal claim. This was the same evidence that was available to the respondent and the additional evidence provided by Ms. Allen.

249. The Tribunal was required to determine whether the claimant's conduct amounted to a repudiatory breach of contract undermining the trust and confidence between himself and the respondent entitling them to dismiss him summarily.

250. With reference to the gross misconduct allegations, the respondent relied on breaches of its Code of Practice, but it did not say which of the factual allegations aligned with each breach in either the investigation report or the claimant's letter of dismissal. The breaches were.

2.11 Abide by work within the spirit of and demonstrate the RNLI's values.
2.15 Maintain the trust and confidence and uphold the reputation of the Organisation at all times.
2.22 Participate in any form of inappropriate behaviour or activity at work, for example sexual activity, unprofessional conduct, practical jokes that cause embarrassment or offence to colleagues.
2.26 Commit any act or omission which might (or does) bring the organisation into disrepute.

251. 2.11 is included in the Code of Conduct policy under the heading individual conduct and responsibility at page 140 of the bundle. 2.15, 2.22 and 2.26 appear under the section which states "the *following standards constitute a serious breach of the Code of Conduct and will normally constitute Gross Misconduct that could lead to summary dismissal*." Therefore, only three of the four alleged breaches are examples of gross misconduct with reference to the respondent's policy.

252. With reference to the table of allegations the Tribunal drew the following conclusions.

a. 1a, the claimant accepted he used the term "*terrorist*" on multiple occasions to describe the Mayor of London. He explained this related to the Mayor's ULEZ policies and the changes he introduced in 2021, and this was corroborated by Mr. Bellamy, Mr. Turrell, WBR 006/24 and

person 1. Although his use of the word "*terrorist*" is an inappropriate term to describe the Mayor's approach to motoring policy, it isn't at odds with the claimant's use of the word "*prostitute*" to describe his annual appraisal whilst giving evidence. Both are inappropriate and the Tribunal accepts the claimant's use of the word "*terrorist*" was in poor taste and did cause offence to WBR 006/24 and Person 1.

b. 1b, the claimant maintained that he did not use the "*N word*" in respect of the Mayor or the word "*vermin*". WBR 006/24 recalled an item on TV about "*vermin*" and the claimant commented "*are we talking about the Mayor again*." The claimant did not expressly call the Mayor "*vermin*" and nor was he asked whether he made that reference because it is a term that is used to denigrate people of minoritised communities. The Tribunal accepts the claimant drew that analogy to "*vermin*", it was an observation in poor taste that caused offence. Only Person 1 stated the claimant used the "*N word*" about the Mayor and had the claimant used that word other witnesses would have mentioned it. Therefore, the Tribunal finds the claimant did not use the "*N word*" to describe the Mayor of London and this allegation was not made out.

c. 1c, the claimant accepted he told the "*Pakistan joke*". The Tribunal finds it was offensive, discriminatory and in poor taste. Repeating a joke one has heard is not an excuse.

d. 1d, other than the use of the word "*"terrorist"*" and "vermin" and the "*"Pakistan joke"*", the respondent was unable to corroborate the claimant made any other racially motivated remarks openly in front of his crew members. Therefore, this allegation was not made out.

e. 1e, WBR 006/24 informed Ms. Irons the claimant did not say "*all black labs matter*" that was another colleague. Notwithstanding that, WBR 006/24 compared that with another comment made in the workplace regarding a puppy and a comment being made that Bruce Grobbelaar had fathered the puppy. WBR 006/24 did not specifically say the claimant made that comment, but the respondent assumed that he did. However, the respondent never asked the claimant about that at any point during the disciplinary process and the claimant denied that comment. The Tribunal finds this allegation was not made out.

f. 1f, the claimant accepted that he engaged in discussion with his Polish colleagues regarding their association with car washes, but he maintained it was instigated by those colleagues. The claimant produced a Facebook post in which one of his Polish colleagues Mr. Tyrlski posted a picture of a bucket and sponge considering the outcome of the Brexit referendum in 2016. This was corroborated by WB 005/24. The Tribunal finds this reference was in poor taste and caused offence.

g. 2a, person 1 complained about the women SAR conference and the other crew member had been upset about it. Ms. Allen confirmed to the Tribunal she was not upset about the conversation, nor did she recall the

claimant using the term "*bullshit*" during their conversation. The claimant denied using that term. The Tribunal finds the claimant did not use the term "*bullshit*" and this allegation was not made out.

h. 3b, the claimant is alleged to have referred to a female crew member as having a "*nice butt*". This allegation was made by person 1, the claimant had no knowledge of this event and explained he may have been discussing the rear end of a car but without any details of when, where and who the comment was directed towards he couldn't respond. Ms. Rainey relied on this allegation as part of her decision to dismiss as she found the claimant's explanation implausible. The Tribunal does not find the claimant made that comment given the lack of investigation into the incident and neither person 1 nor the claimant's position was verified. Therefore, the Tribunal finds this was not use of sexualised comments/remarks about females as alleged by the respondent and this allegation was not made out.

i. 4a, the respondent alleged the claimant made derogatory/belittling comments when viewing camera footage of rescues in the station in an open crew room. Again, this complaint came from Person 1, and no other information was supplied regarding this allegation. Without further information the Tribunal finds the respondent had no evidence the claimant in fact made derogatory/belittling remarks, it was a bare assertion by Person 1 which the respondent accepted without question. The tribunal finds this allegation was not made out.

j. Finally, 5a, the claimant was spoken to by his manager previously. Both Mr. Bellamy and the claimant accepted they had a discussion following the publication of Mr. Dowie's letter in July 2023. Mr. Bellamy told the claimant to tone it down and he agreed. This was reflected in the minutes of the disciplinary hearing and in the investigatory meeting minutes. The Tribunal found this was not an allegation of misconduct at all, notwithstanding it was relied upon by Ms. Rainey in respect of her decision to dismiss the claimant.

253. The Tribunal finds that allegations 1a, b, c & f were substantiated by the evidence available to the respondent and the claimant's own admissions. However, save for use of the word "*"terrorist"*" that was used on more than one occasion, they appear to have been individual instances that took place before the letter from Mr. Dowie and when Mr. Bellamy told the claimant to tone it down.

254. In the circumstances, the Tribunal does not find that conduct cumulatively, taking the respondent's case at its highest, amounted to gross misconduct with reference to the respondent's Code of Conduct nor did it justify the respondent summarily dismissing the claimant at the point in time that it did.

255. Although serious offences they do not reach the threshold for repudiatory breach of contract. Particularly, given the context as the claimant had a

limited appreciation of the respondent's policy before the disciplinary process, his behaviour was not out with the behaviour of others which is why the respondent undertook a cultural reset in 2023, he had never received any complaints about his behaviour previously and it involved employees who both lived and worked together and a blurring of the line between home and work.

Age Discrimination

256. There is one alleged act of direct discrimination, the claimant's dismissal. The Tribunal accepted this could amount to less favourable treatment of the claimant. However, the Tribunal did not find that less favourable treatment was because of the claimant's age.

257. The reason why the claimant was dismissed was due to his conduct in the workplace and his alleged unwillingness to change. The Tribunal was satisfied that was the reason and although there are references to the claimant's retirement from witnesses during the process and the Tribunal accepted the conversation regarding 21st century lifeboatman took place, the Tribunal did not accept the claimant's age was a factor in his dismissal.

258. In respect of this allegation, the claimant asserted he had identified facts from which the Tribunal could conclude in the absence of an adequate explanation that the respondent had unlawfully discriminated against him as perceptions about his willingness to change played a material role in Ms. Rainey's decision to dismiss him.

259. The pertinent facts are the claimant's age, references to his impending retirement by the witnesses, the 21st century lifeboatman conversation and Ms. Rainey's mistaken belief he was unwilling to change. However, it was the claimant who conflated his type of humour and stubbornness and willingness to change with his age, that was not the respondent's position, and the Tribunal did not consider that alone was sufficient to shift the burden of proof.

260. If the Tribunal is wrong about that and the burden shifted, then the Tribunal finds the respondent did prove there was some other ground for the treatment, namely the claimant's conduct in the workplace and his alleged unwillingness to change. The Tribunal did not accept that a hypothetical comparator under the age of 60, in the same circumstances with no material differences would have been treated better than the claimant.

261. Therefore, the complaint of direct age discrimination is not well founded and is dismissed.

Remedy Hearing

262. This matter is listed for a 1-day remedy hearing on **Monday 15 December 2025**. The parties are both legally represented, and they are to agree between themselves a timetable to produce the bundle, exchange of

witness statements and an updated schedule of loss and counter schedule for use at the hearing. The Tribunal will consider the remedy issues at set out in the agreed list of issues.

Employment Judge J. Galbraith-Marten

8 October 2025

SENT TO THE PARTIES ON

17 October 2025

FOR THE TRIBUNAL OFFICE