



EMPLOYMENT TRIBUNALS

Claimant: Mr A Weavin

Respondent: Animal and Plant Health Agency

Heard at: Exeter Employment Tribunal

On: 30 June, 1, 2, 3, 4, 7, 8, 9, 10 July 2025, 29,30 September, 1, 2 3 October 2025

Before: Employment Judge Volkmer

Representation
Claimant: in person

Respondent: Mr McCrossan, counsel
Miss Law (paralegal for the Respondent's Instructing Solicitors)

JUDGMENT having been sent to the parties on 24 October 2025 and written reasons having been requested in accordance with Rule 60 of the Employment Tribunals Rules of Procedure 2024, and that request having been sent to the Judge on 18 November 2025, the following reasons are provided

REASONS

Background

1. The Claimant presented a claim to the Tribunal making complaints of "ordinary" unfair dismissal, whistleblowing detriments and automatically unfair dismissal (whistleblowing) on 10 March 2023. This followed notification to ACAS on 8 March 2023. The ACAS certificate was issued on 10 March 2023.

Case Management History

2. On 26 September 2023, a preliminary hearing was held by telephone in private before Employment Judge Bax, and the resulting order was sent to the parties on 3 October 2023 (page A30).
3. Following this on 24 November 2023 the Claimant made an application to amend by email (page A43)

4. On 6 December 2023, a case management preliminary hearing took place before Employment Judge Cadney, who dismissed the Claimant's amendment application. The order from this hearing was sent to the parties on 28 August 2024 (page A81).
5. On 4 September 2024, a preliminary hearing was conducted via CVP audio before Regional Employment Judge Pirani, and the order was sent to the parties the following day (at page A106) (the "September 2024 CMO"). This set out the List of Issues in relation to the case. Following this on 5 September 2024, the Claimant wrote to the Tribunal (page 103) to confirm that in relation to the pleaded detriments at paragraphs 116 (iv) and (vi) had been withdrawn. The Tribunal responded by email on 9 October 2024 (page 129) with Regional Employment Judge Pirani's direction that the issues were amended to reflect that the detriments at (iv) and (vi) were no longer pursued.
6. On 25 February 2025, a telephone case management hearing was held before Employment Judge Volkmer, with the order sent on 24 March 2025.
7. On 22 May 2025, a Dispute Resolution Appointment was conducted by video before Employment Judge Midgley, and the corresponding case management order was sent on 28 May 2025 (page A1837) (the "May 2025 CMO"). Employment Judge Midgley was able to clarify the List of Issues and set out a revised version in his order. This included a cross-reference to the pleaded protected disclosures set out in the September 2024 CMO. The issues related to unfair dismissal were inadvertently excluded from this list of issues, and detriments (iv) and (vi) were included. Employment Judge Midgley made orders that the Respondent to provide a revised List of Issues by 19 June 2025. This revised list must for each factual allegation said to be a detriment: state whether the facts were admitted, put to proof (with no positive case advanced) or disputed, with a contrary factual assertion. The Respondent must also state whether, if proved, it is admitted that the fact would constitute a detriment under the legal test. The Tribunal was provided with an amended List of Issues within which the Respondent had confirmed this information.

Postponement Application

8. On 23 June 2025, seven days before the start of this hearing, the Respondent made an application to postpone the final hearing. This application was made on the basis that Ms Purohit had travelled to India because of a family emergency and there was unlikely to be enough time to get permission for evidence to be heard remotely from that jurisdiction. Further Ms Cribley was also unavailable for the hearing, which meant two key witnesses for the Respondent were not available.
9. On 25 June 2025, Regional Employment Judge Pirani refused the Respondent's application. An email was sent to the parties on 25 June 2025 saying the following.

"This claim was received at the tribunal on 10 March 2023. It is therefore already over 2 years old. The claims concern allegations going back some years. Postponing the hearing would mean that this case would not be heard until late 2026. Accordingly, Judge Pirani has decided it is not in the interests of justice or in accordance with the overriding objective to postpone the hearing."

However, the respondent can make applications on the first day of the hearing for a revised timetable and, potentially relisted dates, so that the two witnesses can give evidence on a later occasion. That is preferable to postponing the entire hearing. The respondent can take notes of the claimant's evidence which can be provided to the witnesses who are not in attendance. The parties should therefore liaise to agree a revised timetable and witness order which can be presented to the tribunal by 4 PM on 27 June 2025."

10. At the beginning of the hearing Mr McCrossan was not aware that Regional Employment Judge Pirani had already made a decision in relation to the postponement application. We discussed Serco Ltd v Wells EAT 2016 ICR 768, EAT and I invited Mr McCrossan to inform me if there had been any material change since Regional Employment Judge Pirani's decision. He informed me that due to the serious illness of his father, Mr Cox was also not available to give evidence during the hearing. However, unexpectedly, Mr Cox had attended the first day of the hearing. I suggested that rather than having reading time, we start with Mr Cox's evidence immediately. The Claimant stated he was ready to cross examine Mr Cox and Mr Cox was willing to give evidence. We also agreed that we would list a further hearing to conclude with the evidence of Ms Purohit and Ms Cribley, to hear submissions and for me to give judgment. Remedy would still be heard separately as the Claimant had a defined benefit pension scheme.

The List of Issues

11. At the start of the first part of the hearing, we discussed detriments (iv) and (vi) which had been included in the List of Issues by Employment Judge Midgley and the Claimant confirmed that they could be removed from the List of Issues before the Tribunal.
12. I asked that Claimant to clarify the page numbers of the documents of each protected disclosure. He told me that PID 1 was at pages A394 to A404, that PID 2 was at page A674 to A691, and that PID 4 was made by way of an online form to which he had uploaded the PowerPoint presentation at pages A1288-1354, but that he did not have a copy of his submission. He was later able to provide a copy as he received it after having made a request of the National Audit Office for a copy and it was included in the hearing bundle at page A2126.
13. I asked the Respondent to clarify who it was said had "done" the acts in the alleged detriments where no individual was named. The following people were stated to be the relevant persons by the Respondent:
- a. D9: Carl Parker and Jo Cribley;
 - b. D10: Carl Parker and Jo Cribley had made the decision, on their instruction Ms Purohit had made the IT request and the IT department had actually removed the Claimant's access;
 - c. D11: Michelle Wilson;
 - d. D12: Rachel Wallace
 - e. D13: Alison White.

The Hearing

14. This hearing was to deal with liability, Polkey (which I explained was a decision as to whether, if the dismissal is found to be unfair, there would have been a fair dismissal in any event) and contributory conduct only.
15. The first day consisted of the Claimant's cross examination of Mr Cox, and discussion of preliminary matters. The second day was a reading day. It was agreed between the parties that the Claimant could have an extended time to cross examine the witnesses: until the end of day five. Then the Claimant would give evidence on days six and seven. The Claimant finished his cross examination by the end of day four, and as such began his own evidence on the morning of day five. After the lunch break, Mr McCrossan told the Tribunal that he had a migraine coming on. As such I decided we would pause the hearing there and return on Monday morning (day six) to continue the Claimant's evidence. The evidence in the first part of the hearing concluded on day seven (Tuesday 8 July).
16. The Respondent's two witnesses who had not been available during the first set of dates, Ms Cribley and Ms Purohit gave evidence on 29 and 30 September 2025.
17. The alleged detriment at 5.1.12 had not been put to Ms Wallace by the Claimant during her evidence. She had not covered it in her witness statement. With the agreement of the parties, I therefore recalled her on 30 September 2025 in order to ask for her comments on the Claimant's case that she had done this act on the ground of the Claimant's protected interest disclosures.
18. The Claimant told the Tribunal before oral judgment was given that he felt that the hearing had been conducted fairly.

The Evidence

19. The Tribunal heard oral evidence from the Claimant and Mr Cox, Mr Stapleton-Brown, Ms White, Mr Lavendar, Ms Wallace, Ms Cribley and Ms Purohit on behalf of the Respondent. There were two hearing bundles. The "Agreed Bundle" of 1848 pages, references to page numbers in this bundle are pre-fixed with an "A" – A1, A2 and so on. There is a second bundle called the "Disputed Bundle" with 1672 pages, references to which are pre-fixed with at "D" – D1, D2 and so on. There was no dispute between the parties regarding the Tribunal referring to both bundles. The Tribunal was also provided with the Respondent's chronology and cast list. By agreement various documents were added to the end of the Agreed Bundle before the second part of the hearing, and the page number increased to 2128 pages.
20. The Tribunal was having difficulty identifying which documents had been embedded into Mr Stapleton-Brown's disciplinary investigation report. He therefore provided a soft copy to the parties and the Tribunal after having given his evidence. The Claimant did not object to its inclusion in the evidence.
21. The Respondent's position was that the email at page A405 attached the Standard Operating Procedure at page A406 onwards. The Claimant disputed that it was the correct attachment to the email. I therefore asked the Respondent during the course of the hearing to provide the Claimant and the

Tribunal with a soft copy of the relevant email. This was provided and neither party objected to its inclusion in the evidence.

The Issues

22. The issues to be dealt with are as follows. This List of Issues is based on that in the May 2025 CMO, but I have added the unfair dismissal and the protected disclosures, which were set out in the September 2024 CMO. The withdrawn detriments are included but marked as being struck out from the list. During the hearing I asked the Claimant to confirm the page numbers which relate to each of the disclosures. I record the page references he stated related to each disclosure below. A copy of the List of Issues below was sent to the parties on 25 July 2025 as part of a case management order which followed the first part of the final hearing (page A1852).

1. *Time limits*

1.1 *The claim form was presented on 10 March 2023. The Claimant commenced the Early Conciliation process with ACAS on 8 March 2023 (Day A). The Early Conciliation Certificate was issued on 10 March 2023 (Day B). Accordingly, any act or omission which took place before 9 December 2022 (which allows for any extension under the Early Conciliation provisions) is potentially out of time so that the Tribunal may not have jurisdiction to hear that complaint.*

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

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

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

1.2.3 *If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?*

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

2. *Unfair dismissal claim*

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

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

- 2.2.1 *the Respondent would not disclose the Standard Operating Procedure the Claimant was said to have refused to comply with;*
- 2.2.2 *the Respondent failed to look at or take into account the Claimant's evidence as to what had been happening;*
- 2.2.3 *the decision was predetermined;*
- 2.2.4 *he was dismissed because he whistle blew.*
- 2.3 *Was the decision to dismiss a fair sanction, that is, was it within the range of reasonable responses open to a reasonable employer when faced with these facts?*
- 2.4 *Did the Respondent adopt a fair procedure? The Claimant challenges the fairness of the procedure in the following respects;*
- 2.5 *If it did not use a fair procedure, would the Claimant have been fairly dismissed in any event and/or to what extent and when?*
- 2.6 *If the dismissal was unfair, did the Claimant contribute to the dismissal by culpable conduct? This requires the Respondent to prove, on the balance of probabilities, that the Claimant actually committed the misconduct alleged.*
- 3. *Protected disclosures (43B ERA)*
 - 3.1 *The Respondent admits that the Claimant made the following protected disclosures as defined in section 43B ERA.*
 - 3.1.1 *In May 2021 to management level above his supervisors in writing, that they would go the same farm to collect diseased animals and rather than doing it once or sending the correct sized vehicle there would be several trips in close succession to collect the diseased animals instead of removing them in one go, the trips were split up purposely.*

There was much higher cost as a result of the increased journey distanced. This caused an increase of vehicle pollution and contaminated animal faeces escaping from the lorry, increased administrative costs, the farmer needed to isolate the diseased animals from the rest of herd through the cattle crush on several occasions costing them more money.

The reporting on the collections was misleading because it suggested several targets have been met whereas in reality it was one (The Claimant says, for example testing occurred on Monday, Tuesday and Wednesday, if on Monday there were 11 reactors, arrangements were to collect those 11 animals when the test results came in. During the preparation time further results would be coming in for the same farm but those results were not linked together and arrangements were not made to collect all animals at the same time). [PID1] [pages A394 to 404]

3.1.2 *The Claimant updated his disclosure in 2022 by e-mail with additional evidence about what was happening, in particular in November 2022, he showed that the recent audit was incorrect, repeating the earlier disclosure and providing further evidence. [PID 2] [pages A674-691]*

3.1.3 *In January 2023, to the disciplinary investigators and panel he repeated the same information as set out above [PID 3].*

4. *Protected disclosure (43G ERA)*

4.1 *Was a disclosure made to another person in accordance with section 43G ERA?*

4.2 *What did the Claimant say or write? When? To whom?*

4.2.1 *The Claimant says he made a disclosure on 16 January 2023 in writing to the National Audit Office repeating what had been previously disclosed to the Respondent, by copying it into his correspondence with the Respondent. [PID 4] [The Claimant now says this was done via an online form, and that he sent the National Audit Office the presentation at pages A1288 to A1354. The online form is at A2126.]*

4.3 *Was this a disclosure of 'information'?*

4.4 *Did the Claimant believe the disclosure of information was made in the public interest?*

4.5 *Was that belief reasonable?*

4.6 *Did the Claimant believe it tended to show that:*

4.6.1 *a person had failed, was failing or was likely to fail to comply with any legal obligation; The Claimant says that civil servants were not doing the right thing and doing the job properly and not creating an empire contrary to the Administration Act;*

4.6.2 *the health or safety of any individual had been, was being or was likely to be endangered;*

4.6.3 *the environment had been, was being or was likely to be damaged;*

4.6.4 *information tending to show any of these things had been, was being or was likely to be deliberately concealed.*

4.7 *Was that belief reasonable?*

4.8 *If the Claimant made a qualifying disclosure, was a protected disclosure because it was made to the National Audit Office?*

4.9 *Was it made other than for personal gain?*

- 4.10 *Did the Claimant reasonably believe that the information disclosed, and any allegation contained in it were substantially true and*
- 4.11 *Was it reasonable for him to make the disclosure having regard to the identity of the person to whom it was made, its seriousness, whether it was continuing, the action which had been or might have been expected to have been taken and any procedures authorised by the employer?*
- 4.12 *Had the Claimant met any of the conditions in s. 43G(2) namely that: in a case where no person is prescribed for the purposes of section 43F in relation to the relevant failure, the Claimant reasonably believed that it was likely that evidence relating to the relevant failure would be concealed or destroyed if he made a disclosure to his employer, or that the worker had previously made a disclosure of substantially the same information to his employer.*
5. *Detriment (Employment Rights Act 1996 section 47B)*
- 5.1 *Did the Respondent do the following things:*
- 5.1.1 *during 1:1s in May 2021 did Mita Purohit fail to provide the Claimant with monthly performance statistics despite his requests on the following occasions; [D1]*
- 5.1.2 *following a team meeting on 16 November 2021, did Mita Purohit suggest that a comment that the Claimant had made that a female colleague might 'babysit' his case in his absence, was a sexist remark; [D2]*
- ~~5.1.3 *On [date] Did Ms Purohit knowingly misinform the Claimant that the date of his OH appointment was on 29 November 2021 when it was in fact on 29 December 2021? [D3] [withdrawn]*~~
- 5.1.4 *at a MS Teams meeting on 28 March 2022 did Mr Alan Cox undermine and ridicule the Claimant's comments and proposals relating to the LEAN process, commenting "100% How much Leaner could we get?"; [D4]*
- ~~5.1.5 *On 25 April 2022 did Jo Gribble ignore the Claimant's Lean proposals? [D5] [withdrawn]*~~
- 5.1.6 *did Alan Cox and Carol Howe arrange audit meetings in late 2022 at times when they knew the Claimant would be on annual leave and so could not attend? [D6]*
- 5.1.7 *on 17 November 2022 during a Reactor Removal Team meeting did Alan Cox and Carole Howe joke about the waste of public money caused by the audit and did Ms Purohit laugh in response? [D7]*
- 5.1.8 *in late November 2022 did Carl Parker provide negative evidence about the Claimant in an attempt to secure his dismissal, specifically did he:*

5.1.8.1 state that the Claimant was finding things to complain about in relation to the Claimant's attempts to promote CHeCs; [D8a]

5.1.8.2 state that the Claimant was using unapproved systems and apps which had not been vetted by the Respondent; [D8b]

5.1.9 in October 2022, did the Respondent commenced a disciplinary investigation in relation to the Claimant; [D9] [factually admitted] [Carl Parker and Jo Cribley]

5.1.10 in November 2022, did the Respondent remove the Claimant's access to its electronic systems, preventing him from accessing the file and evidence he needed in relation to the disciplinary allegations; [D10] [factually admitted] [Carl Parker and Jo Cribley]

5.1.11 did the Respondent fail to provide the Claimant with the Standard Operating Procedure ("SOP") he was alleged to have breached from October 2022 and thereafter; [D11] [Michelle Wilson]

5.1.12 in January 2023, did the Respondent state that the Claimant's alleged misconduct fell within the Cabinet Office's definition of "internal fraud – fraudulent conduct with a view to gain for the employee"; [D12] [Rachel Wallace] and/or

5.1.13 on 29 March 2023, did the Respondent fail to disclose copies of the 'relevant' SOPs which were in place between 2013 and 2023 to the Claimant? [D13] [Alison White]

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

5.3 If so, was it done on the ground that the Claimant had made the protected disclosure(s) set out above?

6. Dismissal (Employment Rights Act s. 103A)

6.1 Was the making of any proven protected disclosure the principal reason for the Claimant's dismissal?

6.2 The Claimant did have two years' service and the questions which the Tribunal will have to address are:

6.2.1 Has the Claimant produced sufficient evidence to raise the question whether the reason for the dismissal was the protected disclosures?

6.2.2 Has the Respondent proved its reason for the dismissal, namely misconduct?

6.2.3 If not, does the Tribunal accept the reason put forward by the Claimant or does it decide that there was a different reason for the dismissal?

The Facts

23. The Animal and Plant Health Agency, also referred to as APHA, the Respondent, is an agency of the Government Department for Environment, Food & Rural Affairs ("DEFRA"). The Respondent's role is to, among other things, identify and control disease in animals, plants and bees.
24. The Claimant started working for the Respondent on 1 October 2013 as an Administrative Officer ("AO"). At the time of the events complained about the Claimant worked in the "Reactor Removals" Team.
25. External veterinary practices would test cows for tuberculosis ("TB") and would inform the Respondent of the results. It was common for there to be multiple batches of tests in relation to a particular farm, for example if there were too many animals to be tested in one day. Each batch of tests would come into the Respondent separately. The term "reactor" was used to refer to a cow which had tested positive for TB. The test results would be processed by an administrative team (the "Select for Slaughter" Team). They would "select" reactors for slaughter and create a work schedule with an associated removal target. This would reflect the official target to remove reactors within 10 days of the positive test result.
26. The Reactor Removal Team would access the system to view the work schedules and contact the farmer, usually by telephone, and discuss arrangements for the reactors to be removed. They would then make arrangements with the relevant abattoirs to attend the farm and remove the reactor animals for slaughter.
27. The Reactor Removal Teams' aim was to remove reactors as quickly and efficiently as possible from the farm to be slaughtered. Removing animals more quickly reduced the risk of contamination of other animals on the same farm.
28. The Reactor Removal Team followed a process whereby the test results were dealt with in date order priority. The oldest test would be dealt with first and so on. If there was another test in relation to the same farm which was dated more recently, it would not be grouped together. Each test was dealt with separately in date order. The methodology for dealing with reactor removal was set out in a standard operating procedure ("SOP") and "desk instructions", each of which set out steps to be followed by Administrative Officers in the Reactor Removals team.
29. The Claimant's first supervisor Mr Hutchinson was happy for his team to proactively link work schedules relating to the same farm, even if this meant the work schedules would not be dealt with in strict date order. In 2018 Mr Hutchinson left the team. Following this, the new team leader instructed the team that they must take the work schedules in strict date order, rather than linking them.
30. The Claimant objected to this way of doing things because he felt that if there were numerous tests, these should be linked and dealt with together, regardless of date order. He felt that taxpayers' money was being wasted and

that there was additional pollution being caused by having multiple transports of animals if each batch of tests was dealt with separately in date order. The Claimant began raising concerns about this within the Respondent.

31. The Claimant raised this issue numerous times with the Respondent following Mr Hutchinson's departure. I do not go into details of the Claimant's historic complaints in relation to this: his amendment application was refused by Employment Judge Cadney and the historic complaints not relevant to the issues to be determined in this case. However, it is relevant to note that the background to this claim is that the Claimant's position is that he had been raising and pursuing this matter repeatedly with the Respondent since 2018.
32. In around September 2020 Mita Purohit was temporarily made the "Executive Officer" managing the Reactor Removals team. She later became the Claimant's line manager in 2021. Performance management reviews ("PMRs") were one to one meetings which were held monthly between members of the Reactor Removals team and their line managers.
33. On 25 and 26 May 2021 the Claimant sent a number of emails to Alison White setting out his concerns about the reactor removal process (pages A394 to A404). The Claimant did not copy these emails to anyone else. The first email from the Claimant on 25 May 2021 stated the following:

"Essentially, regardless of the history with me personally being involved, it is still a matter of great unnecessary £ cost to the public and the environment when removing TB infected animals.

I know this to be against Government aims and directives.

It has been going on for years already and this will continue if something is not done about it – and now.

The Official reports The Reactor Removal Team supplies have incorrect 'reasons for delay' recorded and staff encouraged/enforced to do so by the supervisory team. Even 'reasons' changed if the staff member has not complied. This in turn then provides incorrect information to our superiors/country.

Together with very poor but organised enforced planning and doctrines in handling of the workload, results in the same Owner and his animals being dealt with by the same Team several time over - thus multiplying the errors, costs and HGV Miles.

The knock-on effect is thousands of pounds in extra costs over many separate TB Reactor removals and the associated higher HGV miles created by a Government agency to achieve the task. That is over an above the extra stress

on Owners and their animals - all done to appear on the surface to be adhering to our 10 working day removal target.

I am not prepared to continue watching and doing my little bit to stop it happening. I will be resigning as I have no choice.

But ask for your help first. This is not a matter of my personal Grievance/Dispute and I hope you will see this as a genuine request for action and will not be solved by any form of mediation as it is just simply wrong.

I can assure you I have done everything possible to explain what is happening, tried to stop it and instead showed how to plan properly.”

34. Ms White’s first response on the same day included the following paragraph:

“You probably know that I am an independent non-executive director, and I chair the Audit Committee. I’m also a nominated person for whistle-blowing. You can make a report to me in any format and provide any evidence in complete confidence. I will not divulge your identity to anyone unless you give me permission to do so.”

35. There followed emails back and forth, with the Claimant providing further details regarding his disclosure as summarised above.

36. Following this, the standard operating procedures (“SOPs”) relevant to the Reactor Removal team were reviewed. The Claimant was involved in this process. Daniel Armstrong sent an email to the team on 7 September 2021 (page A405) attaching various documents. The email stated that:

“These are final SOPs now ready for immediate use. Thank you to all of you that have given me feedback during the creation of these. From the last round of feedback I have clarified what information can be given regarding the CHeCS scheme if the farmer asks during the valuation call.”.

37. Although the Claimant disputed that the SOP document beginning at page A406 was attached to Mr Armstrong’s email of page A405, in my finding is that it was. The Respondent provided an electronic version of the email with the metadata intact, and my finding is based on the review of the electronic version of the email. There is no evidence to support the Claimant’s contention that the Respondent or their solicitors have falsified this. The document is titled

“Preparation of Valuation SOP Wording. (Final Draft)” and sets out the following at page A406, paragraph 2, in relation to linking cases at the same farm:

“Retrieve WSA – manage Pre-Slaughter Arrangement from Aneta Dunstone’s SAM Workbasket. These are to be taken from the top of the Workbasket in order to meet the 10 day target date. Transfer WSA to your workbasket.

If the testing history shows subsequent parts of the test have been completed and/or a Gamma test has been completed with Reactors confirmed for slaughter, then all eligible animals must be removed together.

This will be shown by further Conduct Removal Work Schedules within SAM. Transfer these to your personal workbasket so all Reactors can be removed together.

The daily WM020 report which is saved to SharePoint can also be cross referenced to show you any additional WS for the CPH.”

38. Later in the same document (at pages A407 and A408) the following is set out in bold/underlined text:

“If you see a WS with Reactors that are awaiting confirmation of slaughter from the Select for Slaughter team then you can wait up to 24 hours before preparing the valuation. The Select for Slaughter team have a target to get all Reactors confirmed for slaughter within 24 hours of receiving the test from the OV.

If the animals have not been confirmed after 24 hours, continue to process the original confirmed Reactors so they are removed within the 10 day target as there may be an issue with the subsequent Reactors.

It is imperative that any delay in waiting for additional Reactors to be confirmed for slaughter does not cause any delay for the confirmed Reactors to be removed beyond the 10 day deadline.”

39. The Claimant agreed in cross examination that he had agreed with the new version of the SOP and was happy that it referred to linking reactors. He responded to Mr Armstrong’s email on 8 September 2021 (page A418) saying the following.

“This is quite a day and I have to say it has been a real fight to finally get back to the right way and order of doing things. To look at the whole picture every time with the particular holding and not just deal with that piece of work placed in front of you.

I thank you for your patience and taking on board the logic. I know, and have proven it will have a great effect on the amount and efficiency of the work done by all the team as it will be more interesting and will increase the individual’s

knowledge, satisfaction and 'Ownership' of the latest RR contact with the Keeper."

40. On 3 December 2021, Ms Purohit sent an email to the Reactor Removals Team saying: *"However under no circumstances wait or chase for the results or conduct removals if it is not in the SAM"* (page A422). SAM was a reference to the Respondent's computer system utilised by the Reactor Removals team. This would show positive test results which had not yet been processed by the Select for Slaughter team to turn them into work schedules.
41. Despite his initial agreement with the new process, the Claimant did not agree with the approach of waiting for a maximum of 24 hours to process a work schedule as set out above at paragraph 38. He felt that if there were further tests scheduled with the same farmer's animals, and which might mean there were more reactors likely to be identified on the farm in the future, the right way to approach it was to wait for any future test results (even if they were not yet on SAM) in order to minimise the number of separate transports of animals to the slaughterhouse. He felt this saved diesel pollution and taxpayers' money. As such, this was the practice he adopted, notwithstanding the instructions to the contrary in the document at page A407 and A408 and which had been given by Ms Purohit on 3 December 2021. The Respondent's position was that this delay reduced the time left for the first batch of reactors to be removed within the ten day window and created a larger group for removal within a shorter time scale, making removal arrangements more difficult and more likely to exceed the ten day time scale.
42. In a one to one meeting on 31 March 2022 Ms Purohit records the following:
- "Adrian also told me that he is not happy with the SOP and don't (sic) agree with it. He said he would not follow SOP if it don't (sic) allow him to work in smart ways. I am quite surprised with this opinion as I remembered he said that he was happy with the SOP in previous 1:1. He said that it took him to create a new SOP which would say that WS would be linked. I do not agree with this and told him he had mentioned before that he is happy with the SOP".*
43. In the Claimant's PMR (monthly one to one meeting) with Ms Purohit, which took place on 21 June 2022. The Claimant stated the following (page A476).
- "I am ordered by my supervisor and her supervisor to follow the Ops Manual instructions and carryout the operations as instructed in the current SOPs and not to do any further research or collect evidence regarding the waste of time, money and the pollution it causes.*
- But for me to carry on with current working practices still being promoted by these latest supervisors - purporting to be "reasonable management request" is not possible and I am letting them know this formally here."*
44. The Cattle Health Scheme Certification Standards ("CHeCS") is a self-regulatory body set up by UK cattle industry to ensure consistency between different schemes and herds. It aims to promote improvements in cattle health and welfare. CHeCS provides standards and certification for Cattle Health Schemes. On 7 July 2022 Mr Parker forwarded an email chain on to Ms Purohit.

This showed that on 16 June 2022 the Claimant sent an email to a generic "info" email address at CHeCS from his work email address with his work email signature. This contained queries about the scheme and made a statement that *"From the outset I was discouraged from mentioning the CHeCs scheme by supervisors as if it were me – a civil servant- supporting an outside business."* (page A812). This was forwarded on from CHeCS to the Respondent with a statement that it was worrying from CHeCS' perspective if it was true, it went through two individuals before being forwarded to Carl Parker (who sat three levels above the Claimant in his line management chain). Mr Parker's forwarding email of 7 July 2022 stated the following (A809).

"Hi Mita,

Clearly his comment about being told not to encourage CheCs needs investigating so I'll need to interview you and Dan initially along with Adrian

In the meantime, following his written statement that he will NOT be following managers instructions have you instigated disciplinary proceedings against him as this is clearly "failing to carry our reasonable instructions of management". I assume initially you will need to speak to the cease (sic) worker as per the email I forwarded on Friday.

I will be speaking to Adrian to ask which "supervisor" told him not to encourage the use of CheCS and when. Have you at any time said anything like that to him/

*Happy to have a chat but see your calendar is full today
Carl"*

45. On 11 August 2022 Nigel Stapleton Brown, a Customer Service Centre Operations Manager for the Respondent emailed Ms Purohit asking for access to the Claimant's PMR (page D1306) which Ms Purohit provided. Mr Stapleton Brown then asked for the SOP which he referred to as *"covering the activities that Adrian is not complying with"* (page D1305). Ms Purohit responded, sending a link to an SOP and saying the following (page D1305).

"In case of Adrian's only, It is correct to say removals are not happening as quickly as they could be more so when we less nos. of Reactors to attend to. But he is well aware of the policy so most of the time he manages to book them within the time period of 10 days, else, in case he couldn't book them within the time it goes as farmer's delay in TBCMS as he ensures that he contacted the farmer well in time to inform him that he is managing the removal arrangements. Also he messed up the booking tool as he intervene and always had to call/contact the Slaughterhouses for his bookings which has an knock on effects with others booking the spaces with the SLHs or whoever manages the TB161 mailboxes."

46. Mr Stapleton-Brown's evidence was that he had not been formally appointed as the investigating manager at this stage, but that he had been informed about

the case so was trying to understand the background to the case before his formal appointment as investigation manager.

Policy and Procedure Documents

47. The Respondent's Discipline Procedure (page A1390) sets out a "fast track" procedure for straightforward cases. Misconduct cases which are not straightforward are treated differently. In relation to a case not suitable for "fast track" the following is set out at paragraphs 30 and 31 (pages A1396 and A1397).

"30. Different people should carry out the investigation and act as Decision Manager. In such cases, the line manager should seek appointment of an independent Investigation Manager from within the business, while they would keep the role of Decision Manager themselves..."

31. An Investigation Manager will:

- not decide if a case is proven or whether a penalty should be imposed, but*
- compile a written report for the Decision Manager indicating whether, they believe there is a case to answer or not."*

48. In relation to the Decision Manager, the following is stated (page A1398).

"39. The Decision Manager must decide whether the alleged misconduct is, in their genuine belief:

- proven, or*
- not proven.*

40. Further guidance on deciding the appropriate penalty can be found in the 'How to: Decide a discipline penalty' guide."

49. The "Manager's Toolkit – How to Handle Discipline" (page A1404) sets out the steps to be taken by investigation managers. It states the following at paragraph 24 (page A1409):

"The Investigation Manager should complete a report which includes the following information:

- The original reason for conducting the investigation;*
- A record of all information obtained from the employee and witnesses together with a record of information believed to exist but which it has not been possible to obtain; for example, where it has not been possible to interview a witness or obtain information that other witnesses say exists;*
- An account of the facts and/or relevant information signed and dated by the person being interviewed and counter signed by the Investigation Manager;*
- Any doubts about the evidence obtained or credibility of statements;*
- If proposed witnesses were not deemed necessary or relevant, and reasons for this decision;*
- A copy of all of the evidence, statements and relevant documents;*
- A fully reasoned recommendation as to whether or not they believe there is sufficient evidence to support the allegation of the misconduct; indicating whether they believe there is a case to answer or not. Where it is not possible to provide a clear recommendation, the reason why."*

50. The Manager's Toolkit contained a non-exhaustive list of examples of serious misconduct which included the following (page A1406).

“• Failure to follow departmental policy/procedure, for example, serious insubordination;

...

• Failure to follow reasonable instructions with serious consequences, for example, damage to property;”

51. The Manager's Toolkit also contained a non-exhaustive list of examples of gross misconduct which included the following (pages A1407 and A1408).

“• Significant breach of operational health and safety and/or the failure to follow standard operating procedures;

...

• Insubordination resulting in significant impact, for example, reputational damage;

...

• Repeated or persistent failure to follow reasonable instructions;”

Commencement of the Disciplinary Investigation

52. On 11 October 2022 Ms Purohit emailed Mr Stapleton-Brown (A544) attaching a number of emails. In the cover email she stated:

“Hello Nigel

Thank you for agreeing to be the Investigating officer for the issues mentioned below.

Subsequent to the consultation of HR Case Worker (Katherine Pryce Katherine.Pryce@cshrcasework.justice.gov.uk), it has been decided that following issues with Adrian Weavin, AO, Reactor Removal Team may be investigated further to decide if there is a case to answer or not for Serious misconduct against him:-

1. Failure to follow reasonable request by the Line Manager and Head of Customer Service Delivery

2. Failure to follow departmental policy/procedure

3. Exceeding the level of authority with negative impact on the business

I have included chains of emails to prove the above points.

Background

RR Team manages the pre-slaughter arrangements which includes telephonic valuation and booking Reactors to SLH or arrange OFS. In a nutshell objective of the RR Team is to remove the Reactors from the farm within the 10 days time from the day animals are identified as Reactor to control the spread of the disease, exceptions are always there.

Adrian is one of the experienced team member. In all our 1:1 meeting he keeps repeating about the past when he was managed by a Manager (Alex).

According to him when RR Team was managed by Alex all the work flow process were perfect. Since Alex left he felt that he was not been heard and his issues (Poor IT, inadequate way of RR work process) were never been addressed. Since he kept complaining about the process, the whole RR Process was reviewed and a new SOP was introduced in 2021. He was involved in the reviewing process and agreed with the new SOP.

However he still felt the process is not perfect in way which he envisaged that the WSAs should be linked together that should save the repetitive journeys by the SLH to a farm and so would benefit the Planet and save money. He thinks that the whole team is not linking the Work Schedules. So he took it upon himself to do the things on his own way. He continued to collect data to prove his point that the Team is not collating/linking the WSAs. In order to prove what he is doing is best possible way of doing the process he started emailing other teams requesting for doing the work in a certain way or asking for clarifications from other teams or SLT. If he is being asked for simple clarification on any subject he would write long emails providing justifications for proving the point that his way of working is the best and should be adapted by all and he would involve people from the organisation (Sr Management) in all of those emails irrespective of the fact that he has repeatedly been asked to avoid involving others in his BAU work.

In order to heard himself by the Senior Management, he was emailing everyone with his way of working process failing to follow the communication protocol and using irrelevant platforms and unacceptable tone:-

Previous Operational Delivery Manager heard him out and subsequently the RR Process was again reviewed with the objective to lean the process. He had actively participated in the Lean Process. The Lean Process Project Incharge reviewed the process and submitted the report which is now being analysed by the Project team. He was being informed about the progress of the lean project and was asked to follow the SOP till the time new work process is introduced and should stop collating evidences. He blatantly refused to follow this request.

Another chain of communication where he refused to follow the instruction His emails are confusing and most of the time come across as demeaning. He is being told by Head of Customer Service Delivery to be careful about such emails and was asked to follow the process. But he continued to email others or indulge himself with the cases done by others and include the team members in his email when they are not required to be involved.

Very Recently, a pilot run of 6 weeks from 20th September was initiated where all the team members were requested to fill up a spreadsheet with the data from the cases where they are Reactors from tests which conducted in parts of a herd or the herd have skin test followed by a schedule of blood test. This data would then be analysed by SLT to see for the scope of leaning the RR Work Process. However, while analysing the data it was noticed that there were nil entries from some of the Team Members. A reminder was sent to all of them to update the spreadsheet in case they missed updating. Adrian was amongst them and so was requested to update the spreadsheet (3rd Reminder). He presented a counter argument with the EO stating 'How do you know if I have done any qualifying work?'. This is very demeaning tone and not acceptable

behaviour from a civil servant. Chain of emails attached here evidence that he fails to follow the reasonable management request.

I am also attaching his PMR reports for records of the 1:1 discussions where he had told me he would continue to follow his way of working [link]

If required, happy to help with any further query."

53. On the same day, 11 October 2022, Ms Purohit notified the Claimant by letter (page A806) that he was being investigated by Mr Stapleton-Brown for allegations of serious misconduct, described as:

*"(1) Failure to follow reasonable request by the Line Manager and Head of Customer Service Delivery
(2) Failure to follow departmental policy/procedure
(3) Exceeding the level of authority with negative impact on the business"*

54. On 13 October 2022 a team meeting took place within the Reactor Removals team. Following the meeting, Ms Purohit emailed the Claimant, copying Mr Stapleton-Brown. Ms Purohit stated the following in her email (page A550):

"This is to bring in your notice that I find your behaviour in today's Team Meeting not appropriate. Your behaviour illustrates of being insubordinate, attempted to undermine EO's authority in front of colleagues and appeared to be attempting to canvass team opinion on subjects closely related to the investigation.

You will be given opportunities throughout the formal process to respond to allegations and suggest witnesses to the investigation manager.

I would like to warn you that this kind of behaviour is not acceptable and if this behaviour continues, I will have no option but to proceed for some serious action which may include suspension for the period of pending investigation."

55. The Claimant responded the same day (page A551), also copying Mr Stapleton-Brown, saying *"Funnily enough, when you are attacked and your livelihood is threatened you try and get the support of others - so I was canvassing opinion and I am also not sure what angle, evidence and witnesses you have this time."* The Claimant also referred to his evidence regarding the Respondent not "linking" work, as well as requesting information regarding his performance relative to his team.

56. The Claimant attached a sick note, which signed him off work from 13 October 2022 to 13 November 2022 on the grounds of anxiety disorder and work-related stress (page A555).

57. The Claimant returned to work on 14 November 2022 and wrote to Mr Stapleton-Brown saying he would like the investigation to be concluded quickly (page A565).

58. On 25 October 2022 the Claimant had forwarded an email chain between him and Ms White to, among others, the Permanent Secretary (the most senior civil servant at DEFRA, of which the Respondent was an agency) (page A683). The email chain included various lengthy emails detailing his concerns in relation to

the lack of “linking” work [PID 2]. The Permanent Secretary’s office responded to say that the Claimant’s correspondence had been passed to Andrew Soldan, the Respondent’s nominated director for whistleblowing (page A682). On 15 November 2022 the Claimant sent a further email (page A679) to the same recipient group, again including the Permanent Secretary. This contained further information regarding his concern including specific details related to a particular farmer’s test results, and discussions with him. Mr Soldan responded to the Claimant and Emma Biggs (Head of International Trade and the Customer Service Network, Service Delivery) saying that it was no longer a whistleblowing case and that the Claimant’s suggestions should be used for future delivery of work where appropriate (page A679). Ms Biggs was Ms Cribley’s line manager.

59. On 15 November 2022 Mr Stapleton-Brown wrote to the Claimant explaining his role as investigating manager and inviting him to an interview on 23 November 2022 (page A865). The letter informed the Claimant that he could be accompanied to the meeting and stated that “*[i]t is essential that you do not discuss this matter with anyone other than your trade union representative or accompanying work colleague.*” (page A865).
60. On 16 November 2022, the Claimant emailed a number of individuals, including Ms White, Ms Biggs and the Permanent Secretary (page A670) [PID 2]. In his email he explained why it was important to link work to be as cost effective and environmentally friendly as possible. He stated that his problems had started in 2018, saying “*My problems started then as I will simply not do as I am told.*”, and going on to say “*I would ask that they get on with sacking me for serious misconduct quickly so I can get this out to the public before there is any more waste of public money and extra pollution. I will not do as I am told and will not do work bit by bit - so they have me already.*” (page A672).
61. On 22 November 2022, the Claimant sent a reply to the email referred to at paragraph 58 above, again to the same wide recipient group including Mr Soldan, the Permanent Secretary, Ms White and Ms Biggs as well as others (page A674) [PID 2]. This went through one particular farmer’s case in detail in relation to the failure by colleagues to link work together.

Investigation meeting

62. The disciplinary investigation meeting took place on 23 November 2022, the notes of the meeting are at page A866. The Claimant was accompanied by his trade union representative, and Lizzie Prosser also attended as a note-taker. Mr Stapleton-Brown explained that he wished only to discuss the conduct allegations and not the merits of the Claimant’s concerns regarding linking work schedules.
63. In relation to the allegation that he failed to follow reasonable requests by his line manager and the Head of Customer Service, the Claimant stated that the requests were not reasonable as they involved HGVs going up and down the motorway and it was a waste of public money. He stated “*I don’t have any choice; I can only work in the right way. I am not going to do it.*” (page A866). Mr Stapleton-Brown challenged the Claimant, saying “*it is not unreasonable for the business to ask you to follow line managers instructions & SOP’s*” (page A867), but the Claimant insisted it was unreasonable, saying “*I have integrity,*

I am not doing it.” (page A867). The Claimant stated that if he worked for the police, he would not do anything illegal, and when Mr Stapleton-Brown stated that he was not asked to do anything illegal, the Claimant asked why it was not illegal for the civil service to knowingly waste money. The Claimant stated “I accept that I am not following requests, but I do not accept that the requests are reasonable, because they are not, they are unreasonable. I do accept that I am not following Policy and Procedure.” (page A868). Mr Stapleton-Brown pointed out that the Claimant’s concerns had gone all the way up to senior management and been listened to. The Claimant was given time at the end of the meeting to add any comments he wanted. His response was to ask who the decision manager was likely to be.

64. During the meeting the Claimant stated that he would not stop even when he was sacked, and that he would take it to the NFU (National Farmers Union) and the public.

Suspension

65. Ms Cribley was the Head of Customer Service Delivery for the Respondent. She managed Mr Parker. Mr Parker in turn managed Deanna Miarowska, who managed Ms Purohit, the Claimant’s line manager.
66. On 24 November 2022, the Claimant was suspended by the Respondent, and he had his IT permissions removed.
67. Based on the evidence of Ms Cribley she made this decision, following a discussion with Mr Parker. The reason for the decision was because of emails and comments made by the Claimant saying that he was collating information and wanted to share it with the NFU and the public. Ms Cribley was concerned about the risks around information management and felt that it was too risky not to take action. This reasoning is different to what was stated in the suspension letter written by Ms Purohit, which referred to a breakdown in the relationship and causing disharmony in the team (page A874). Ms Purohit’s reference to disharmony in the team relates to a Teams meeting in which the Claimant canvassed for support from his team in relation to the disciplinary process, which had been a concern for Ms Purohit. However, Ms Purohit was clear that she had not made the decision to suspend and said that the decision had been made by her senior managers (Ms Cribley and Mr Parker). Notwithstanding the different reason given in the suspension letter, I find that the reason for the suspension was the risk of data breach, based on Ms Cribley’s evidence which I found credible. Ms Cribley’s evidence was also consistent with comments made by the Claimant in the investigatory meeting that he intended to take the matter to the NFU and the public.

Disciplinary Investigation Report

68. Mr Stapleton-Brown produced an investigation report (page A693) dated 30 November 2022. It was in the format of a word document with embedded attachments. There were a number of emails and word documents within the

document, which could be double clicked in the soft copy to access the relevant email or word document.

69. In the investigation report Mr Stapleton-Brown concluded that there was a disciplinary case to answer making the following findings.

“AW’s actions in pursuing his beliefs have led him to challenge the authority of his line manager including sending disrespectful emails & openly challenging her in team meetings, not only causing her considerable distress but also having a detrimental impact on his team members making them feel very uncomfortable to the extent they didn’t want to be involved in the investigation process.(in a team meeting AW had disclosed he was subject to a disciplinary Investigation & was inappropriately trying to recruit witnesses in his defence during an open team meeting)

AW has continued to refuse to follow instructions from both his line manager & the Head of Customer Services to adhere to departmental processes & standard operating procedures (SOP’s) a position he has re stated several times within emails attached & explicitly in his June 22 PMR.

....

In addition to not following line management instructions AW has been repeatedly by-passing his line manager & escalating his concerns to Senior Managers & staff outside the department including to the Permanent Secretary, this has been deemed not to be whistle blowing by Senior Management but continuing attempts to elevate his concerns about the financial & environmental impacts of the operational processes. These have been considered, with responses relayed via the line but AW refuses to accept the decisions, continuing to repeatedly raise the same issues further undermining his line manager.

In addition to not following line management instructions AW has been repeatedly by-passing his line manager & escalating his concerns to Senior Managers & staff outside the department including to the Permanent Secretary, this has been deemed not to be whistle blowing by Senior Management but continuing attempts to elevate his concerns about the financial & environmental impacts of the operational processes. These have been considered, with responses relayed via the line but AW refuses to accept the decisions, continuing to repeatedly raise the same issues further undermining his line manager.” (pages A696 to 698).

70. In a section of the report titled “details of consideration”, Mr Stapleton-Brown made the following comments.

“From the Investigation Interview with AW it is clear that he is passionate about his beliefs that the TB processes are not as he would like, consequently it is his assertion that he is unable to follow the line managers instructions & SOP’s because he doesn’t agree that management requests to do so are reasonable & his integrity would be compromised if he followed these requests. He has though been included in process reviews but because he doesn’t agree with the outcomes, he has refused to follow subsequent SOP’s & management instructions. This he openly admits to in numerous PMR discussions having

recorded this fact himself in his own comments, restating this in his Investigation meeting & in various emails attached to this report.

Both his repeated refusal to follow line management protocols & continued escalations to Senior Management have become an established pattern of behaviour. AW has continued to collect documentation despite being asked not to in support of his arguments, openly stating that even when he is no longer with the agency (there has been no mention of this in any emails/ correspondence or verbally from anyone within the agency) he will continue to pursue his arguments, through the courts if necessary, utilising the evidence he has collected.

In pursuit of his wish to 'do things his own way' he has exceeded his level of authority by continually lobbying his team members to adopt his ways of working both via email & openly in team meetings, & in one instance lobbying an external organisation (CheCs) & directly challenging the authority of his manager causing great upset & stress for all involved, - no members of his team wanted to be involved in this investigation.

AW has now been suspended whilst the investigation is completed primarily due to concerns over possible external data loss as AW has stated that he has collected evidence to support his arguments which he has both added to his CV & will use to support his cause through the courts if necessary or to anyone who will listen." (pages A701 to 702).

71. Mr Lavender had initially been identified as the disciplinary decision-maker. Mr Stapleton-Brown emailed the investigation report to Mr Lavender (page A692). On reviewing the report Mr Lavender felt that the allegations met the threshold for gross misconduct rather than "serious misconduct", which had been the characterisation until this point. Based on Mr Lavendar's evidence, I find that the reason for this was that Mr Lavendar considered the conduct alleged fell within examples given of gross misconduct in the manager's toolkit (pages A1407 and A1408), namely repeated failure to follow standard operating procedures; insubordination resulting in significant impact; and persistent failure to follow reasonable instructions. Mr Lavender did not have the right level of seniority to make a finding of gross misconduct. A decision maker was required who had authority to dismiss the Claimant if the allegations were upheld. Mr Lavender did not have the authority to do so. There was a delay in the process because the HR team had asked Mr Lavender to pause at this point.
72. Ms Wallace was then appointed to be the disciplinary manager. She was more senior than Mr Lavender and could therefore dismiss the Claimant, if appropriate. The Claimant's position appeared to be that Mr Lavender made the dismissal decision when he decided that there was potential gross misconduct. I do not uphold this. That was not the evidence of Mr Lavender or Ms Wallace and I found their evidence to be credible, consistent with the contemporaneous emails (page A878) and aligned with the process followed.

All that Mr Lavender determined was that he was not senior enough to hear allegations which potentially constituted gross misconduct.

Disciplinary Process

73. On 20 December 2022, Mr Lavender referred the investigation report to Ms Wallace as the new disciplinary manager.
74. Ms Wallace reviewed the investigation report and agreed that the allegations should be taken forward as allegations of gross misconduct (page A923).
75. On 9 January 2023, Ms Wallace sent the investigation report to the Claimant by email (page A968). She also attached an invitation to the disciplinary meeting (page A979). The letter stated: "*[t]he formal meeting will consider the allegations that you have failed to follow reasonable requests; failed to follow departmental policy/procedure; and exceeded the level of authority with negative impact on the department.*" (page A979). The Claimant was notified of the change of classification to gross misconduct, that he may be dismissed and that he could be accompanied to the meeting.
76. The letter also contained a section which stated: "*[t]he misconduct alleged against you appears to fall within the Cabinet Office definition of internal fraud*" and went on to explain that if this was upheld, the Claimant could be put on a register which would bar him from employment for civil service posts within participating departments. Ms Wallace had drafted the invitation letter using a template, as is clear from the email interactions regarding the invitation letter (pages A922 and A923).
77. The Claimant responded to Ms Wallace's email, sending multiple lengthy emails between 10 and 16 January 2023 (pages A1026 to A1038). In them, he pointed out that he no longer had access to the Respondent's systems and asked for numerous documents. Many of the document requests related to the content of his protected disclosures, but he also asked for a copy of his employment contract, the relevant SOP he was said to have breached and a copy of the disciplinary policy showing examples of gross misconduct.
78. Ms Wallas directed the Claimant to request any documents from Ms Miarowska, which he did (page A1000). They were not provided to him. The emails between Ms Miarowska and an HR case worker show that, initially the reason for not providing this documentation was due to the Claimant making the request at short notice before the disciplinary hearing and Ms Miarowska's work commitments (page 1049). The case worker then advised Ms Miarowska that she should not provide documents because the Respondent was concerned about the Claimant making a "public disclosure", and the need to therefore be careful in relation to the information he was given.
79. The Claimant also sent Ms Wallace a PowerPoint presentation, which explained his protected disclosure (pages A1288 to A1354) [PID 3]. This document is undated, and it is unclear which email it was attached to, but the parties agree that the Claimant provided the presentation to Ms Wallace at this stage in the disciplinary process, and it is clear from the notes of 17 January 2023 that Ms Wallace had received this presentation before that date.

80. Having made a previous submission to the National Audit Office on 13 January 2025, which is not relied upon as a disclosure in these proceedings, the Claimant submitted a form on 16 January 2023 (page A2126) stating the following:

"Further to my disclosure and request for you to obtain and view the Whistleblowing report/updates and evidence already supplied to DEFRA I attach an overview presentation which will help you further to understand the issues. Please do not hesitate to contact me for any information you need. The attachment is encrypted with my forename which you can find on my contact with you when you confirmed receipt of initial contact at 17:26 13/01/2023 - I will now forward the presentation and update Tamar Finkelstein who is already of my submission. Thanks again"

81. The form attached the same presentation as had been provided to Ms Wallace (pages A1288 to A1354) [PID 4].

Disciplinary Hearing

82. The disciplinary hearing took place on 17 January 2023. The notes of the meeting are at pages A1041 to A1045. During the meeting, the Claimant was asked to comment in relation to each disciplinary allegation.
83. In relation to the allegation that he had not followed reasonable management instructions, the Claimant said that he considered that the management instructions were not reasonable. The Claimant said that he had been instructed to deal with work schedules in strict date order, but that it was not a reasonable request to work in this way. He felt that it was wrong. The Claimant is recorded as having *"stated that he wasn't going to work in this way and can't do that"* (page A1042).
84. The Claimant *"explained in great detail about doing the work in a to do list in strict date order and explained how this was not cost effective, or any good to the farmer or the environment with HGV lorries going to farms multiple times. Working how it was previous done was better because jobs could be linked together saving time to all and money and these extra pick ups by the HGV lorries. In the past he had trained people in this way but when the old line manager left, the new line manager took over it was changed to this to do list in strict date order."* (page A1042).
85. Ms Wallace felt that the discussion on this point also covered the second allegation in relation to a failure to follow departmental policy and procedure.
86. Ms Wallace explained that the third allegation regarding exceeding authority *"was about the CHECS and the letter to the permanent secretary of state"*. The Claimant stated that he had been told that if he had issues he should speak up, that this was an area he was interested in. He had sent emails asking for help and this was not unreasonable (page A1043).
87. The Claimant raised with Ms Wallace in the meeting that there had been an audit process over six weeks which showed that there were other colleagues

linking work “in the right way”, but that he was going to be sacked for doing so (pages A1265 and A1266).

88. The Claimant told Ms Wallace that “*regardless of sacking me or not I will ensure that the public affected by this situation will find out*” (A1266)
89. I find, based on Ms Wallace’s evidence that her decision to dismiss the Claimant was based on his repeated failure to follow instructions. There were instances in writing where he had told his line manager and Ms Cribley that he would not follow instructions and would continue to work in his own way. The Claimant had explained to both Mr Stapleton-Brown and Ms Wallace why he would not follow instructions. He had told them both he would continue to work the way he thought was right.
90. Ms Wallace considered that this meant that allegations one and two were upheld, namely “failed to follow reasonable requests” and “failed to follow departmental policy/procedure”. Whilst allegation three (exceeded the level of authority with negative impact on the department) had been discussed and there was some evidence for it, this was not the reason for the dismissal.
91. The reason for making this finding is that I found Ms Wallace’s evidence credible and it was consistent with the dismissal letter dated 10 February 2023 which stated “*you repeatedly stated throughout the formal process and at our meeting on 17th January, that you would refuse to comply with the current SOP and would continue to fail to follow reasonable management instruction, I believe your behaviour has undermined the trust and confidence between yourself and the managers, resulting in an irretrievable breakdown in this relationship.*” (page A1068).
92. The Claimant’s employment was terminated with immediate effect from 10 February 2023, and the Claimant was sent a letter setting out the reasons for his dismissal (page A1067). The Claimant was given the right to appeal his dismissal.

Appeal

93. The Claimant appealed his dismissal on 15 February 2023. The focus of his grounds of appeal (pages A1094 and A1095) was that he had been raising concerns since 2018 that public money was being wasted and pollution increased because the reactor removal process was not being done properly. Later saying he wanted the SOP to be put right and enshrined so that no future supervisory team could get rid of it, he wanted: “*A ‘Smart’ & ‘Green’ SOP. I cannot return to my Colleagues or work unless I am vindicated and this is put ‘right’.*” (page A1096). The Claimant alleged that he had been victimised since speaking up. The Claimant stated that some other colleagues also linked work. He said that during the investigation stage “*As soon as I confirmed I would not do the “unreasonable” (in the true sense of the word) it was clear I was automatically proven to be failing to follow ‘orders’.*” (page 1096). The Claimant criticised Mr Stapleton-Brown for not looking into the alleged negative impact on the business.
94. During the appeal stage, the Claimant made repeated requests for the SOP from Ms Wilson. In replies from Ms Wilson, she stated that the appeal process

was not to rehear the case but to determine if the decision making process and penalty given were reasonable (page A1109). Ms Wilson stated that she would not provide the requested SOP saying: *"This is not my role and not required for the Appeal meeting (internal APHA documents)."* There are several emails in the hearing bundle from the Claimant regarding his appeal which copy in third parties, and several emails from Ms Wilson telling him that this was a breach of confidentiality (for example, A1112).

95. An appeal meeting took place on 28 February 2023. The Claimant was asked about saying that the process was unfair. His response was that he had been trying to get everyone to listen and "get things right", that it was all about linking work together. He also raised that the investigator did not want to cover anything about linking work together as he stated it had already been dealt with. The Claimant felt this meant that the investigation was biased.
96. The Claimant said that he had asked the investigator to show him the SOP and show him what he was not doing. He felt the process was not fair because he had not been given the opportunity to show that others in the team were also linking work. He felt it was wrong to penalise him for the CheCs email because it was a partner agency and the Respondent should be saving the customer monty and troubles.
97. Ms Wilson asked the Claimant *"I'll talk frankly, if tomorrow I was to make a decision to reverse the dismissal on the condition that you follow the SOP on the ops manual what would your position be? If it says you are not allowed to do it the way you feel is best, could you come back to the Exeter team and follow the set process?"*. The Claimant's response was *"I cant it would kill me, its all provable."* (page A1142). The conversation later continued with Ms Wilson saying: *"You are employed by APHA and so that's what you have to do and follow the instructions, I need to decide why the decision was unreasonable, but you have just spent 20 mins telling me that you won't follow guidance unless it is your method."* (page A1142). The Claimant's response was *"Not my way of working, it's the way of working we have done before. You are sacking me as I'm the loudest others are doing the same."* (page A1142).
98. On 7 March 2023 Ms Wilson wrote to the Claimant with the outcome of the appeal (page A1168) saying the following.

"The purpose of our Appeal meeting was to determine if the decision-making process, and the penalty given, was reasonable (not a rehearing of the original case). During our meeting we explored 3 key themes: New evidence, Unfair decision (due to unfair process), and Unreasonable decision.

Whilst we explored the subjects in detail the evidence largley (sic) referred to the original case and the process for conducting the TB Reactor Removal activities. As a result your appeal has not been upheld and the original decision taken by the decision manager (Rachel Wallace) stands."

Freedom of Information Request

99. The Claimant made a freedom of information request on 8 March 2023 requesting the SOPs related to the TB Reactor Removal Department (A1188). Ms White worked in the Respondent's Freedom of Information Department. A

request for clarification was sent to the Claimant on 13 March 2023 (page A1189). He responded on the same day (page A1189) The Claimant received a response to his request on 29 March 2023 (page A1193), supplying the Claimant with WMTB05 and WMTB05(E) SOPS.

100. These were not the documents the Claimant wished to receive. The document the Claimant wished to receive was that at page A406. Whilst the Claimant and his team referred to this as a “SOP”, in fact the official classification for the document was that it was a “desk instruction”. This meant that it was held locally by the team. An official SOP would be held by the “Operations Manual Team”. Ms White had requested SOPs for the TB Reactor Removals Department from the Operations Manual Team and sent the Claimant what she had been provided by that team.
101. I find, based on Ms White’s evidence was that when acting upon the Claimant’s requests she had not known that he was a former employee, nor about any of the protected disclosures. She had just processed the request as she would any other request from a member of the public.

The Law

Unfair dismissal

102. The reason for the dismissal was conduct which is a potentially fair reason for dismissal under section 98 (2) (b) of the Employment Rights Act 1996 (“ERA”).
103. The Tribunal must then determine whether the dismissal was fair or unfair pursuant to section 98 (4) of ERA which provides that:

*“.... 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”.*

104. The Tribunal must apply the range of reasonable responses test which was summarised by Mr Justice Browne-Wilkinson in Iceland Frozen Foods Ltd v Jones 1983 ICR 17, EAT as follows.

“We consider that the authorities establish that in law the correct approach for the... tribunal to adopt in answering the question posed by [S.98(4)] is as follows:

- (1) the starting point should always be the words of [S.98(4)] themselves;*
- (2) in applying the section [a] tribunal must consider the reasonableness of the employer’s conduct, not simply whether they (the members of the... tribunal) consider the dismissal to be fair;*
- (3) in judging the reasonableness of the employer’s conduct [a] tribunal must*

not substitute its decision as to what was the right course to adopt for that of the employer;

(4) in many (though not all) cases there is a band of reasonable responses to the employee's conduct within which one employer might reasonably take one view, another quite reasonably take another;

(5) the function of the... tribunal, as an industrial jury, is to determine whether in the particular circumstances of each case the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair: if the dismissal falls outside the band it is unfair."

105. The correct approach is to consider together all the circumstances of the case, both substantive and procedural, and reach a conclusion in all the circumstances. Applying British Home Stores Limited v Burchell 1980 ICR 303, EAT, a helpful approach in most cases of conduct dismissal is to identify three elements (as to the first of which the burden of proof is on the employer; as to the second and third, the burden is neutral): (i) that the employer did believe the employee to have been guilty of misconduct; (ii) that the employer had in mind reasonable grounds on which to sustain that belief; and (iii) that the employer, at the stage (or any rate the final stage) at which it formed that belief on those grounds, had carried out as much investigation as was reasonable in the circumstances of the case. Applying Sainsbury's Supermarkets Ltd v Hitt [2002] EWCA Civ 1588, the band of reasonable responses test applies as much to the question of whether the investigation was reasonable in all the circumstances as it does to the reasonableness of the decision to dismiss.

106. When considering whether a dismissal on the grounds of conduct is fair, it is important to consider only matters which the employer was aware of at the time of the dismissal; the question is whether the employer reasonably concluded that the misconduct occurred at the time of dismissal, not whether the misconduct actually happened (Devis (W) & Sons Ltd v Atkins [1977] HL).

107. The scope of an investigation in circumstances where the employee has admitted to the alleged conduct was addressed in the case of Community Integrated Care Ltd v Smith EATS 0015/08 as follows.

"Once the employers had what appeared to be a clear admission of the wrongdoing that limited the extent of any further investigation. As the Employment Appeal Tribunal observed in Boys and Girls Welfare Society v McDonald [1996] IRLR 129 (HH Judge Clark presiding) the degree of investigation required is limited where the fundamental facts are not in dispute."
[43]

108. This point is also emphasised in Scottish and Southern Energy plc v Innes EATS 0043/10. It also provided clarification regarding whether an investigation for Burchell purposes requires investigation into matters which relate to mitigation.

"This being a case where the Claimant admitted the charges of misconduct which were, on both occasions, found to have been established, there was little scope for further investigation; the burden on the employer was lightened - Royal Society for the Protection of Birds v Croucher [1984] ICR

*604 - but the Tribunal had failed to recognise that. The Claimant's reference to his health was a matter of mitigation but when it came to the application of s.98(4) of the Employment Rights Act 1996 ("the 1996 Act"), **an employer did not have a duty to investigate matters advanced by an employee in mitigation.**" [31] (emphasis added)*

Protected Interest Disclosures

109. There are two stages in relation to establishing a public interest disclosure. First a "qualifying disclosure must be made" (as defined in section 43B of ERA). That qualifying disclosure will constitute a "protected disclosure" if it was made in accordance with any of sections 43C to 43H of ERA.

110. A qualifying disclosure is defined in section 43B of ERA as follows.

"(1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—

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

(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,

(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,

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

(e) that the environment has been, is being or is likely to be damaged, or

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

111. In this claim the alleged disclosures made to the Respondent have been conceded to constitute protected interest disclosures. I therefore only deal with the disclosure made to the National Audit Agency. The Claimant relies on section 43G of ERA ("Disclosure in other cases"), which states the following.

"(1) A qualifying disclosure is made in accordance with this section if—

. . .

(b) the worker reasonably believes that the information disclosed, and any allegation contained in it, are substantially true,

(c) he does not make the disclosure for purposes of personal gain,

(d) any of the conditions in subsection (2) is met, and

(e) in all the circumstances of the case, it is reasonable for him to make the disclosure.

(2) The conditions referred to in subsection (1)(d) are—

- (a) that, at the time he makes the disclosure, the worker reasonably believes that he will be subjected to a detriment by his employer if he makes a disclosure to his employer or in accordance with section 43F,*
- (b) that, in a case where no person is prescribed for the purposes of section 43F in relation to the relevant failure, the worker reasonably believes that it is likely that evidence relating to the relevant failure will be concealed or destroyed if he makes a disclosure to his employer, or*
- (c) that the worker has previously made a disclosure of substantially the same information—*
 - (i) to his employer, or*
 - (ii) in accordance with section 43F.*

(3) In determining for the purposes of subsection (1)(e) whether it is reasonable for the worker to make the disclosure, regard shall be had, in particular, to—

- (a) the identity of the person to whom the disclosure is made,*
- (b) the seriousness of the relevant failure,*
- (c) whether the relevant failure is continuing or is likely to occur in the future,*
- (d) whether the disclosure is made in breach of a duty of confidentiality owed by the employer to any other person,*
- (e) in a case falling within subsection (2)(c)(i) or (ii), any action which the employer or the person to whom the previous disclosure in accordance with section 43F was made has taken or might reasonably be expected to have taken as a result of the previous disclosure, and*
- (f) in a case falling within subsection (2)(c)(i), whether in making the disclosure to the employer the worker complied with any procedure whose use by him was authorised by the employer.*

(4) For the purposes of this section a subsequent disclosure may be regarded as a disclosure of substantially the same information as that disclosed by a previous disclosure as mentioned in subsection (2)(c) even though the subsequent disclosure extends to information about action taken or not taken by any person as a result of the previous disclosure.”

Dismissal

112. Section 103A of ERA states the following.

“An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.”

Detriment

113. Section 47B of ERA sets out the following.

“(1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.”

114. The following is set out in *(1) London Borough of Southwark (2) Evelina Hospital School v Mr A Martin [2025] EAT 60* by Judge Stout in relation to the

question of whether something constitutes a detriment.

“37. A detriment is something that a reasonable worker in the Claimant’s position would or might consider to be to their disadvantage in the circumstances in which they thereafter have to work. Something may be a detriment even if there are no physical or economic consequences for the Claimant, but an unjustified sense of grievance is not a detriment: see Warburton v Chief Constable of Northamptonshire Police [2022] EAT 42 at [48]-[51], applying Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] UKHL 11, [2003] ICR 337.”

Causation

115. Judge Stout goes on to address causation in LB of Southwark v Mr A Martin (see above) as follows.

“38. If a protected disclosure has been made, the Tribunal must consider whether the Claimant has been subjected to a detriment “on the ground that” he made a protected disclosure (s 47B(1)). It is well established that the same approach is to be applied as for direct discrimination under section 136 of the Equality Act 2010. The protected disclosure must be a material factor in the reason for the treatment, in the sense of being a more than trivial influence on the treatment: Fecitt v NHS Manchester [2011] EWCA Civ 1190, [2012] ICR 372 at [43] and [45]. As for discrimination, this requires an analysis of the mental processes of the worker who is alleged to have subjected the claimant to a detriment.”

116. As per Fecitt v NHS Manchester [2011] EWCA Civ 1190:

“43... Suffice it to say that I agree with the submissions of Ms Romney, counsel for the claimants, that liability arises if the protected disclosure is a material factor in the employer’s decision to subject the claimant to a detrimental act. I agree with Mr Linden that Igen is not strictly applicable since it has an EU context. However, the reasoning which has informed the EU analysis is that unlawful discriminatory considerations should not be tolerated and ought not to have any influence on an employer’s decisions. In my judgment, that principle is equally applicable where the objective is to protect whistleblowers, particularly given the public interest in ensuring that they are not discouraged from coming forward to highlight potential wrongdoing.

44. I accept, as Mr Linden argues, that this creates an anomaly with the situation in unfair dismissal where the protected disclosure must be the sole or principal reason before the dismissal is deemed to be automatically unfair. However, it seems to me that that is simply the result of placing dismissal for this particular reason into the general run of unfair dismissal law. As Mummery LJ cautioned in Kuzel v Roche Products Ltd [2008] ICR 799 at para 48, in the context of a protected disclosure claim:

“Unfair dismissal and discrimination on specific prohibited grounds are, however, different causes of action. The statutory structure of the unfair dismissal legislation is so different from that of the discrimination legislation that an attempt at cross fertilisation or legal transplants runs the risk of complicating rather than clarifying the legal concepts.”

45. *In my judgment, the better view is that section 47B will be infringed if the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer's treatment of the whistleblower. If Parliament had wanted the test for the standard of proof in section 47B to be the same as for unfair dismissal, it could have used precisely the same language, but it did not do so.*"

117. In Jesudason v Alder Hay Children's NHS Foundation Trust [2020] ICR 1226 Sir Patrick Elias provided further explanation of causation: "*Liability is not, therefore, established by the claimant showing that but for the protected disclosure, the employer would not have committed the relevant act which gives rise to a detriment. If the employer can show that the reason he took the action which caused the detriment had nothing to do with the making of the protected disclosures, or that this was only a trivial factor in his reasoning, he will not be liable under s 47B.*" [31]

118. Where there are several reasons for treatment, Simler LJ and the Court of Appeal gave the following guidance in Kong v Gulf International Bank [2022] EWCA Civ 941.

"57. Once the reasons for particular treatment have been identified by the fact-finding tribunal, it must evaluate whether the reasons so identified are separate from the protected disclosure, or whether they are so closely connected with it that a distinction cannot fairly and sensibly be drawn. Were this exercise not permissible, the effect would be that whistle-blowers would have immunity for behaviour or conduct related to the making of a protected disclosure no matter how bad, and employers would be obliged to ensure that they are not adversely treated, again no matter how bad the associated behaviour or conduct.

58. Likewise, what was said in Martin, about being slow to allow purported distinctions between a protected complaint and ordinary unreasonable behaviour, is also not a rule of law. There is no objective standard against which behaviour must be assessed to determine whether the separability principle applies in a particular case, nor any question of requiring behaviour to reach a particular threshold of seriousness before that behaviour or conduct can be distinguished as separable from the making of the protected disclosure itself. The phrases used in the authorities (in the context of trade union activities, victimisation and whistleblowing) capture the flavour of the distinction, but were not intended to be treated as defining, and do not define, those cases where separability would or would not apply. They cannot properly be read in this way. In the wide spectrum of human conduct that might be relied on by decisionmakers, each end of the spectrum is easy to identify as Phillips J observed in Lyon: gross misconduct or conduct that is "wholly unreasonable, extraneous or malicious" at one end; and wholly innocent, blameless conduct at the other. Between those two ends of the spectrum difficult questions of fact arise, and the conduct and circumstances of the particular case will require close consideration. But the authorities provide no factual precedent or objective standard against which to assess the conduct relied on in a particular case.

59. The statutory question to be determined in these cases is what motivated a particular decision-maker; in other words, what reason did he or she have for dismissing or treating the complainant in an adverse way. This factual question

is easy to state; but it can be and frequently is difficult to decide because human motivation can be complex, difficult to discern and subtle distinctions might have to be considered. In a proper case, even where the conduct of the whistleblower is found not to be unreasonable, a tribunal may be entitled to conclude that there is a separate feature of the claimant's conduct that is distinct from the protected disclosure and is the real reason for impugned treatment.

60. All that said, if a whistle-blower's conduct is blameless, or does not go beyond ordinary unreasonableness, it is less likely that it will be found to be the real reason for an employer's detrimental treatment of the whistle-blower. The detrimental treatment of an innocent whistle-blower will be a powerful basis for particularly close scrutiny of an argument that the real reason for adverse treatment was not the protected disclosure. It will "cry out" for an explanation from the employer, as Elias LJ observed in Fecitt, and tribunals will need to examine such explanations with particular care.

61. The legislation confers a high level of protection on whistleblowers for sound reasons, and the distinction should not be allowed to undermine that important protection or deprive individuals of protection merely because their behaviour is challenging, unwelcome or resisted by colleagues. As Mr Laddie emphasised, whistleblowing by its nature, frequently involves an individual raising concerns about wrongdoing committed by individuals, frequently colleagues, commonly working in the same workplace. It is a natural human response to be defensive and resist criticism. Not only is it likely that the subject or content of a protected disclosure will be unwelcome, the manner in which it is made, repeated or explained, may also be unwelcome, leaving individuals feeling it necessary to restate their concerns, and increasing the prospect of being perceived as an irritant or thorn in the employer's side. Some things are necessarily inherent in the making of a protected disclosure and are unlikely to be properly viewed as distinct from it. The upset that a protected disclosure causes is one example because for all practical purposes it is a necessary part of blowing the whistle; inherent criticism is another. There are likely to be few cases where employers will be able to rely on upset or inherent criticism caused by whistleblowing as a separate and distinct reason for treatment from the protected disclosure itself, though I am reluctant to say that it could never occur. The way in which the protected disclosure is made is also, in general, part of the disclosure itself, unless there is a particular feature of the way it is made (for example, accompanying racist abuse) that makes it genuinely separable."

Burden of proof

119. Section 48 ERA sets out the following.

"48 Complaints to employment tribunals.

....

(1A) A worker may present a complaint to an employment tribunal that he has been subjected to a detriment in contravention of section 47B.

....

(2) On a complaint under subsection (1), (1XA), (1ZA), (1A) or (1B) it is for the

employer to show the ground on which any act, or deliberate failure to act, was done.”

120. Section 48(2) ERA creates a shifting burden of proof similar to that which applies in discrimination claims under section 136 of the Equality Act 2010 (EA 2010).

121. The EAT gave guidance on this in *International Petroleum Ltd and ors v Osipov and ors EAT 0058/1* as follows.

“I agree that the proper approach to inference drawing and the burden of proof in a s.47B ERA 1996 case can be summarised as follows:

(a) the burden of proof lies on a claimant to show that a ground or reason (that is more than trivial) for detrimental treatment to which he or she is subjected is a protected disclosure he or she made.

(b) By virtue of s.48(2) ERA 1996, the employer (or other respondent) must be prepared to show why the detrimental treatment was done. If they do not do so inferences may be drawn against them: see London Borough of Harrow v. Knight at paragraph 20.

(c) However, as with inferences drawn in any discrimination case, inferences drawn by tribunals in protected disclosure cases must be justified by the facts as found.” [115]

Time Limits

122. Section 48(3) of ERA sets out time limits in relation to detriment complaints as follows.

“An employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal:

(a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.”

123. The three month time limit can be extended by time spent conciliating through ACAS as set out in section 207B of ERA, as follows.

(2) In this section—

(a) Day A is the day on which the complainant or applicant concerned complies with the requirement in subsection (1) of section 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and

(b) Day B is the day on which the complainant or applicant concerned receives

or, if earlier, is treated as receiving (by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section.

(3) In working out when a time limit set by a relevant provision expires the period beginning with the day after Day A and ending with Day B is not to be counted.

(4) If a time limit set by a relevant provision would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.

(5) Where an employment tribunal has power under this Act to extend a time limit set by a relevant provision, the power is exercisable in relation to the time limit as extended by this section.

124. Section 207B(4) of ERA does not apply where the limitation period has already expired before the Claimant notifies ACAS: Pearce v Bank of America Merrill Lynch and ors EAT 0067/19.

A series of acts

125. The case law in relation to consideration whether there is a “series of acts” for the purposes of section 48(3)(a) of ERA was summarised by His Honour Judge Auerbach in Antony Savva v (1) Leather Inside Out (in liquidation) and Others: [2025] EAT 96 as follows.

“64. Turning to section 48(3)(a), as the speeches in Arthur [v London Eastern Railway Limited] [2006] EWCA Civ 1686 discuss, what is required for it to apply is that the tribunal find that the (otherwise) out-of-time conduct complained of forms, together with conduct complained of in time, a series of similar acts (or failures to act). Further, only conduct which is found to have been done on the proscribed ground (in this case a protected disclosure) can be relied upon for this purpose (see Royal Mail Group Ltd v Jhuti, UKEAT/0020/16, 19 March 2018 at [43]). (The claimant relied upon what was said (citing an earlier authority) at [45] of Jhuti. But the point made in that paragraph is a different one, being that the fact that there was other conduct which, had it been successfully complained of, might also have formed part of the same series, does not necessarily mean that the conduct which was successfully complained of could not do so).

65. It is not, however, the law that the mere fact (if it be found) that a number of acts (or failures) are all found to be on grounds of a protected disclosure must necessarily mean in every case that they are all bound to be regarded as part of a series of similar acts. For the reasons explained by Lloyd LJ in Arthur, that would be a problematic reading of the statute. However, in my view, the answer is that Mummery LJ in the last sentence of [35] in Arthur did not in fact so hold. He merely (obiter) did not rule out that being a possibility in a given case. That said, what his observations, and those of Sedley LJ, show, is that where there is found to be what Sedley LJ called a “shared motive” for the various conduct of complained of, then that is a potentially relevant consideration.”

Reasonably Practicable

126. In Northamptonshire County Council v Entwhistle UKEAT/0540/09/ZT Underhill J (President) (as he then was) reviewed the authorities regarding the operation of the “not reasonably practicable” test in the context of a case where the Claimant had access to a skilled adviser as follows.

“5. There has been a great deal of authority about the effect of the “not reasonably practicable” test and, in particular, about its application in circumstances where a Claimant has consulted skilled advisers who have failed to give him proper advice about the applicable time limits. The cases to which I have been referred are Dedman v British Building and Engineering Appliances Ltd [1974] ICR 53, Walls Meat Company Ltd v Khan [1979] ICR 52, Riley v Tesco Stores Ltd [1980] ICR 323, Palmer and Saunders v Southend-on-Sea Borough Council [1984] IRLR 119, London International College v Sen [1993] IRLR 333, Marks & Spencer PLC v Williams-Ryan [2008] ICR 193 and Ashcroft v Haberdasher’s Aske’s Boys School [2008] ICR 613. I will not attempt a full analysis of what those cases decide; the points relevant to the argument in the present case can be summarised as follows.

(1) Section 111 (2) (b) should be given “a liberal construction in favour of the employee”. This was first established in Dedman. There have been some changes to the legislation since but this principle has remained: see, most recently, paragraph 20 in the judgment of Lord Phillips MR in Williams-Ryan, at page 1300.

(2) In accordance with that approach it has consistently been held to be not reasonably practicable for an employee to present a claim within the primary time limit if he was, reasonably, in ignorance of that time limit. This was first clearly established in the decision of the Court of Appeal in the Walls case, but see most recently paragraph 21 of Lord Phillips’ judgment in Williams-Ryan and, in particular, the passage from the judgment of Brandon LJ in Walls there quoted, at pages 1300 to 1301.

(3) In Dedman the Court of Appeal appeared to hold categorically that an applicant could not claim to be in reasonable ignorance of the time limit if he had consulted a skilled adviser, even if that adviser had failed to advise him correctly. Lord Denning MR said this at page 61 E-G: “But what is the position if he goes to skilled advisers and they make a mistake? The English court has taken the view that the man must abide by their mistake. There was a case where a man was dismissed and went to his trade association for advice. They acted on his behalf. They calculated the four weeks wrongly and posted the complaint two or three days late. It was held that it was ‘practicable’ for it to have been posted in time. He was not entitled to the benefit of the escape clause: see Hammond v Haigh Castle & Co Ltd [1973] ICR 148. I think that was right. If a man engages skilled advisers to act for him, and they mistake the time limit and present it too late, he is out. His remedy is against them. Summing up, I would suggest that in every case the Tribunal should inquire into the circumstances and ask themselves whether the man or his advisers were at fault in allowing the four weeks to pass by without presenting the complaint. If he was not at fault, nor his advisers, so that he had just cause or excuse for not presenting his complaint with the four weeks then it was not practicable for him to present it within that time. A court has then a discretion to allow it to be

presented out of time if it thinks it right to do so, but if he was at fault, or his advisers were at fault in allowing the four weeks to slip by, he must take the consequences. By exercising reasonable diligence the complaint could and should have been presented in time.” Lord Denning made a similar point in his judgment in the Walls case, at page 56 D-E. In his judgment in the same case Brandon LJ, after referring to the fact that a complainant could in principle seek to rely on ignorance or mistake about the time limit, said this, at pages 60-61: “Either state of mind will further not be reasonable if it arises from the fault of the complainant in not making such inquiries as he should reasonably in all the circumstances have made or from the fault of his solicitors or other professional advisers in not giving him such information as they should reasonably in all the circumstances have given him [my emphasis].”

(4) In Riley, Stephenson LJ cautioned against treating Dedman as laying down a rule of law, observing that “every case must depend on its own facts”: see page 329 C-D. In Sen Sir Thomas Bingham MR went further and questioned the rationale of the rule itself: see paragraph 16, at pages 335-6.

(5) However, in Williams-Ryan Lord Phillips reviewed the relevant authorities in some detail with a view to identifying whether it was a correct proposition of law that, as he put it at paragraph 24 (page 1301): “...if an employee takes advice about his or her rights and is given incorrect or inadequate advice, the employee cannot rely upon that fact to excuse a failure to make a complaint to the Employment Tribunal in due time. The fault on the part of the adviser is attributed to the employee.” He concluded squarely at paragraph 31 (page 1303): “What proposition of law is established by these authorities? The passage I quoted from Lord Denning’s judgment in Dedman was part of the ratio. There the employee had retained a solicitor to act for him and failed to meet the time limit because of the solicitor’s negligence. In such circumstances it is clear that the adviser’s fault will defeat any attempt to argue that it was not reasonably practicable to make a timely complaint to an Employment Tribunal.” The passage from Dedman there referred to is part of the passage which I have set out at (3) above. I think it is clear that Lord Phillips was intending to confirm that what he elsewhere called “the principle in Dedman” is a proposition of law and, to that extent, to decline to endorse Stephenson LJ’s observations in Riley, which he referred to as having been obiter, or Sir Thomas Bingham’s doubts in Sen.

(6) Subject to the Dedman point, the trend of the authorities is to emphasise that the question of reasonable practicability is one of fact for the Tribunal and falls to be decided by close attention to the particular circumstances of the particular case: see, for example, the judgment of May LJ in Palmer at page 385 B-F. I should refer also to the comment by Stephenson LJ in Riley, at page 334 D that: “When judges elaborate or qualify the plain words of a statute by gloss upon gloss, the meaning of the words may be changed, the intention of parliament not carried out but defeated and injustice done instead of justice.” Lord Phillips acknowledged this at paragraph 43 of his judgment in Williams-Ryan (see page 1305).”

Discussion and conclusions

Protected disclosures

127. The Respondent has conceded PID1, PID2 and PID3, both factually and as constituting protected disclosures within the meaning of section 43B ERA.
128. In relation to PID4, the Respondent made no submissions but also no concession.
129. The online form relevant to the Claimant's submission to the National Audit Office on 16 January 2023 was provided to the Tribunal (page A2126). This attached the same PowerPoint presentation he had disclosed to Ms Wallace (page A1288 to A1354).
130. The presentation contained an outline of the reactor removal process and the Claimant's concerns about the lack of "linking" of reactors. The Claimant stated in the presentation that this created pollution and extra costs for the taxpayer. He also complained of his treatment by the Respondent as a whistleblower. I find that the presentation is a disclosure of information in that the Respondent's reactor removal process is described and constitutes information.
131. I find that the Claimant did believe that this information tended to show that the environment was being damaged, and that disclosure of information was in the public interest. However, the Respondent has not put forward a positive case regarding whether the Claimant's belief was reasonable. It was not put to him that his belief was not reasonable. I find that it was reasonable to have this belief in the circumstances. The Claimant did not make the disclosure for personal gain.
132. I must consider whether it was reasonable for the Claimant to have believed the information and allegations were substantially true. It is clear that he had such a reasonable belief in relation to the truth of the information. The Claimant had gathered the information himself and there is no suggestion that the information was not, in fact, accurate, as to the way in which the Respondent operated.
133. I consider that it was certainly the case that the Claimant had a subjective belief in its truth of the allegations he made. The Respondent's case is that there are multiple factors to be taken into account, and that it is legitimate for the Respondent to prioritise speed of removal over the efficiency of transportation arrangements. However, the Respondent has not put forward a positive case regarding whether it was reasonable for the Claimant to believe the truth of his allegations. It was not put to him that his belief was not reasonable. On that basis I consider that the Claimant's belief in the substantial truth of the information and allegations was reasonable.
134. It was reasonable to have made the disclosure to the National Audit Office taking into account the identity of the recipient, the fact that the matters the Claimant was concerned about were ongoing, its seriousness and the Respondent's authorised procedures. The Claimant had already made an identical disclosure to his employer.

135. On that basis I consider that PID4 is also a protected disclosure pursuant to section 43G of ERA.

Whistleblowing Detriments

136. I will deal first with those whistleblowing allegations which are within the three month time limit, as extended by ACAS, because they took place after 9 December 2022.

5.1.11 Did the Respondent fail to provide the Claimant with the Standard Operating Procedure ("SOP") he was alleged to have breached from October 2022 and thereafter; [D11] [Michelle Wilson]

137. The complaint is in time because although this act began in October 2022, the requests and failure to provide the SOP continued until 7 March 2023 when the appeals process concluded. I therefore consider that time began to run on 7 March 2023, which is within the limitation period.

138. The Respondent agrees that the SOP was not provided to the Claimant.

139. I consider that not providing a document relevant to a disciplinary allegation made against the Claimant is something that a reasonable worker in the Claimant's position would consider to be to their disadvantage in the circumstances. It constitutes a detriment.

140. Under section 48(2) of ERA, it is the Respondent's burden to prove the ground upon which the SOP was not provided to the Claimant.

141. The Claimant requested the SOP at the disciplinary stage. He was directed to ask Ms Miarowska for the relevant document. She was not called as a witness by the Respondent despite being a current employee.

142. Whilst the Claimant describes a background of near constant raising of the same issues during the course of his employment, I am only concerned with the pleaded disclosures. The relevant protected disclosures were not made to Ms Miarowska. No evidence has been identified by the Claimant which would indicate that Ms Miarowska was aware he had made the protected disclosures he relies on. It appears based on the evidence before the Tribunal that Ms Miarowska was not aware of the Claimant's pleaded disclosures.

143. There are, however, contemporaneous emails discussing the reasons for not providing the documents, which refer to a concern that the Claimant will publicly disclose the documents (page A1048). I consider that these emails should be taken at face value. The Claimant made several statements to the effect that he would go public with his concerns in relation to the reactor removals process. There was a genuine concern that the Claimant may publicly disclose the Respondent's confidential documents and information. This was clear from both Ms Cribley's and Mr Lavendar's evidence. On that basis I find on the balance of probabilities the reason for not providing the SOP to the Claimant at this stage was a perceived risk the Claimant would breach confidentiality and make the Respondent's documents and information publicly available.

144. Ms Wilson has sadly passed away and therefore has also not given witness evidence. Since Ms Wilson had the disciplinary materials including the presentation, so she was aware of PID 3. At appeals stage, the reason given by Ms Wilson in the contemporaneous emails for not providing the SOP was that this was not relevant to the appeal process – which was not a re-hearing but a review, of the fairness of the process and sanction. Again, I conclude that Ms Wilson's emails should be taken at face value. I find on the balance of probabilities that the reason the SOP was not provided was because Ms Wilson did not consider them to be relevant to the appeal process.

145. I consider that the Respondent's concerns regarding the Claimant making their documents and information public can be properly separated from the Claimant's protected disclosures. The reason for the Respondent's concern was the risk of a data breach in relation to data and documents rather than the fact that the Claimant had previously made the protected disclosures he relies on. Further, Ms Wilson did not provide the document because she considered it was not relevant to the appeal process. I therefore find that the protected disclosure did not have any significant influence on the decision not to provide the Claimant with the SOP. The Respondent has discharged its burden of proof.

146. The allegation is therefore dismissed.

5.1.12 In January 2023, did the Respondent state that the Claimant's alleged misconduct fell within the Cabinet Office's definition of "internal fraud – fraudulent conduct with a view to gain for the employee"; [D12] [Rachel Wallace]

147. This statement is set out in the disciplinary meeting invitation sent to the Claimant on 9 January 2023 (see above at paragraph 76).

148. I consider that alleging the Claimant has acted fraudulently is clearly something that a reasonable worker in the Claimant's position would consider to be to their disadvantage in the circumstances. It therefore constitutes a detriment.

149. Under section 48(2) of ERA, it is the Respondent's burden to prove the ground upon which this wording was included in the letter.

150. I find, based on her witness evidence, that Ms Wallace drafted the letter based on a template which included this wording. She queried the inclusion of these words and was told by the HR case worker to leave it in and therefore did so. The same wording had also been included in the disciplinary decision letter, but Ms Wallace removed it on the basis that it was not relevant to the Claimant's conduct.

151. It was clearly distressing for the Claimant that this wording was included in the invitation letter. However, I accept Ms Wallace's evidence that the reason for this wording was simply that it was template wording which she had been told should not be removed. This was credible and consistent with the evidence of Ms Cribley who also gave evidence that this was template wording. I find, based on Ms Wallace's evidence, that her motivation was not influenced by the fact that the Claimant had made a protected disclosure.

152. This allegation is dismissed.

5.1.13 On 29 March 2023, did the Respondent fail to disclose copies of the 'relevant' SOPs which were in place between 2013 and 2023 to the Claimant? [D13] [Alison White]

153. The Respondent did not provide the Claimant with the documentation he wished to receive.

154. This is something that a reasonable worker in the Claimant's position would consider to be to their disadvantage in the circumstances. It is therefore a detriment.

155. The Claimant and his team referred to the relevant documents as SOPs and therefore the Claimant did not know that this was not the official classification of the document he was seeking. Ms White simply followed the normal process by asking the relevant team for the documents requested. They were different to those the Claimant wanted to have because of an internal classification regarding SOPs and desk instructions. The former being held by a central team and the latter being held by a local team. The reason the Claimant was not provided with the document is simply because of the document classification: it was not officially classified as a SOP.

156. I find that Ms White was not aware of the Claimant making a protected disclosure(s), and therefore the fact he had done so had no influence on her actions. No one influenced her actions who was aware of the protected disclosure(s).

157. This allegation is dismissed.

Jurisdiction in relation to the other alleged detriments

158. Detriments D1 to D10 all occurred before 9 December 2022 and are therefore outside of the primary three month time limit (as extended by ACAS conciliation).

159. Only conduct which is found to have been done on the proscribed ground (in this case a protected disclosure) can be relied upon for the purposes of concluding that there has been a series of connected acts for time limit purposes. Since I have not upheld any of the detriments which are in time, the "series of acts" analysis will not serve to bring any of the older detriments within the time limit.

160. I must therefore determine whether it was reasonably practicable for the Claimant to have presented a complaint in relation to these detriments within this primary time limit. I find based on the Claimant's evidence that he was supported by his trade union during the time that the alleged acts took place, but did not discuss time limits with them. He could have done so. The Claimant was aware that there was a three month time limit for bringing unfair dismissal claims. He was not aware that the time limit for detriment complaints was three months from the date of the alleged act, and thought he had to be dismissed

first. The Claimant had internet access and there was no impediment to him starting the ACAS process. The Claimant had brought a previous unfair dismissal complaint in relation to his dismissal from the police and he had been involved in the claim in the Employment Tribunal and Employment Appeal Tribunal so had experience of employment litigation.

161. The Claimant had previously been involved in Employment Tribunal litigation and was aware of time limits applying. He had access to the internet and trade union support. In the circumstances it was incumbent on him to seek information and advice on how to enforce his rights in relation to whistleblowing detriment. His ignorance of time limits was not reasonable in the circumstances. As such, I consider that even in circumstances where the Claimant not aware of the time limit, it was still reasonably practicable for him to have presented a complaint in relation to the relevant detriments within 3 months.

162. The remaining detriments are out of time and are dismissed for want of jurisdiction.

Whistleblowing Dismissal

163. The Claimant brings a complaint that his dismissal was automatically unfair because his dismissal was for the sole or principal reason that he had made protected disclosures.

164. The Respondent's position was when an Administrative Officer received a work schedule to process, they could only wait up to 24 hours before booking in a slaughterhouse to collect the animals (see paragraph 38 above). This would allow time for a work schedule to be created for any animals for whom further test results were already known. This was because the Select for Slaughter Team were required to create a work schedule within 24 hours of being notified of a test result. An Administrative Officer could see the positive test result on SAM (the computer system) but would then need to wait up to 24 hours for the work schedule to come through. The Claimant objected to this because it may be that there were further test results due which were not already on the SAM system. The Claimant considered that if the Respondent was aware that further tests were due to take place, it should also link those animals for transport to the slaughterhouse. His view was that to do otherwise would damage to the environment through diesel pollution as well as increased cost to the taxpayer through the need for multiple transports to the slaughterhouse. The Respondent's view was that this was a multi-factorial decision, which required the weighing of factors such as the need for speed in order to control TB, the capacity and availability of the relevant slaughterhouses, and other factors as well as the desirability of keeping the number of animal transports to a minimum.

165. The Claimant stated in oral evidence that there could be no compromise in relation to his view. The Claimant considered the Respondent was adopting the wrong process. He refused to do his job in the way mandated by his employer. This forms the basis for disciplinary allegations 1 and 2.

166. Allegation 3 related, in part, to an email to the permanent secretary, and therefore to PID2.

167. Ms Wallace was an independent manager, not in the Claimant's team. I found her evidence credible regarding the "reason why". The Claimant was dismissed because of allegations 1 and 2: he refused to follow the Respondent's process and his management team's instructions as to how the reactor removal process should be conducted. He admitted this to both Mr Stapleton-Brown and Ms Wallace. A further key factor was insistence that he would not follow management instructions or the SOP in the future if the outcome of the disciplinary process was that he was not dismissed. He repeated his position in relation to this at the appeal stage.
168. I consider that the Respondent has discharged its burden to prove the reason for the dismissal. Although allegation 3 was related to PID 2 I am satisfied based on the evidence that it was not the reason for the dismissal.
169. The Claimant's refusal to follow the Respondent's process and his management team's instructions as to how the reactor removal process should be conducted, although linked to his protected disclosures (in the sense that he refused to follow instructions because of the concerns he raised), they are not the same thing and can be properly separated from them for the purposes of this complaint.
170. In my finding the Claimant was not dismissed for the sole or principal reason that he had made a protected disclosure. His automatic unfair dismissal complaint is not well founded and is dismissed.

Unfair dismissal

171. In my finding, the reason for the dismissal was misconduct, which is a potentially fair reason within section 98(2)(b) of ERA. The conduct was that the Claimant refused to follow the Respondent's process and his management team's instructions as to how the reactor removal process should be conducted. This is based on the evidence of Ms Wallace.
172. I consider that Ms Wallace had a genuine belief that this misconduct had occurred. Her belief was based on the Claimant's admissions in relation to the conduct and was therefore based on reasonable grounds.

Reasonableness of the investigation

173. The Claimant makes some suggestion that the fact that Mr Stapleton-Brown requested the SOP in August 2022, before his formal appointment as investigating manager is evidence of pre-determination or ulterior motive. I do not accept that, there is no evidence to support it. I accept Mr Stapleton-Brown's explanation that he simply wished to understand the background before formally being appointed.
174. The Claimant criticises the investigation on the grounds that the Respondent would not disclose the Standard Operating Procedure the Claimant was said to have refused to comply with.

175. At the time of Mr Stapleton-Brown's investigation meeting with the Claimant, the Claimant still had access to the Respondent's computer systems and could have accessed the relevant documents/SOPs. He did not request the SOP during the investigation meeting but only did so afterwards when the disciplinary process had started. Further, in the investigation and disciplinary meeting, the Claimant did not express any confusion as to the allegations against him. In the meeting he admitted that he was not willing to follow the Respondent's instructions, whether the mandated procedure or in relation to instructions given by management. His argument was instead that the instructions he was being given and the reactor removal process were not reasonable.
176. The failure to provide the SOP did not render the process unfair in circumstances where the Claimant had made an admission as to the conduct.
177. A further criticism the Claimant makes of the investigation is that it failed to look at or take into account the Claimant's evidence as to what had been happening. This refers to the Claimant's concerns regarding whether the Respondent's instructions and procedures were "right".
178. The Claimant agrees that the Respondent had previously considered his position in 2021. The Respondent's "desk instructions" had been amended as a result of the points made by the Claimant regarding the "linking" of animals to be taken for slaughter. The Claimant's concerns were also considered separately through a whistleblowing process conducted by Andrew Soldan. Although initially pleased with amendments made in 2021, the Claimant again became dissatisfied with the process for reactor removals which the Respondent required Administrative Officers to undertake.
179. Mr Stapleton-Brown was aware that the Claimant's concerns had been separately considered within the Respondent as described. In those circumstances I find it was reasonable for him not to re-investigate the Claimant's concerns regarding the reactor removals process.
180. The Claimant's position is that the Respondent had falsely stated that the colleagues in his team were unwilling to be witnesses. During the investigation process the Claimant had not suggested a specific witness should be interviewed. There was no evidence before me which supports an allegation that the Respondent had fabricated a reluctance on the part of the Claimant's colleagues to be involved in the investigation.
181. As set out in the case of Community Integrated Care Ltd v Smith, where there is an admission made by the employee in relation to the alleged conduct, that limits how much further investigation is required. I consider that the Respondent's investigation was reasonable in circumstances where the alleged conduct had been expressly admitted by the Claimant. There had been a separate investigation into the concerns he raised (i.e. in relation to the matters he had blown the whistle about). I find that it was reasonable not to interview members of the Claimant's team in circumstances where the Claimant had admitted the relevant conduct. Their evidence would not have added anything to his admission.

182. The Claimant had also raised during the investigation that he was not the only person in his team “linking” animals. I consider that this is potentially a point of mitigation for the Claimant.

183. As set out in Scottish and Southern Energy plc v Innes an employer does not have to investigate points put forward by an employee in mitigation.

184. I consider that the process was fair in all the circumstances.

Was the decision to dismiss within the reasonable range of responses?

185. The Claimant admitted that he had not followed management instructions and his employer’s procedures and made clear statements to the effect that he would refuse to do so in the future. His clearly expressed view was that unless the reactor removal process was amended to the method he considered was “right”, he would not be able to comply with it. He maintained this position in the investigation, disciplinary and appeal meetings and continued to maintain it during this Tribunal hearing. His position in cross examination was that there could be absolutely no compromise to the way he considered was correct.

186. As part of my assessment as to the reasonableness of the dismissal, I must consider the lawfulness and reasonableness of the Respondent’s instructions to the Claimant.

187. It was not in dispute that the Respondent could give the Claimant instructions as to how to undertake his role, which included making slaughter arrangements with slaughterhouses for the slaughter of TB infected cattle. The instruction was therefore lawful in the sense that it was in line with the contractual agreement between the parties.

188. The Claimant’s position is that the instruction was not a reasonable instruction because it was simply not legitimate to prioritise speed of making arrangements over the linking of different test results in order to cover all of the infected cattle at the same farm when making slaughter arrangements.

189. The Respondent’s position is that it was a reasonable instruction because this was a multi-factorial decision, which required the weighing of factors such as the need for speed in relation to disease control measures, the need to avoid backlogs, the capacity and availability of the relevant slaughterhouses, and other factors as well as the desirability of keeping the number of animal transports to a minimum.

190. Further, I find based on Ms Cribley’s evidence that the linking of cattle would not necessarily have the result of more efficient transportation, as it would depend on things like the vehicles available to the slaughterhouse, the accessibility of the farm and slaughterhouse capacity (with many smaller slaughterhouses being located in Devon) and therefore a larger number of animals being collected may result in a significantly longer journey to a larger slaughterhouse in Wales.

191. Even on the assumption that the Claimant is right and the Respondent's methodology would incur higher costs for the taxpayer and to use more vehicle miles and therefore create more pollution, I consider it was reasonable for the Respondent to make a judgment that it wished to prioritise speed of booking animals in for slaughter. The purpose of the removal of the reactors was to control the spread of TB. It is a decision with many factors which need to be balanced against one another, and compromises inevitably need to be made. There are a number of different ways in which this could be done, which would all be reasonable for an employer to ask its employees to put into practice. The decision as to which factors were given priority is one to be made by the Respondent, not the Claimant.
192. In assessing the reasonableness of the Respondent's instructions, it is also relevant to note that the Respondent had taken the Claimant's position into account and amended its policies in 2021, so that these required consideration to be given to linking animals if there were relevant test results on the SAM system. There had also been a whistleblowing investigation undertaken by Andrew Soldan.
193. For those reasons I find that it was a lawful and reasonable instruction to require the Claimant to follow the Respondent's methodology for reactor removal.
194. As to whether the sanction was fair in circumstances where the Claimant had raised that other employees were linking work, this must be separated from saying that other employees are not following instructions/the SOP. Linking work schedules, in itself, was not considered problematic by the Respondent, and the Claimant was aware that the procedure had been amended to that effect in 2021. The linking of work schedules had to be done in the way mandated by the Respondent, which the Claimant refused to do. The evidence of Mr Cox and Ms Purohit was that whilst others in the team linked work, they did so in compliance with the way mandated by the Respondent. The Claimant had not identified any individual who was not following the Respondent's mandated linking process. It was therefore reasonable for it not to be taken into account when considering sanctions. The Claimant's refusal to follow the mandated linking process was the basis for the misconduct allegations. The Claimant had expressed a clear intention to continue to refuse to comply with instructions given by the employer. Taking these circumstances into account into account, this factor does not affect the fairness of the employer's approach.
195. Reasonable employers expect their employees to follow reasonable management instructions: it is one of the central covenants of the employment relationship between employers and employees. In circumstances where the Claimant had admitted that he had not followed reasonable management instructions and had made clear statements to the effect that he would continue not to do so in the future if not dismissed, it was within the range of reasonable responses to dismiss the Claimant.
196. I do not uphold the Claimant's case that the dismissal was pre-determined or that the reason for his dismissal was that he had blown the whistle.

197. The unfair dismissal claim is not well founded and is dismissed.

**Approved by
Employment Judge Volkmer
3 December 2025**

REASONS SENT TO THE PARTIES ON
19 December 2025

Jade Lobb
FOR THE TRIBUNAL OFFICE