Case Number: 2206663/2020

Reserved Judgment

EMPLOYMENT TRIBUNALS

BETWEEN

Claimant	**and**	**Respondent**
Mr W Davey		**Harrods Ltd**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

SITTING AT: London Central **ON: 20-25 November 2025**

BEFORE: Employment Judge A M Snelson

On hearing the Claimant in person and Ms A Greenley, counsel, on behalf of the Respondent, the Tribunal determines that:

(1) The Claimant's complaints of 'ordinary' unfair dismissal, unfair dismissal on health and safety grounds and unfair dismissal on 'whistle-blowing' grounds (under the Employment Rights Act 1996, ss 94 and 98, 101(1)(a) and 103A, respectively) are not well-founded.
(2) Accordingly, the proceedings as a whole are dismissed.

REASONS

Introduction

1 The Respondent is the corporate vehicle for the retail business which operates at a well-known Knightsbridge store of the same name ('the Store') and at outlets at Heathrow and Gatwick airports. It also has a distribution centre at Thatcham and offices in Hammersmith. Prior to the reorganisation effected in 2020, its headcount stood at approximately 4,800 employees.

2 The Claimant was continuously employed by the Respondent at the Store between 8 December 2017 and 4 October 2020 in the capacity of Out of Hours Duty Manager, latterly on an annual salary of a little over £50,000. The employment ended with dismissal on the stated ground of redundancy.

3 By a claim under case no. 2205889/2020 the Claimant brought complaints of unfair dismissal and disability discrimination. Those proceedings were swiftly

withdrawn and, on 2 November 2020, Employment Judge Khan issued a judgment dismissing them.

4 By his claim form in the instant proceedings, presented on 11 October 2020, the Claimant brought a series of claims under the Employment Rights Act 1996 ('ERA') arising out of his dismissal.

5 Further particulars of the claim were served on 25 November 2020.

6 The Claimant's application for interim relief was heard and dismissed by Employment Judge Goodman on 5 November 2020. An appeal against that adjudication was subsequently dismissed by the Employment Appeal Tribunal ('EAT').

7 All claims were resisted in the response form of 19 January 2021.

8 On 12 May 2021 Employment Judge JS Burns struck out the Claimant's claims for non-compliance with the Tribunal's orders.

9 On 31 August 2023, His Honour Judge Barklem, sitting in the EAT, overturned Judge Burns's strike-out judgment, thereby reinstating these proceedings. An application on behalf of the Respondent for a review of Judge Barklem's judgment was refused.

10 At a preliminary hearing for case management on 12 and 13 August 2025, Employment Judge Bunting dealt with a number of matters. Three need to be mentioned. In the first place, for reasons given orally, he refused the Claimant's application to amend the claim form to add complaints under the Equality Act 2010. He stated in his formal record of the hearing (paras 15 and 16) that one ground for refusing the amendment was that the principle of *res judicata* applied (arising out of the judgment of 2 November 2020) but that, for reasons briefly stated, it did not operate as a bar to the unfair dismissal claims in these proceedings. Secondly, the issues in the case were identified, with the agreement of the parties. This involved, among other things, listing the 10 disclosures relied on by the Claimant for the purposes of his 'whistle-blowing' unfair dismissal claim. Thirdly, a final hearing was listed to commence on 17 November 2025 with seven consecutive sitting days allocated and a timetable set for the preparation of witness and documentary evidence.

11 Following the preliminary hearing of 12 and 13 August 2025, there were some exchanges between the parties as a result of which, on 8 September 2025, the Respondent agreed that the list of issues should be expanded to add two further alleged protected disclosures (which had featured in the original pleaded case).

12 The result was that, at least by the time the case reached trial, there was full agreement between the parties that the list of issues approved by Employment Judge Bunting, as varied on 8 September 2025, captured the dispute to be determined. So much of the original list as is required for present purposes is

appended to these reasons. Disclosures 11 and 12 do not appear there but they are explained in my narrative below.

13 The matter came before me for final hearing on Thursday, 20 November 2025 (the first three days of the allocation were lost because I was not available and nor was any other Employment Judge). The Claimant represented himself with skill and good grace. The Respondent had the advantage of the careful and restrained representation of Ms Greenley.

14 Unfortunately, the Claimant has been affected by mental health problems for a number of years. He has a diagnosis of PTSD. Prior to the hearing, he produced a detailed set of suggested adjustments which might be implemented in order to redress the disadvantage which he would face in presenting his case. At the start of the hearing, there was a useful discussion as a result of which we agreed in the first instance on a simple strategy of allowing frequent breaks and keeping matters under review. The Claimant was content to proceed on this understanding and I made it clear on several occasions that he must be uninhibited in asking for assistance in so far as I could offer it. Besides offering breaks, I volunteered guidance on matters of procedure at several points in the hearing. For her part, Ms Greenley also provided frequent assistance, particularly in helping to locate documents to which the Claimant wished to take witnesses in cross-examination.

15 Although the dispute was wide-ranging, I was able, thanks to the co-operation of both parties, to complete the evidence during the morning of Monday, 24 November. I then adjourned until the afternoon of Tuesday, 25 November, so as to allow ample time for the preparation of closing argument. Both parties presented substantial written submissions which they supplemented with brief oral observations. I then elected to reserve judgment.

The Legal Framework

16 The right to protection from unfair dismissal is enacted in ERA[1], s94. The 'ordinary' unfair dismissal claim is governed by s98. It is convenient to set out the following subsections:

> **(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show –**
>
> **(a) the reason (or, if more than one, the principal reason) for the dismissal, and**
> **(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.**
>
> **(2) A reason falls within this subsection if it – …**
>
> **(c) is that the employee was redundant …**
>
> **(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –**

[1] To which all section numbers hereafter will refer.

> **(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.**

17 Although my central function is simply to apply the clear language of the legislation, I am mindful of the guidance provided by the leading authorities. From *Iceland Frozen Foods Ltd v Jones* [1982] IRLR 439 EAT and *Post Office v Foley; HSBC Bank v Madden* [2000] IRLR 827 CA, I derive the cardinal principle that, when considering reasonableness under s98(4), the Tribunal's task is not to substitute its view for that of the employer but rather to determine whether the employer's decision to dismiss fell within a band of reasonable responses open to it in the circumstances. That rule applies as much to the procedural management of the case as to the substance of the decision to dismiss (*Sainsbury's Supermarkets Ltd v Hitt* [2003] IRLR 23 CA). The 'band of reasonable responses' principle is applicable in the redundancy context no less than where the dismissal is based on conduct, capability or any other reason (*Williams v Compair Maxam Ltd* [1982] ICR 156 EAT, particularly at 161E).

18 ERA, s100 includes:

> **(1) An employee who is dismissed shall be regarded for the purposes of this Part is unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that –**
>
> **(a) having been designated by the employer to carry out activities in connection with preventing or reducing risks to health and safety at work, the employee carried out (or proposed to carry out) any such activities …**

19 In *Castano v London General Transport Services Ltd* [2020] IRLR 417 the EAT considered an appeal brought by a bus driver whose claim to have been unfairly dismissed in contravention of ERA, s100(1)(a) had been struck out by the Employment Tribunal as having no reasonable prospect of success. Dismissing the appeal, Eady J observed (para 27):

> **In respect of the Claimant's attempt to lay claim to the protection afforded to designated health and safety representatives, I therefore consider the ET was right to find that his case had no reasonable prospect of success: the Claimant had not been "*designated*", as would be required for this protection; rather, as was common ground, another employee had been specifically designated to carry out that role. The fact that other employees – specifically, bus operators such as the Claimant - also had some health and safety obligations as part of their duties did not mean that they had been designated to carry out this far more specific role; they had not. Indeed, if the Claimant's argument was right, all of the Respondent's drivers holding PCV licences would have been designated for the purposes of subsection (1)(a). They plainly were not. Subsection (1)(a) is directed towards the situation in which a particular employee has been designated, over and above their ordinary job duties, to carry out specific activities in connection with preventing or reducing risks (essentially, a health and safety officer's function). Appointing an employee to do a job in which they must exercise some responsibility to take care of their own health and safety and that of others (which, per Von Goetz, could extend beyond other workers) is not the same thing.**

20 By ERA, s43B, it is stipulated (so far as relevant) that:

> **(1) In this Part a 'qualifying disclosure' means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is 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;**
> **…**
> **(d) that the health or safety of any individual has been, is being or is likely to be endangered;**
> **…**
> **(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.**

21 Qualifying disclosures are protected if made in accordance with ss43C to 43H (see s43A). By s43C, it is provided that:

> **(1) A qualifying disclosure is made in accordance with this section if the worker makes the disclosure –**
>
> **(a) to his employer …**

22 The requirement for a disclosure of 'information' was considered by Slade J sitting in the EAT in *Cavendish Munro Professional Risk Management Ltd v Geduld* [2010] ICR 325. She equated 'information' with 'facts', observing that mere 'allegations' did not fall within the statutory protection. This analysis was qualified in *Kilraine v London Borough of Wandsworth* [2018] ICR 1850 CA, in which it was pointed out that the legislation posited no rigid dichotomy between facts and allegations and that 'information' may comprise both: a disclosure which makes an allegation will be protected provided that it has sufficient factual content and specificity.

23 I have borne in mind the authoritative guidance of the Court of Appeal in *Chesterton Global Ltd & another v Nurmohamed* [2017] EWCA Civ 979 on the requirement for the putative whistle-blower to hold a reasonable belief that the relevant disclosure is made 'in the public interest'.

24 By ERA, s103A, an employee is treated as 'automatically' unfairly dismissed where the reason, or principal reason, for the dismissal is that he/she has made a PD.

Oral Evidence and Documents

25 I heard oral evidence from the Claimant and four witnesses on behalf of the Respondent who are introduced and named in the narrative below.

26 In addition to the statements of witnesses I read the documents to which I was referred in the bundle of over 1,200 pages together with sundry further documents submitted shortly before the hearing, including the Claimant's 'Facts of

Case Corrections' dated 19 November 2025, running to 43 pages, the stated purpose of which was to correct 'material factual errors' at the interim relief stage and provide 'an authoritative factual record'.

27 I also had the benefit of the detailed written closing submissions presented on both sides.

The Facts

28 The facts essential to my decision, either agreed or proved on a balance of probabilities, I find as follows.

Setting the scene

29 The Claimant's principal function was to monitor and advise the Respondent's contractors performing work at its premises overnight and otherwise outside normal daytime working hours. This involved liaising with contracting personnel and management to ensure that work was being carried out in accordance with agreed method statements and risk assessments. Health and safety was one significant area of responsibility. The role required him to exercise a degree of judgement and use his initiative to solve problems. On occasions it was appropriate for him to raise matters, which might include health and safety concerns, with relevant Departmental Project Managers. In rare instances, it fell to him to stop work in progress, pending resolution of a pressing concern. He produced daily reports following the end of his shifts.

30 Before the reorganisation which occasioned the redundancy situation, the Claimant was one of two Out of Hours Duty Managers. Immediately above them in the hierarchy was the Lead Out of Hours Manager, Mr Gregory (a witness before me) and, as such, their line manager.

31 Above Mr Gregory was the Construction Team Manager, Mr McDaid (also a witness before me). He was responsible for several teams, including the Duty Managers Team.

32 Mr McDaid reported to Mr Ray Arno, Senior Construction Project Manager (another witness before me), who was charged with managing projects and the Duty Managers Team (through Mr McDaid) and the CAD[2] Team.

33 In turn, Mr Arno reported to Mr Martin Illingworth, the Respondent's Director of Store Development (the fourth of the Respondent's witnesses before me). Mr Illingworth was responsible for all capital works and construction projects.

34 In addition to those already identified, it seems that there was also a Project Management Team, apparently reporting directly to Mr Arno.

35 All the individuals and teams referred to sat within the Technical Services Department ('TSD').

[2] Computer Aided Design

Facts relevant to the 'ordinary' unfair dismissal claim

36 The findings made here concern the redundancy process and the Claimant's dismissal. The heading should not be taken to imply that I have overlooked the importance of having regard to facts found under the other headings below when considering the 'ordinary' unfair dismissal claim.

37 The Covid-19 pandemic resulted in the Store being closed between 25 March and 15 June 2020. That caused lost sales estimated at £425 million. Senior directors rapidly agreed a drastic reduction in the capital spend of the business for 2020. 14 major capital projects were deferred, having a combined value of more than £33 million. This in turn involved a substantial reduction in the volume of work required of the Duty Managers Team, the CAD Team and the Project Management Team.

38 The decision to cut capital projects did not bear only upon capital spending. Under the Respondent's arrangements, contributions to fund the salaries of Out of Hours Duty Managers and Project Managers were directly related to current projects. Accordingly, the cancellation of the projects required TSD to look for payroll savings too.

39 The TSD Team could find immediate savings by eliminating three current Projects Manager vacancies, giving a total cost saving of £136,000 annually.

40 Turning to the CAD Team, a change in arrangements between the Respondent and its consultants involving transfer of responsibility for CAD work to the consultants meant that the requirement for the Respondent to employ a CAD Operator disappeared, leading to a saving annually of £19,000.

41 In the case of the Duty Managers Team, the assessment was made that the Out of Hours Duty Managers could be reduced from three (two Duty Managers and the Lead Duty Manager) to two (one Duty Manager and the Lead Duty Manager). This would be achievable by changing the out of hours shift patterns. To date, each Duty Manager had worked three nights per week and the Lead Duty Manager had worked the remaining night alone but also doubled up with each of the Duty Managers on one other night per week. The proposal was that one Duty Manager post be deleted and a new shift pattern implemented involving the remaining Duty Manager and the Lead Duty Manager covering the full week between them, each working for three or four nights and the allocations (of either three or four nights weekly) being reversed approximately every two months. In times of sickness or absence on leave, a member of the daytime Duty Manager Team would be required to deputise. This proposal would inevitably result in the Out of Hours Duty Managers being placed at risk of redundancy. The possibility of placing members of the daytime team at risk was discounted on the basis that the daytime and out of hours roles had never been seen as interchangeable and the Out of Hours Duty Managers were paid something like 60% more than their daytime peers.

42 On 30 June 2020 Mr Illingworth, accompanied by Ms Alicia Hoque, an Employee Relations Specialist in the TSD, met the Claimant, Mr Jim Sullivan, the

other Out of Hours Duty Manager and Mr Dean Norris, CAD Operator, to advise them that they were being placed at risk of redundancy. He explained the business case, which I have already summarised.

43 Letters were sent to the affected employees the same day confirming what had been discussed at the meeting.

44 A process of consultation followed, collective and individual. Mr Sullivan acted as the Employee Representative for the purposes of the collective consultation. He invited comments or questions from the Claimant and others, but it seems that none were passed to him. He attended three collective consultation meetings, on 13 July 2020, 24 July 2020 and 27 August 2020. No challenge was raised to the Respondent's reorganisation proposals, the underlying business case or the proposed redundancy selection criteria and process. I am not aware of any criticism of the collective consultation process.

45 The proposed selection criteria were five in number: length of service; performance (based on the most recent appraisal); disciplinary record; attendance record; and qualifications/specialist training.

46 In late July or early August Mr Arno carried out a scoring exercise with a view to identifying the Out of Hours Duty Manager to be made redundant. This work was done after the second collective consultation meeting, at which it was apparent that no challenge was raised to the proposed selection criteria.

47 The outcome of Mr Arno's exercise was that the two candidates were tied on scores of 12 points each.

48 Individual consultation with the Claimant took place on three separate occasions. The first took the form of a meeting held on 12 August 2020, chaired by Mr Arno. The business case was rehearsed, and the Claimant said that he understood it. The selection methodology was also discussed and the Claimant raised no challenge to it. Mr Arno told him the score he had received and he replied that he agreed with it and had arrived at the same figure himself. Having explained that Mr Sullivan had registered the same score, Mr Arno went on to say that there would be a tie-break in the form of an interview.

49 It was initially intended that the interview panel would consist of Mr Arno and Mr Mitul Shah, a senior manager in another Department, but as a result of representations by the Claimant, two adjustments were made. First, Mr Arno was replaced by Mr Robert MacPherson, Senior Engineering Technical Manager. Second, the Claimant's request for his interview to be conducted in writing was granted.

50 On 24 August 2020, the Claimant's written interview was conducted. That of Mr Sullivan, which took a conventional form, was held at around the same time. Mr Mitul and Mr MacPherson scored the answers out of a total of 20. The combined scores were averaged, giving totals of 11 and 18.5 respectively. These numbers were then calibrated to reflect the scoring scheme applied to the original selection criteria, with the result that the Claimant was awarded an additional score of three,

and Mr Sullivan, four. Accordingly, Mr Sullivan won the competition by the narrow margin of one point.

51 The second individual consultation meeting was conducted through an exchange in writing, at the Claimant's request. Ms Hoque sent a long message to him on 26 August 2020, setting out, again, the rationale behind the redundancy programme generally and its particular impact on the Out of Hours Duty Managers, the outcome of the selection exercise, access to information about alternative employment within the organisation and sundry other matters. As agreed, the Claimant responded in writing two days later. He raised several points. First, he queried how two Duty Managers could cover the entire working week and what provision would be made in respect of annual leave and/or sick cover. Second, he questioned the performance score awarded by Mr Arno, contending that his most recent appraisal (for 2018) had been done hastily and at a time when he had been experiencing stress and anxiety and that it would have been fairer to base the scoring on an average of appraisal scores. Third, he voiced general dissatisfaction with the way in which the Respondent had treated him, in relation to the redundancy process and a grievance he had raised.

52 The third individual consultation meeting, initially scheduled for 2 September 2020, was again, at the Claimant's request, conducted in writing. Ms Hoque wrote to the Claimant on 31 August and 2 September 2020, rehearsing the background history again, giving notice that, if redeployment was not possible, he would be dismissed for redundancy on notice to be given on 4 September 2020, setting out his entitlements in respect of notice and a redundancy payment and providing detailed responses to the first and second matters which he had raised in the second consultation meeting. As to the first, she explained that the Respondent had formed the view (on experience) that it would be able to manage with two Duty Managers, supplemented by appropriate cover where necessary. Second, she observed that the performance score had been in accordance with the scoring scheme (to which no objections had been raised). (She did not add the further information which had been shared with her that the Claimant had raised no challenge to the 2018 appraisal score and that, in any event, there had been no prior appraisal, since he had joined the organisation in mid-2017.) The Claimant responded on 3 September 2020, stating only that he had considered the Respondent's online information on vacancies but had made no application.

53 On 4 September 2020 the Respondent gave the Claimant notice of dismissal on the ground of redundancy to expire on 4 October 2020 and advised him of his right to appeal.

54 The Claimant appealed against the decision to dismiss, disputing that he was redundant and maintaining in any event that the dismissal was unfair on 'whistle-blowing' grounds and because it was (partly) based on his mental health disability. A particular point on unfairness consisted of the allegation that at a grievance meeting on 26 June 2020, Mr Chris Dee, Director of Food & Home, who had chaired the meeting, had been recorded as remarking (of the Claimant), 'Next week's going to be difficult for him', which was said to signal pre-determination of his dismissal. An appeal meeting was held on 28 September 2000. It was conducted by Mr John Lacey, General Manager TVDC, who was supported by Ms

Georgia Long of HR. The Claimant attended and was accompanied by a trade union representative. The meeting took over an hour and the discussion was wide-ranging. Mr Lacey subsequently spoke with Mr Arno, Mr MacPherson and Ms Caroline Andrew, Senior Employee Relations Specialist. By a detailed letter of 6 November 2020, running to 11 pages, Mr Lacey dismissed the appeal against dismissal, holding that the redundancy had been genuine and the procedure followed, fair. In relation to the point about Mr Dee's remark at the meeting of 26 June 2020, Mr Lacey found, accepting the evidence of Ms Andrew, who had been present (Mr Dee was not available, having left the organisation), that the reference was simply to the fact that plans for a reorganisation were about to be announced and would inevitably be unwelcome to the Claimant, as to all persons affected.

55 The Claimant was one of about 700 individuals dismissed by the Respondent on the ground of redundancy in the 2020 reorganisation.

Facts relevant to the health and safety unfair dismissal claim

56 Since this part of the case turns fundamentally on the meaning of the statutory provisions and there is very little factually between the parties, it would not be proportionate for me to add many findings to those already made concerning the scope and nature of the Claimant's job. His general responsibilities for monitoring, oversight, liaison and daily reporting certainly involved a health and safety component. In particular, the Duty Manager has the duty to look out for health and safety issues and hazards and to report them. It may fall to him to resolve minor matters at once. Otherwise, they must be taken to the manager of the relevant contractor on site or, where necessary, to the Project Manager. Moreover, despite these reporting mechanisms, there have been occasions when a Duty Manager has had to intervene unilaterally. I have already noted that the Claimant did, on occasion, take the decision (which he had express power to do) to halt work temporarily on a health and safety ground.

57 The difficulty for the Claimant is that, despite the disproportionate mass of evidence concerning his health and safety responsibilities, his claim under the 1996 Act, s100(1)(a) does not get off the ground unless he was 'designated' by the Respondent to carry out activities in connection with preventing or reducing risks to health and safety. As I have explained on the basis of binding legal authority, the notion of 'designation' entails assignment or attribution to an individual of a special health and safety function, extending beyond his or her ordinary job duties. The Claimant has never had any such special, additional health and safety function. His duties in relation to health and safety matters were indistinguishable from those of the other Duty Managers.

Facts relevant to the 'whistle-blowing' unfair dismissal claim

58 Here again, I need to start with the principle of proportionality. In view of the way in which I have decided the case on the matter of the reason for dismissal, it would not be proportionate for me to devote pages of analysis to finding facts and drawing conclusions on the issue of whether the Claimant ever acquired the protection of the 1996 Act, s103A. For present purposes, the findings which follow, are perhaps rather more than is needed. I will identify the alleged protected

disclosures as 'PD1', 'PD2' and so on, mimicking the more elaborate paragraph numbering system in Employment Judge Bunting's appended case management document.[3]

59 Although some of the findings grouped here might reasonably be seen as 'secondary', evaluative or inferential findings, I think it convenient to keep them together in one place.

60 PD1, PD2, PD3, PD4, PD10 and PD11, which date from December 2019 to June 2020, concern an incident in April 2019 when a staircase at the Store was opened before an analyst had carried out asbestos checks. I find that, taken together at least, they amount to a communication of information. Not without hesitation (given in particular the delay in raising the matter), I further find that the Claimant reasonably believed that the information tended to show a breach of a legal obligation and/or a risk to health and safety and that the disclosure was made in the public interest.

61 PD5, contained in the Claimant's grievance of 12 March 2020, contains information about a fire in the Store's Men's Contemporary Department on 3 January 2020, makes critical comments about the Respondent's response to the fire and conveys his chief complaint as being that he was not notified of what had happened (he was not on duty) or of what lessons had been learned. I find that this communication conveyed information and that the Claimant reasonably believed that it tended to show a breach of a legal obligation and/or a risk to health and safety. Taking the disclosure as a whole, I am also prepared to assume that he believed that it was communicated in the public interest despite his central preoccupation appearing to be that he personally had not been made aware of the relevant events.

62 PD6, contained in an email sent by the Claimant to various individuals, including Mr Arno, Mr McDaid and Mr Gregory, on 16 June 2019, made allegations of various breaches by contractors of health and safety rules, which had resulted in the Claimant stopping the work on the relevant site. Mr McDaid immediately acknowledged the message as identifying a serious issue. I find that it conveyed information which the Claimant reasonably believed to show a breach of a legal obligation and/or a risk to health and safety and that he reasonably believed that its disclosure was in the public interest.

63 PD7, contained in the grievance of 12 March 2020, conveyed an assertion that the Claimant had not seen a risk assessment in respect of his job. In my judgment, that is not a disclosure of information. And even if it was, it was not a disclosure of anything which the Claimant believed to show a breach of the legal obligation or a risk to health and safety. (It was not in dispute that risk assessments had been carried out in respect of specific tasks. This is different: it concerns a proposed risk assessment in respect of an entire role.) Nor, I find, did the Claimant believe that this communication was in the public interest and, if I am wrong about that, I find that any such belief was not reasonable.

[3] As already mentioned, Judge Bunting listed 10 disclosures. I refer to the two additional disclosures as PD11 and PD12.

64 PD8, also contained in the grievance of 12 March 2020, is a complaint about 'not working the actual hours in contract'. The Claimant offered, so far as I can recall, no specific information concerning excess hours and I find that he did routinely work his contracted hours. He also elected to work voluntary overtime. I find that this complaint falls short of amounting to a communication of information and stands as a mere 'allegation'. I further find that it was not a matter which, in the Claimant's reasonable belief, tended to show a breach of any legal obligation or a risk to health and safety. Nor am I persuaded that he believed that this disclosure (if such it was) was made in the public interest.

65 PD9, again in the grievance of 12 March 2020, is a complaint about the absence of any annual health check. I make identical findings here to those in respect of PD8.

66 By PD12, contained in an email to Mr Arno, Mr McDaid and Mr Gregory sent on 6 January 2020, the Claimant referred to contractors working a 17-hour shift and then driving to Nottingham (something which '[happened] a lot'), contending that the Respondent had a duty 'as the client' to ensure that contractors take all necessary steps to avoid risks. I find that this was a communication of information, but I think it very unlikely that the Claimant really believed that it tended to show a breach *by the Respondent* of any legal obligation. And if I am wrong about that, I am in no doubt that any such belief was not reasonable. To state the obvious, the Respondent had no power, let alone duty, to control the behaviour of contractors after they left the Harrods site. In the circumstances, I do not accept that the Claimant believed that this disclosure was made in the public interest. And again, if I am mistaken on that point, I find that any such belief was also unreasonable.

Secondary Findings and Conclusions

Rationale for primary findings

67 I found the Claimant and the Respondent's witnesses frank and sincere. In arriving at my primary findings, I have had regard to the plausibility and consistency of the evidence given by witnesses and have given particular attention to contemporary documents.

'Ordinary' unfair dismissal

68 The Claimant did not dispute that a redundancy situation arose as a consequence of the Respondent's decision to reorganise its business. Nor did he dispute that the Respondent was entitled to judge that the TSD should not be exempt from the need for economies.

69 In my view it is very clear that a redundancy situation arose as a consequence of the reorganisation. The requirements of the Respondent's business for employees to carry out work of a particular kind, namely Out of Hours Duty Manager work, had diminished as a consequence of the decision to use the Lead Manager and one of the Duty Managers to cover the working week between them and to look to the daytime team to fill in where necessary.

70 To reorganise in that way was a business decision open to the Respondent in the circumstances. It was also permissible to confine the pool for selection to the two Duty Managers. The Respondent was entitled to judge that the Lead Duty Manager should be retained because (as was not disputed) he had some responsibilities at a higher level, sitting between the Duty Managers and Mr McDaid. The Respondent was also entitled to judge that the pool should consist of the two Out of Hours Duty Managers and should not include the daytime Duty Managers. The responsibilities of the two categories of Duty Manager were not the same, as was vividly reflected in the substantial difference in the salaries they attracted.

71 The selection criteria were reasonable and certainly permissible. They were very largely objective and capable of measurement and verification. It was reasonable to resort to an interview in order to separate the two candidates after application of the initial criteria. It was also reasonable and certainly permissible to include at interview questions designed to test competence and values, despite the fact that this would require scorers to apply a degree of subjective judgement in their assessment of the answers.

72 The scoring scheme was not the subject of any challenge, rightly in my view. It was certainly a proper and permissible scheme.

73 Nor, again rightly, was there any challenge to the application of the scheme, including the scoring of each candidate at the interview stage.

74 As I have mentioned, there was a full and genuine consultation process. I am satisfied that the Claimant was made fully and clearly aware of the Respondent's reorganisation plans and the rationale for them and had ample opportunity to question the proposals and/or put forward arguments or suggestions for means by which compulsory redundancies might be averted.

75 The Claimant was also advised at all stages of the consultation process as to where to seek information about vacancies within the Respondent's business. It seems that there was no vacancy for which he was suited or, at least, none which attracted his interest.

76 In the circumstances, I am satisfied to a high standard that the redundancy process was fair and certainly well within a range of permissible decision-making open to the Respondent in the circumstances.

77 The dispute is really about substance rather than process. The nub of the Claimant's case is his challenge to the stated reason for dismissal. But here too, I have reached a very clear answer. I have started by reminding myself of the law. The central question is whether the reason, or principal reason, for dismissal was that the Claimant *was redundant* (emphasis added). The focus is not on the belief of the employer, but on the legal reality (see the 1996 Act, s98(2)(c)). Was the Claimant redundant? In my view, he manifestly was, given the reorganisation which had been decided upon and the selection exercise which had been performed.

78 Was that the reason, or principal reason, for dismissal? The obvious answer, I think, is yes. For a clear business reason, one of two identical posts had been deleted. That left one of two post-holders redundant. The Claimant had lost the competition against the other post-holder for the single Out of Hours Duty Manager vacancy in the new structure. Absent any possibility of redeployment, the only rational course open to the Respondent was to dismiss him as redundant. To do anything different would have defeated the object of the reorganisation, namely to achieve economies. This reasoning accords with common sense and is borne out by the contemporary documents. The Claimant argues (submissions, p2 and following) that the timing of the redundancy process 'strongly suggests an ulterior motive', namely to get rid of him as a 'whistle-blower'. With respect to him, he seems to have fallen for an old fallacy: the fact that one event precedes another does not of itself justify treating the former as the cause of the latter.[4] That plans for a business-wide reorganisation (in the aftermath of a commercially catastrophic event) are announced at a time when a particular employee is pursuing a grievance raising health and safety issues does not point to a malign motivation against that employee. The suggestion of a 'sham' redundancy programme (which the Claimant felt evident discomfort in putting to Mr Illingworth) was plainly hopeless. His second-string argument was that the timing suggested 'contamination of decision-making', apparently implicating Mr Arno and/or Mr Illingworth. But there is simply no evidential basis for any theory of manipulation of the redundancy process. That process was, as I have found, entirely unobjectionable. When it came to the selection exercise, Mr Arno gave the Claimant the very score which (as he very fairly accepted in evidence) he would have awarded himself. He was replaced by Mr MacPherson at the interview stage, at the Claimant's request. The Claimant makes no criticism of the scores awarded on interview. To his credit, he does not argue that the ultimate scoring outcome was unfair or that Mr Sullivan ought to have been dismissed in his stead.

79 For all of these reasons, I reject the complaint of 'ordinary' unfair dismissal.

Health and safety unfair dismissal

80 On the strength of my findings of fact above, the claim under the 1996 Act, s100(1)(a) falls at the first hurdle. The Claimant was not 'designated' in accordance with that provision and the protection he invokes does not attach to him.

81 The claim is, in any event, without merit. Even if the Claimant was within the statutory protection, he would succeed only if the Tribunal found that activities carried out by him pursuant to the designation were the sole, or principal, reason for dismissal. I am satisfied that he was not dismissed because of his interest in, or concerns about, health and safety matters. Those matters played no part whatsoever in the decision to dismiss. The sole reason for his dismissal was redundancy.

'Whistle-blowing' unfair dismissal

[4] The fallacy is sometimes given the Latin tag, *post hoc ergo propter hoc*.

82 On my findings above, the Claimant establishes that some of the communications on which he relies amounted to protected disclosures for the purposes of the 'whistle-blowing' provisions. But his claim under this head fails because, I find, such disclosures were not the reason, or even a contributory reason, underlying the dismissal. I will not repeat my findings above.

Overall conclusions

83 It follows that the dismissal was not unfair.

84 Finally, and only for completeness, I should add that I have confined my decision-making to the agreed issues. It would have been open to the Claimant to pursue claims under the 1996 Act, 105(3) and 105(6A), to the effect that the reason for dismissal *was* redundancy, but the dismissal was automatically unfair on the basis that the reason, or principal reason, for *selecting him for redundancy* was a reason which offended against the corresponding unfair dismissal protections of ss100(1)(a) and 103A. That course would have spared him the hugely challenging task of attempting to undermine the Respondent's self-evidently solid case on the genuineness of the redundancy ground relied upon. Instead, the focus would have been exclusively on the reason why the Claimant was selected for redundancy. But, for the reasons already stated, the outcome would have been the same. In short, I would have found that the s105(3) claim did not get off the ground because the Claimant was not 'designated', that the selection had, in any event, nothing to do with his health and safety activities, and that the s105(6A) claim failed because such protected disclosures as there were did not in any way influence, let alone amount to the reason or principal reason for, the Claimant being selected for redundancy.

Outcome and postscript

85 For the reasons stated, the claims fail and the proceedings as a whole are dismissed.

86 Finally, I would not wish to leave this litigation without saying that I greatly regret the pain and stress which it has cost the Claimant. I accept entirely that he has pursued his claims under the settled conviction that they are valid. For the reasons I have given I am unable to share his view, but I sincerely hope that having a decision on the merits will provide him with closure and a chance to make a fresh start in employment, putting his conspicuous energy and talents to fulfilling use.

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EMPLOYMENT JUDGE SNELSON
Date: 19 December 2025

Reasons entered in the Register and copies sent to the parties on 19 December 2025
..... for Office of the Tribunals

APPENDIX

LIST OF ISSUES

1. Unfair dismissal

1.1 Was the claimant dismissed?

1.2 What was the reason or principal reason for dismissal? The respondent says the reason was redundancy or some other substantial reason.

1.3 If the reason was redundancy, did the respondent act reasonably or unreasonably in all the circumstances, including the respondent's size and administrative resources, in treating that as a sufficient reason to dismiss the claimant? The Tribunal's determination whether the dismissal was fair or unfair must be in accordance with equity and the substantial merits of the case. It will usually decide, in particular, whether:

1.3.1 The respondent adequately warned and consulted the claimant;
1.3.2 The respondent adopted a reasonable selection decision, including its approach to a selection pool;
1.3.3 The respondent took reasonable steps to find the claimant suitable alternative employment;
1.3.4 Dismissal was within the range of reasonable responses.

1.4 What was the reason or principal reason for dismissal? The respondent says, as an alternative, the reason was a substantial reason capable of justifying dismissal, namely business reorganisation.

1.5 Did the respondent act reasonably or unreasonably in all the circumstances, including the respondent's size and administrative resources, in treating that as a sufficient reason to dismiss the claimant? The Tribunal's determination whether the dismissal was fair or unfair must be in accordance with equity and the substantial merits of the case.

2. Protected disclosure

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

2.1.1 What did the claimant say or write? When? To whom? The claimant says they made disclosures on these occasions:

2.1.1.1 In relation to s80 Shaft Asbestos Works - 23 January 2020 – Email to Patrick McDaid, Ray Arno and Simon Gregory.
2.1.1.2 In relation to s80 Shaft Asbestos Works - 12 March

2020 – Grievance letter (para 2.1.1).
2.1.1.3 In relation to recommendation to an investigation to the s80 Shaft Asbestos Works - 12 March 2020 – Grievance letter (para 3.1).
2.1.1.4 In relation to the claimant's opinion as to the consequences of a failure to follow his advice - s80 Shaft Asbestos Works - 12 March 2020 – Grievance letter (para 4.1).
2.1.1.5 In relation to fire in the men's contemporary department - 12 March 2020 – Grievance letter (para 2.1.2).
2.1.1.6 In relation to the Portview site closure - 12 March 2020 – Grievance letter (para 2.1.3).
2.1.1.7 In relation to a failure to conduct a risk assessment - 12 March 2020 – Grievance letter (para 2.2).
2.1.1.8 In relation to the claimant's working hours - 12 March 2020 – Grievance letter (para 2.2).
2.1.1.9 In relation to the failure to carry out an annual health check - 12 March 2020 – Grievance letter (para 2.2).
2.1.1.10 In relation to s80 Shaft Asbestos Works – 19 June 2020 – Updated Grievance letter (para 2.1).

2.1.2 Did they disclose information?

2.1.3 Did they believe the disclosure of information was made in the public interest?

2.1.4 Was that belief reasonable?

2.1.5 Did they believe it tended to show that:

2.1.5.1 a criminal offence had been, was being or was likely to be committed;
2.1.5.2 a person had failed, was failing or was likely to fail to comply with any legal obligation;
2.1.5.3 the health or safety of any individual had been, was being or was likely to be endangered;
2.1.5.4 the environment had been, was being or was likely to be damaged;
2.1.5.5 information tending to show any of these things had been, was being or was likely to be deliberately concealed.

2.1.6 Was that belief reasonable?

2.2 If the claimant made a qualifying disclosure, it was a protected disclosure because it was made to the claimant's employer.
If so, it was a protected disclosure.

<u>3. Automatically Unfair dismissal (whistleblowing – s103A)</u>

3.1 Was the claimant dismissed?

3.2 Was the reason or principal reason for dismissal that the claimant made a protected disclosure?
If so, the claimant will be regarded as unfairly dismissed.

4. Automatically Unfair dismissal (health and safety – s100(1)(a))

4.1 Was the claimant dismissed?

4.2 Was the claimant designated by the respondent to carry out activities in connection with preventing or reducing risks to health and safety at work (section 100(1)(a) ERA 1996)?

4.3 Did the claimant carry out, or propose to carry out, those activities?

4.4 Was the reason, or principal reason, for dismissal that the claimant carried out (or proposed to carry out) those activities? If so, the claimant will be regarded as unfairly dismissed.