



EMPLOYMENT TRIBUNALS

Claimant: Mr A Gheorghiu

Respondent: Superdrug Stores Plc

Heard at: Watford Employment Tribunal (In Public; In Person)

On: 26 to 29 January 2026

Before: Employment Judge Quill (Sitting Alone)

Appearances

For the Claimant: Ms A Ciobanu, fiancée
For the respondent: Ms S Tharoo, counsel

Interpreter

Days 1 to 3: Mr A Todea
Day 4: Mr Marcusan-Dumitru

Oral judgment and reasons were given on 29 January 2026. Written judgment was sent to the parties on 18 March 2026. A request for written reasons was made, and these are those written reasons.

REASONS

Introduction

1. A request for written reasons was made on 31 January 2026 and forwarded to me on 18 February 2026. I apologise to the parties and their representatives for the delay in sending this document to them.
2. This was an in-person hearing, conducted over four days. There was an interpreter present on each of the four days.

3. I had a bundle of documents of around 401 pages. References below to [Bundle XXX] are to page XXX from that bundle.
4. I had written witness statements, one from the claimant, and 4 statements on behalf of the respondent,
 - 4.1 Alina Ani-Ungureanu
 - 4.2 Ioana Madalina Ciocirlan (who was formerly Giogu)
 - 4.3 Elena Ciora
 - 4.4 Krzysztof Niedzielski
5. Each of the witnesses attended the hearing, gave evidence on oath and answered questions.
6. There were some additional documents supplied during the course of the hearing, which were replicas of pages already in the hearing bundle, with signatures added in some places.
7. There had been a case management hearing before EJ George on 2 June 2025 [Bundle 46]. EJ George's further orders were sent to parties on 28 August 2025 [Bundle 63], and these included updated list of issues [Bundle 66].

Claims and Issues

8. Omitting the sections that dealt with remedy matters, the list of issues was:

1. Time limits

1.1 Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 5 December 2023 may not have been brought in time.

1.2 Were the discrimination complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

1.2.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?

1.2.2 If not, was there conduct extending over a period?

1.2.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

1.2.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

1.2.4.1 Why were the complaints not made to the Tribunal in time?

1.2.4.2 In any event, is it just and equitable in all the circumstances to extend time?

2. Unfair dismissal

2.1 Was the claimant dismissed?

2.1.1 Did the respondent do the following things:

2.1.1.1 Follow an unfair disciplinary process, namely one in which the respondent

2.1.1.1.1 lacked concrete evidence,

2.1.1.1.2 only listened to one side;

2.1.1.1.3 failed to obtain relevant CCTV footage;

2.1.1.1.4 failed to take into accounts statements from relevant witnesses namely the claimant's previous female manager and female colleagues;

2.1.1.2 Suspend the claimant on 31 October 2023 for failure to follow a reasonable management request when that resulted from a failure on the part of the respondent to adequately train the claimant as to the paperwork which needed to be completed.

2.1.1.3 On 22 February 2024 impose a disproportionate sanction by moving the claimant to a different department which had the consequence that the claimant moved from skilled rate to semi-skilled rate;

2.1.1.4 Discriminate against the claimant?

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

2.1.2.1 whether the respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent; and

2.1.2.2 whether it had reasonable and proper cause for doing so.

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

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

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

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

2.3 Was it a potentially fair reason?

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

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

4. Direct sex discrimination (Equality Act 2010 section 13)

4.1 Did the respondent do the following things:

4.1.1 Did his immediate line manager, Ms Giogu, presume or regard the claimant as aggressive because he is a man – the claimant states that this presumption caused her to complain about him;

4.1.2 Did, Ms Giogu, actively construct and promote a false narrative portraying the claimant as an aggressive bully because he is a man;

4.1.3 Did the investigation manager, Alina Ana Ungureanu, presume or regard the claimant as aggressive because he is a man – the claimant states that this caused her to suspend and investigate him for allegedly aggressive behaviour;

4.1.4 Carry out a one-sided investigation taking into account predominantly female witnesses and excluding as irrelevant female witness put forward by the claimant;

4.1.5 Decide to move the claimant to a different department on 22 February 2024.

4.2 Was that less favourable treatment?

The Tribunal will decide whether the claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the claimant's.

If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether they were treated worse than someone else would have been treated.

The claimant says they were treated worse than Mirela Zafir in respect of the decision to move him to a different department. Otherwise, the claimant has not named anyone in particular who they say was treated better than they were and relies upon hypothetical comparators.

4.3 If so, was it because of sex?

4.4 Did the respondent's treatment amount to a detriment?

Facts

9. I make out the following findings of fact.
10. I have found these facts based on all of the evidence which I have heard and read, and on the balance of probabilities.
11. I do not find that any witness has deliberately attempted to deceive me. It is common place in litigation, that witnesses will give a version of events that is most favourable to themselves. That does not mean that they are being deliberately dishonest. Where there has been a conflict of evidence, as well as their statement and oral evidence, I have taken into account the contemporaneous documents.

Contract and Policies

12. In 2016, the claimant began working for the respondent as an agency worker, as shown in the letter on [Bundle 112].
13. In September 2020, he commenced as a direct employee. He was given the employment contract that starts at [Bundle 113], and his job title was distribution operative, and his rate of pay was described as "career band 10".
 - 13.1 Clause 1.2 said the respondent could make reasonable changes to job title and the capacity in which he was employed and his duties and responsibilities. It said he could be required to perform new duties and also that the line manager could be changed.
 - 13.2 Clause 1.3 required the claimant to comply with rules, regulations, policies and procedures.
 - 13.3 Clauses 2 and 4 contained details of salary and payments and so on.

- 13.4 Section 4, clause 9, deals with termination of employment. As at September 2023, the claimant had completed the third year of employment. He had not completed the fourth year. Therefore, in accordance with clause 9.2(b) of the contract [Bundle 117], the employer would have been required to give him four weeks' written notice of dismissal.
- 13.5 Clause 9.3 stated that the employer could terminate employment immediately and without any entitlement to notice or compensation if the employee was guilty of gross misconduct or gross negligence. It said that examples of gross misconduct were set out in the disciplinary rules and referred to the policies and procedures manual. It also said that that list was not exhaustive.
14. The covering letter made clear that policies and procedures were available to the employee on an electronic system or intranet. I accept that the employer had policies covering most matters, including the disciplinary policy and the dignity at work policy. Although the version in the bundle is dated August 2023, there must have been an earlier version. The claimant has not suggested that he did not have access to the disciplinary procedure. In any event, when he was undergoing a disciplinary process, it was supplied to him by email.
15. The disciplinary procedure starts at [Bundle 125].
- 15.1 The introduction includes seven bullet points stating the reasons for the procedure. The right to be accompanied is discussed.
- 15.2 [Bundle 127] includes a description of an investigation and an investigation meeting. It says an investigation meeting takes place prior to the disciplinary process. It refers to suspension. My interpretation is that suspension might take place before an investigation meeting or as a result of an investigation meeting.
- 15.3 The policy states that an investigation is likely to include meetings with the employee, meetings with relevant individuals, witness statements, and obtaining other relevant evidence.
- 15.4 Under the heading "disciplinary hearings" [Bundle 128], it is mentioned that informal routes should be used where appropriate and exhausted where appropriate before proceeding further.
- 15.5 Disciplinary issues are defined as those where the employee has behaved in an unacceptable way or breached company rules. Levels of warnings are discussed. It is noted that it will not always be appropriate to escalate warnings one by one, and that a higher level warning may be issued where appropriate. Dismissal is discussed, including dismissal without notice.

- 15.6 There is a description of summary dismissal [Bundle 130]. It states that this might occur if the employer has a reasonable belief that the employee has committed an act of gross misconduct. In those circumstances, the employee can be dismissed without prior warnings and without notice.
- 15.7 Under the heading “demotion”, the policy states that in certain circumstances, as an alternative to dismissal, an employee may be demoted with a consequent reduction in pay and conditions. I am satisfied that this was intended to mean, and that it was clear to the reader that it meant, that demotion as an alternative to dismissal could be an alternative to each of (i) dismissal with notice and (ii) summary dismissal.
- 15.8 At [Bundle 131], there is a further discussion of suspension. It says suspension might be used where there appears to have been serious misconduct. Conditions of suspension include that it is on basic pay. If the employee falls sick while suspended, they receive SSP rather than company sick pay.
- 15.9 There is a lengthy list of gross misconduct starting at [Bundle 133]. It includes, amongst other things, failure or refusal to carry out a legitimate and reasonable instruction, assault or improper or insulting behaviour, unlawful harassment, discrimination, intimidation, or any action preventing colleagues from carrying out their duties effectively. It also includes a general clause covering any serious breach of rules judged using a common-sense interpretation.
- 15.10 The list is not exhaustive.
- 15.10.1 It includes an assault or improper insulting behaviour towards colleagues or members of the public. There is no suggestion in this case of any assault, but there is an argument about whether there has been improper or insulting behaviour.
- 15.10.2 As would be expected, unlawful harassment and discrimination, intimidation are mentioned
- 15.10.3 The bullet points include, amongst other things, a failure or refusal to carry out a legitimate and reasonable instruction given by a manager, or to carry out normal requirements of the job.
- 15.10.4 It is also said that any action which prevents colleagues from carrying out their duties effectively is an example of gross misconduct.
- 15.10.5 There is a bullet point to say any other breaches of rules, policies and procedures which the employer views, using a common sense

interpretation, as being a serious infringement of normal industrial discipline or practice, will be regarded as gross misconduct.

- 15.10.6 Under the list, it is repeated, as it states in the contract itself, that the list is neither rigid, exclusive nor exhaustive, and another act of misconduct may be defined by the employer as gross misconduct. It says the penalty applied for a particular offence may vary according to the exact circumstances.
- 15.11 The claimant did not manage people, but for completeness, since it was put to respondent's witnesses during cross examination, one of the examples of gross misconduct is a failure by a manager to manage employees in accordance with the respondent's rules and procedures and policies
- 15.12 The procedure provides a right of appeal to a more senior manager.
- 15.13 It says that one of the employer's obligations is to ensure that somebody present at the hearing must ensure that notes are signed and dated
16. The dignity at work policy in the bundle is a two-page document from August 2023 defining bullying and harassment and setting out reporting procedures, including contacting human resources confidentially.
17. I do not agree with the Claimant's suggestion that a manager could not use that policy in respect of complaints against a subordinate. In any event, I do not consider that point material to my decisions on any of the matters in list of issues.

Duties and Training

18. The claimant worked in the damages department. This is part of the warehouse where pallets containing damaged items are processed. Each pallet contains boxes, each containing items which must be checked individually. The operative decides whether items are (i) salvageable and to be retained or (ii) hazardous and to be disposed of accordingly or (iii) neither of those things, so an item which is to be disposed of, but without the need to treat it as hazardous waste.
19. For those items that are to be kept, the operatives follow a process in which the item is appropriately repackaged. That item is then designated as a "putaway". One of the warehouse operatives tasks can be to deal with "putaways"; that is follow the process which culminates in the item being stored appropriately for potential future sale.
20. The pallet checking process requires checking every item. A pallet is only regarded as complete when every item has been checked. An employee does not always complete a pallet in a single shift. Work on a partially completed pallet

can be passed to others (on the same shift, or a different shift) or resumed later by the same worker.

21. However, the paperwork for each pallet must be completed contemporaneously so that there is a record of what has been done. There was documentation which was supposed to be used to keep a record of what had been done to each of the items in the pallet that had been checked so far
22. Ioana Madalina Ciocirlan (Ms Ciocirlan), known at the time as Ms Giogu, was a superuser, effectively a supervisor. She was more senior than general warehouse operatives. She reported to shift supervisors, including Alina Ani-Ungureanu (Ms Ani-Ungureanu), who had been a shift manager since the start of the claimant's employment.
23. The claimant raises issues about training, stating there is no signed document identifying specific training provided.
24. On his own account, prior to October 2023, the Claimant had not been formally criticised. He learned tasks through colleagues and word of mouth and also trained new starters himself.
25. On any given day, his tasks were allocated to him by the superuser. In particular, he might be told to work on checking pallets of damages, or else he might be told to work on "putaways".

Historic Complaints

26. In his own witness statement, the claimant refers to a document at [Bundle 154]. Although the name is redacted, on the claimant's account this is a grievance submitted by a colleague, Cristian, against Ms Ciocirlan. The complaint includes suggestions that Ms Ciocirlan had been giving work targets that were too high, generally increasing the targets, and also that she allegedly took no account of Cristian's physical condition, namely back pain.
27. It was put to the claimant in cross-examination that the outcome to this is the document shown at [Bundle 165]. While the grievance itself is from August 2022, this is an item dated 6 January 2023. It is a letter signed by Ms Ani-Ungureanu, and the claimant says he does not know whether this is the outcome of the grievance that he referred to or not.
28. The assertion put to the Claimant in cross-examination was not included in the respondent's written witness evidence. I can say no more than that the contents of the 6 January letter are not inconsistent with the grievance at [Bundle 154]. However, to the extent that the claimant is seeking to argue that Cristian's grievance had been ignored, the claimant has not proved that.

29. The claimant also relies on the treatment of Ms Mirella Zafir, who is named in list of issues.
30. In his witness statement, the Claimant refers to an outcome letter which he says was given to Ms Zafir and refers to [Bundle 162]. The respondent accepts that this is an outcome letter to Ms Zafir. The redactions to this document are inappropriate in my opinion. I accept that, as a general rule, comments in documents – and tribunal judgments - about disciplinary action to other employees, who have not been witnesses, must be handled with care. However, this particular employee was named as an alleged actual comparator, and – for that reason – documents relating to Ms Zafir about disciplinary action – or behaviour which might have merited disciplinary action - fell within the orders for disclosure of documents. Some redactions (for example, where her home address, personal contact details etc were not relevant to anything I had to decide) would have been perfectly fine. However, deleting both the recipient and signatory details of the letter at [Bundle 162 to 164] was not appropriate. That being said, I have been able to find the necessary facts, and the inappropriate redaction has not prevented a fair hearing.
31. The gist of the allegation against Ms Zafir can be seen from the outcome letter, notwithstanding the unnecessary and inappropriate redactions. The allegation was that Ms Zafir was given a particular instruction and she declined to carry it out.
32. The decision of the person who issued this outcome letter was that the reasons that Ms Zafir had given for declining or refusing to carry out instructions were not adequate. The letter noted that Ms Zafir said, at least during the disciplinary process, that she did not feel well enough, and/or was too tired to carry out the task.
33. The evidence that was taken into account, as referred to in the outcome letter, was that the superuser had asked Ms Zafir multiple times, to complete the task or to provide an explanation, and Ms Zafir had not done so, and had not given witnesses, including the superuser, the explanation that she later relied on at the disciplinary hearing.
34. Ms Zafir's assertion that the superuser had raised their voice was rejected. The letter said that other witnesses had been contacted, and had not supported the employee's version of events.
35. The letter said that the shift manager who made the decision decided that Ms Zafir committed an act of gross misconduct, which was said to be a refusal to carry out a legitimate and reasonable request from management on 30 September 2022, and it said that the outcome was a final written warning.

36. There is no suggestion in the outcome letter that the employee had been accused of behaving aggressively, or that the managers in question or other colleagues were not willing or able to work with Ms Zanfir in the future.
37. At [Bundle 160], there is an email which the claimant sent to human resources on 30 September 2022. The introduction makes clear that the email was about Ms Ciocirlan. The email said that the claimant worked in the damages department for four years, including the period of time being an agency worker.
38. The email stated, accurately (in my view, and as the respondent accepts), that the claimant had not been considered to be somebody who caused issues in the past. The email stated that Ms Ciocirlan had acted inappropriately, including by screaming at the claimant. The claimant said he had raised concerns with his managers, and Ms Ani-Ungureanu accepts that he did so.
39. Indeed, Ms Ani-Ungureanu accepts that each of the claimant and Ms Ciocirlan had spoken to her on separate occasions to say that there were some issues between them. I accept Ms Ani-Ungureanu's account that she had suggested that she was willing to arrange mediation, and that there was no mutual agreement to that course of action. She did not think that matters had reached the level whereby she needed to take formal disciplinary action against either or both of them.
40. One of the incidents described in the email is the claimant reporting having been near to a machine while it was cooling down, and that Ms Ciocirlan was some distance away in the tagging department, and that she screamed at him.
41. It is potentially significant (for my findings about the events of the 16 and 19 October 2023) that the claimant says, firstly, that machines were cooling down and make a significant amount of noise, and secondly that it was sometimes necessary for workers to raise their voices when speaking to each other. On the occasion described in the email, the Claimant's allegation was that the superuser had, notwithstanding those issues, acted inappropriately by screaming at him.
42. HR replied to the claimant the following day, less than 24 hours after the email, and offered a meeting on 7 October 2022. A further email was sent on 15 November offering a meeting on 17 November. It is clear from the email trail that one or more meetings did occur, or at least discussions did occur, but ultimately on 18 November at 12:46 [Bundle 158], the claimant wrote to say that he believed there had been a change in Ms Ciocirlan's attitude in a good way since he returned from holiday.
43. He said he had not had any issues with her since he returned from holiday, and that he decided not to proceed with the complaint. My finding is that firstly there was no investigation, and therefore no finding about any allegations of

misconduct by Ms Ciocirlan at that stage, but secondly the reason there was no investigation was simply because the claimant stated that he had decided not to pursue the matter further.

Sickness Absence

44. In August 2023, the claimant had a brief period of absence due to back pain, and the records show that this was not work-related. There was a return to work interview, [Bundle 184]. He did have a further period of absence between 20 October and 30 October 2023, and that was said to be because of heart palpitations, dizziness, fatigue and insomnia on the Fit Note.
45. On return from the second period of absence, there was no return to work interview conducted. The claimant's account, as per his statement, is that it was what happened on 19 October at work that caused him to call in sick the following day and to have that period of absence.

October 2023 incidents

46. The employer's practices did not change in or around October 2023; the practices continued to be those that had been in place previously. I note that Ms Ciocirlan talks about some changes which, on her account, were improvements, but these were not recent changes as of October 2023.
47. The events of 16 and 19 October 2023 are centrally relevant.
48. The events, and alleged events, of 16 October and 19 October are relevant to the claims as presented in the list of issues. It is necessary for me to make some findings of fact about them, not least because, on the claimant's case in terms of sex discrimination, he alleges that Ms Ciocirlan constructed a false narrative.
49. In his witness statement, the claimant's version of what happened on 16 October is contained in the first four lines at the top of page 2. Ms Ciocirlan's evidence is in paragraphs 8, 9, 10 and 11 of her witness statement.
50. It is more or less common ground, and in any event my finding of fact is that on 16 October the claimant's shift was due to end at 10pm.
51. Earlier in the shift, at least an hour before the end, probably around 8:30pm or so, he had a discussion with Ms Ciocirlan. She asked him what he had done during that shift. She had allocated him to do putaways. He told her that he had done putaways, and he also told her that he had completed a pallet of damages.
52. Later in the shift, Ms Ciocirlan was walking around the damages department, accompanied by colleague Joshua Miles, and she came across an incomplete

pallet of damages. There is no dispute that the pallet that she came across was the pallet that the claimant had said he had completed.

53. There is also no dispute that, in fact, it was not actually completed, because there were some boxes that still remained to be checked. It is also common ground that Ms Ciocirlan spoke to the claimant about this.
54. I am satisfied fully on the evidence that her conscious reason for asking the claimant about this pallet was that she thought there was a situation that required an explanation from him. In particular, she thought she had been told by the claimant that he had completed the pallet, when it was clear that he had not completed it.
55. The claimant does not dispute that he told Ms Ciocirlan that the pallet had been completed, and he does not dispute that, in fact, it was not complete. His position is that the information he gave to her at the time was sufficiently accurate, because at the time he expected that the pallet would be fully completed by the end of the shift. It subsequently took longer than he had expected.
56. There are several disputes between them, about exactly what was said, about the tones of voices and the volumes of voices, and about whether either or both of them behaved aggressively. I have taken into account what they each have asserted when reaching my conclusions as set out in the analysis.
57. There were then incidents on 19 October 2023.
58. It is common ground that the claimant, during that shift, had started to check a particular pallet of damages. It is also common ground that there came a time during the shift when Ms Ciocirlan allocated him to other duties, and that that pallet was left incomplete.
59. There is no criticism of the claimant for the fact that the pallet was left incomplete; it was incomplete because he was given other duties instead. While the claimant was away attending to those duties, the pallet was taken away from where the claimant had left it and it was sent elsewhere.
60. In his witness statement to the tribunal, the claimant says that he was accused of not writing notes in relation to the partially completed pallet. The following day, 20 October, Ms Ciocirlan wrote to human resources [Bundle 186].
61. Amongst other things, she said that she wanted the situation to be resolved quickly and amicably, and in the email she gave her version of events on 16 October and 19 October.
62. Her version at the time was that the claimant had volunteered the information to her that he had not completed the paperwork on the pallet of damages, which

had been left partially completed when he was called away to other duties. Her account was that he said that he would be able to complete the paperwork based on notes he had made.

63. Her account was that she requested those notes from him, but that he refused to provide them to her, and said he was willing to give them to somebody else but not to her. She said she repeated the request and that he refused again.
64. At [Bundle 190-191], there is an email from the claimant to Russell Collyer, warehouse operations manager, dated 16 October 2023 at 10.48pm, which includes the claimant's version of events of 16 October, including allegations that he was feeling bullied by Ms Ciocirlan.
65. There was a response to that on 18 October. Mr Collyer offered to meet the claimant later in the week. As part of the same trail, the claimant wrote on Sunday 22 October, during his sickness absence, to refer to the events, at least briefly, that had allegedly occurred on 19 October.
66. Within the email, the claimant says that Ms Ciocirlan was accusing him of not writing down the items that would be sent for recycling. He said that he had told her that he had done this.
67. Ms Ani-Ungureanu commenced an investigation. She carried out a meeting with Ms Ciocirlan on 30 October, the notes of which appear at [Bundle 192]. Within that document:
 - 67.1 Ms Ciocirlan gave an account of 16 October, which I find to be consistent with what she said on other occasions, including the allegation that the claimant raised his voice during the discussion.
 - 67.2 In relation to 19 October, amongst other things, she said that the claimant had told her that she could start an investigation in relation to the partially completed pallet and paperwork. She said that she told the claimant she was not planning to start an investigation, but raised issues about the fact that he had not completed the paperwork fully.
 - 67.3 She claimed she felt in danger, felt stressed.
 - 67.4 She said she did not want mediation, but she did not want to be in close proximity to the claimant. She said she did not feel safe around him
68. My finding is that it is clear from what Ms Ciocirlan said during this meeting that she was fully aware that the paperwork she was asking the claimant to hand over was not official company documentation. She knew he had not said that he had (and therefore she knew that she was not asking for) the pre-printed forms that the claimant was required to complete. It is clear that what she was asserting

was that the claimant had told her that he possessed notes of raw data — my words, not hers — from which he could complete the official record in due course. Ms Ciocirlan (on her account) was asking that he hand that over those notes to her so that they could be used to complete the official record.

69. In the 30 October meeting, Ms Ciocirlan was asked if, on or after 19 October, the Claimant had handed these notes to anybody else. She said, as far as she was aware, he had not done so.
70. In fairness to the claimant, he was still off sick as at 30 October.
71. When Ms Ciocirlan was asked what she was looking for, she said she did not want mediation, but she did not want to be in close proximity to the claimant. She said she did not feel safe around him.
72. Ms Ani-Ungureanu also interviewed Ms Zanfir [Bundle 196] on 30 October.
 - 72.1 Ms Zanfir gave her version of events on 16 October. She said that the claimant had raised his voice, and that Ms Ciocirlan had remained calm.
 - 72.2 She spoke about 19 October and said that Ms Ciocirlan had approached the claimant with the paperwork for the pallet in question, and she had asked the claimant where the documents were to complete the paperwork more fully in relation to the items that the claimant had processed on that day.
 - 72.3 Her account was that Ms Ciocirlan had acted appropriately in the way she asked for the information, and it was the claimant who became angry. Ms Zanfir asserted that the claimant had a tendency to act in such a way that it was not possible to have a normal conversation with him without him becoming angry.
 - 72.4 Ms Zanfir said that the claimant had said that he was willing to give his notes to somebody else, but not to give it to Ms Ciocirlan.
 - 72.5 Ms Zanfir said that the claimant's behaviour had been very bad, that she had been left shaking, and that she did not feel comfortable around the claimant. She also reported that Ms Ciocirlan had been shaking and was in tears after the incident.
73. Ms Ani-Ungureanu also interviewed Cristian, with an interpreter present.
 - 73.1 In relation to 19 October, Cristian said that the claimant was shouting and that Ms Ciocirlan was not. He said that he personally thought that Ms Ciocirlan had been affected by the claimant's behaviour.
 - 73.2 Questions were put to him by Ms Ani-Ungureanu as to whether he thought that this type of behaviour could make women feel intimidated, his answer

was that the claimant did not speak to him like that and that he spoke to women differently.

- 73.3 He was also asked whether there were other people around, as well as himself and Ms Zanfir, on 19 October and also on 16 October. He said that, on 16 October, Joshua Miles had also been present.
74. The claimant returned to work from sickness absence on 31 October, and immediately he was called into a meeting with Ms Ani-Ungureanu. The initial part of that meeting was from around 2:00pm to around 3:30 pm, according to the notes, and then there was a gap and it reconvened for around eight minutes or so at 5:00 pm
75. Looking at the notes, and the length of the notes, my finding is that they cannot contain full details of everything discussed in a 90-minute conversation. I accept that the notes reasonably accurately report some of the things said in the meeting, although they not verbatim, and they are incomplete.
76. The claimant was told that there was an investigation into alleged conduct by him that might be a breach of the dignity at work policy, and also an investigation about alleged refusal of a managerial request on 16 and 19 October. He was told it was an investigation meeting.
77. The claimant gave an explanation in relation to 16 October that is consistent with what he said on other occasions.
- 77.1 In particular, he said that he believed that the information he gave about what work he had done that day was sufficiently accurate in all the circumstances. He said that Ms Ciocirlan reacted aggressively to him on that occasion, screamed at him and accused him of lying. He named Ms Zanfir and Cristian as witnesses, although he said he did not know whether they had heard or not.
- 77.2 He spoke about further discussions that he had with Ms Ciocirlan later that day. [And I should mention that there was no dispute that he spoke to her by phone at least a couple more times before the end of his shift.] The claimant was not aware of any other witnesses in relation to those discussions.
- 77.3 The claimant was given the opportunity to say anything else he wanted to say about 16 October, and he claimed that he had been told by Ms Ciocirlan that he was stealing.
78. There was then a discussion about 19 October. The claimant's account is recorded at [Bundle 207].

- 78.1 His account was that he had not completed all of the paperwork for the work that he had done in relation to the partially completed pallet of damages.
- 78.2 He said that he had divided items into categories, but had not had time to write things down. He was asked how, if he had not written it down on the official paperwork, he would be able to complete that paperwork in due course. He said that he had a separate piece of paper with the information on it.
79. My finding of fact is that when the claimant was being cross-examined in this Employment Tribunal hearing, he initially gave answers that were consistent with what he is recorded as having said on 31 October 2023, namely that he acknowledged that the paperwork had been incomplete — in other words, for the incomplete pallet, the paperwork did not contain a record of everything he had done before he went away to do another task.
80. Later in his evidence, the claimant sought to suggest that actually the paperwork had been completed fully in relation to that incomplete pallet before he went away. My finding is that that is not correct, and that the account he gave on 31 October is more accurate.
81. In the interview on 31 October 2023, when giving his account of what Ms Ciocirlan said to him, the Claimant said that Ms Ciocirlan had accused him of not completing the paperwork correctly, and that he had told her that that was not correct, and that he would have been able to complete it correctly, and that he had documents in his own possession in which he had written all the relevant information.
82. He made the claim that he had shown Ms Ciocirlan the piece of paper, but that he had refused to hand it to her. He also denied that he raised his voice after that incident, and he named Ms Zafir and Cristian as potential witnesses.
83. When the meeting resumed just before 5pm, Ms Ani-Ungureanu informed the claimant that he was suspended, and she gave him a suspension letter. The suspension letter is at [Bundle 210].
84. I accept that the decision to suspend the claimant was made by Ms Ani-Ungureanu, having listened to what the claimant said between 2pm and 3:30pm, and having taken advice from HR, as is customary. It was her decision, and she decided that suspension was appropriate in the circumstances.
85. To the extent that the claimant denies having had the opportunity to check the notes on 31 October 2023, I accept that there is some merit in what he says. I think he is telling the truth when he says that, because the notes were in English, he was not given as much time as he would have liked to check them thoroughly.

86. In terms of the suggestion that the part about him raising his voice was added after he signed the notes, it is sufficient for me to say that, when the claimant signed the notes, he was not intending to agree that he had raised his voice.
87. At the time he was suspended on 31 October, the claimant's grievance was initially investigated by Krzysztof Niedzielski. There was a meeting with the claimant, the notes of which appear at [Bundle 215]. This was on 2 November, a few days after the meeting with Ms Ani-Ungureanu, and about two weeks after 19 October itself.
88. The Claimant gave an account on 2 November. It was a much briefer account than he had already given (and I make no criticism of the claimant for that) in relation to those October 2023 incidents, although it was not inconsistent with what he had already said/written.
89. Ms Ani-Ungureanu continued her investigation. She spoke in particular to Joshua Miles and did so on 2 November, and she met Ms Ciocirlan again, with notes at [Bundle 233]. She met Cristian again [Bundle 243]. I am satisfied that she made a good faith attempt to ensure that she asked appropriate questions and recorded their answers accurately, with the assistance of HR.
90. Because Mr Niedzielski was unavoidably absent for a period of time after he met the claimant on 2 November, the decision was made to reallocate the grievance to Ms Ciora. She spoke to Ms Ciocirlan [Bundle 247], to Cristian [Bundle 250], and to Ms Ani-Ungureanu [Bundle 252].
91. I accept, as a finding of fact, that all of these interviews were signed at the time of the interviews after the witnesses had checked the contents. I do not find it suspicious that the copies that were sent to the claimant were unsigned versions. It would have been preferable if the signed versions had been the ones that were sent as part of disclosure, but the issue was not raised by the claimant, or anyone on his behalf, promptly after he received them. The first time it was raised as an issue was during cross-examination, and this enabled the respondent to make further enquiries. I am satisfied with the explanation that has been given, which is that the HR representative was able to access scanned copies of the signed versions. I accept that it is an innocent oversight on behalf of the respondent and/or its representatives and I accept that they thought the unsigned versions would be sufficient in all the circumstances.
92. In any event, regardless of whether the explanation for failing to supply the signed versions sooner is satisfactory or unsatisfactory, my finding is that the text of the versions in the bundle do matches the versions disclosed during the course of the hearing, and that none of these documents is a recent fabrication.

93. On 7 December, Ms Ciora wrote to the claimant with the decision on his grievance. She rejected the claimant's assertion that he had been accused of stealing by Ms Ciocirlan, and she accepted that it was a normal part of the superuser's role to carry out checks and ask questions of employees, and also to check that paperwork was completed correctly.
94. Ms Ciora also rejected the claimant's suggestion that his suspension had been inappropriate.
95. By letter dated 26 January [Bundle 263], the claimant was invited to a disciplinary hearing, and he was supplied with copies of the notes of the investigation carried out by Ms Ani-Ungureanu. The documents itemised in that letter were all, in fact, supplied to the claimant, and that included the dignity at work policy and the disciplinary policy.
96. The claimant was told that there was to be a disciplinary hearing in relation to alleged gross misconduct. He was told that the allegations were, firstly, that he fundamentally breached the dignity at work policy by his behaviour, and secondly, that he refused a reasonable management request to provide paperwork to his line manager, that being Ms Ciocirlan, as the claimant understood.
97. The letter informed him of his right to be accompanied. The meeting was rearranged for 13 February, and a letter dated 31 January [Bundle 268], repeated the same information for the new hearing date. The signatory was Mr Niedzielski and the letter made clear that Mr Niedzielski was to conduct the hearing, accompanied by Joanna Davey, People Business Partner.
98. The claimant emailed the HR representative, Ms Davey, copying in the disciplinary hearing manager, and he asked for the respondent to conduct what the claimant described as a "360 feedback". The respondent does not dispute that the Claimant had been told he was unable to approach the witnesses. In this document, the Claimant gave the names of the proposed witnesses to the respondent. The reason he gave was that, as far as he was concerned, he had been accused of being a bully. He also said that the respondent had provided statements from people who had not known him for several years. This, he said, was in contrast to the individuals whose names he supplied.
99. The Claimant said that the 10 names which he supplied were a reasonable representation of people who knew him, including female colleagues and people who had managed him, and that these people would be able to comment on whether he was somebody who had been violent or verbally or physically inappropriate.

100. On 1 February, the respondent said that it was looking at particular incidents and asked the claimant if these people had information about the specific incidents. On 2 February, the claimant repeated what he had said previously and went into more detail about why the individuals should be approached. He does not suggest either at the time or later that they were direct witnesses to the events of 16 or 19 October, but he did give a clear account of why he thought they should be approached. In his opinion, they had relevant information.
101. Ms Davey replied on 7 February. She clearly understood what the claimant was saying about these witnesses, and in particular she referred to them as character witnesses. It was clear what she meant by that. She said the respondent was willing to approach two of those and invited the claimant to say which two. The claimant responded that since the respondent was relying on four witnesses, they should approach at least four of his witnesses. On 8 February, the respondent said that they did not accept that argument and repeated what they had said previously. The claimant did not agree. As made clear politely but firmly on 8 February 2024, the respondent stood its ground.
102. In due course, two witness statements [Bundle 280 and 281] were obtained and copies of them were supplied to the claimant in advance of the disciplinary hearing. The claimant also requested other items, and the respondent supplied those to him as well prior to the disciplinary hearing.
103. The hearing commenced on 13 February. There are handwritten and typed versions of the notes. I am satisfied that the typed version is sufficiently accurate, although the handwritten version makes it clear, for the avoidance of doubt, that the 13 February meeting finished around 13:47 and the resumed meeting on 22 February started around 12:07.
104. There was a telephone call after the first part of the meeting before the resumption. The timing is clear from (amongst other things) the fact that the notes of the first part of the meeting is part of the discussion.
- 104.1 The Claimant and the Respondent had each produced transcripts of an audio recording made by the Claimant. As well as reading both transcripts I have listened to it myself. The recording does not start at the beginning of the phone conversation.
- 104.2 As per both transcripts, the word in relation to Ms Giogu's (Ms Ciocirlan's) conduct is "could" rather than "should". The claimant accepts that. I draw no adverse inference about credibility because the word "should" was used in his witness statement. I do not place as much importance on this, as the parties apparently do.

- 104.3 I prefer the respondent's interpretation of what Mr Harmse was saying, namely that he was simply reporting that the notes would include what the union representative had said about Ms Giogu's alleged behaviour, rather than that Mr Harmse was expressing his own opinion about her conduct.
- 104.4 It is clear that the recording is not of the entire conversation, and my inference is that it is more likely than not that Mr Harmse specifically referred to the notes including what the union representative said because the claimant had mentioned that during a part of the conversation that was not recorded. I make no criticism of the claimant in relation to this. It was reasonable for him to say that he wanted the notes to include what had been said, on his behalf, about the superuser's (alleged) conduct and attitude.
- 104.5 In any event, even if I am wrong about the precise reason that Mr Harmse mentioned that the notes would include the union representative's remarks, it does not particularly matter. What is clear is that in no sense whatsoever was the HR representative expressing his own opinion about Ms Giogu's conduct or about the appropriate outcome of the disciplinary process. Rather, Mr Harmse was seeking to make clear to the claimant that the purpose of the conversation was that the claimant should look at the scanned notes, sign them, and send them back, and that the outcome would be provided in due course, effectively as soon as possible.
105. My decision is that Mr Niedzielski took into account all of the evidence from the investigation and everything said by the claimant on 13 February.
- 105.1 In paragraph 16 of his statement, he says that he took into account the claimant's length of service, his clean disciplinary record, and what he referred to as the "mitigation statements". My finding is that he is referring to what had been called "character statements" in the correspondence between the Claimant and Ms Davey, namely [Bundle 280, 281].
- 105.2 Mr Niedzielski was cross-examined on that point and stood by it. I note what the contemporaneous records say, but, in any event, I accept his evidence on oath to the effect that he took into account the claimant's length of service, and his clean disciplinary record, as well as the Claimant's witnesses.
106. I also accept that Mr Niedzielski had been involved in Ms Zanfir's case and that he regarded it as significantly different, in that colleagues had not said they would be unable to work with her. I find that it was his genuine opinion that the claimant had spoken aggressively to Ms Ciocirlan (known as Ms Giogu at the time) on 16 and 19 October 2023 and that the Claimant had acted inappropriately.
107. Mr Niedzielski found two incidents occurred a few days apart and reached his conclusions by considering all the evidence, including witness accounts from Mr

Miles in relation to one incident and Ms Zanfir and Cristian in relation to both incidents. It was his decision that those independent witnesses gave versions closer to Ms Ciocirlan's than to the claimant's.

108. In relation to CCTV, I accept that enquiries were made and that the footage viewed was blank by the time anyone first sought to look at it. To the extent that it is suggested that Ms Ciocirlan ought to have checked CCTV straight away, I disagree. There was no reason for her to do so. She had a first hand experience of what had happened, and did not need to examine CCTV.
109. On 22 February 2024, Mr Niedzielski informed the claimant of the decision. The decision was that the claimant was guilty of gross misconduct, that he would receive a final written warning, and that he would be moved to a different department. Because he would be doing a different job, his pay would be reduced. There is no dispute that this amounted to a demotion.
110. The claimant was told he had a right of appeal. He was told that his suspension was lifted and that he should report to the new department on Monday, 26 February 2024.
111. On 1 March 2024, the claimant resigned with immediate effect, prior to receiving the written outcome. The written disciplinary outcome letter is dated 6 March [Bundle 356]. On 7 March, HR wrote to the claimant acknowledging the termination and setting out arrangements. It also stated that he had the option to follow the disciplinary policy and submit an appeal instead of resigning.
112. The claimant did not submit an appeal either before or after receiving those letters. He also did not appeal the grievance decision. In each case, he relied on similar reasons: that he did not feel well enough and that it would have an adverse effect on his health to pursue an appeal, and that he believed the outcome would be the same.
113. In terms of the reasons for his resignation, the claimant states that there were several. These included the effect on his health, the accusations he was facing, and his concern about gossip upon return. He considered that returning to a different department would signal that the respondent had found him guilty of wrongdoing, which he believed to be wrong, as in his view there had been no wrongdoing on his part.

The Law

Equality Act 2010 ("EQA")

114. The burden of proof provisions are codified in s136 EQA and s136 is applicable to all of the contraventions of the Equality Act which are alleged in these proceedings.

(1) This section applies to any proceedings relating to a contravention of this Act.

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision.

115. It is a two stage approach.

115.1 At the first stage, the Tribunal considers whether the Tribunal has found facts - having assessed the totality of the evidence presented by either side and drawn any appropriate factual inferences from that evidence - from which the Tribunal could conclude - in the absence of an adequate explanation - that a contravention has occurred.

At this first stage it is not sufficient for the claimant to simply prove that the alleged treatment did occur. There has to be some evidential basis from which the Tribunal could reasonably infer that there was a contravention of the act. The Tribunal can and should look at all the relevant facts and circumstances when considering this part of the burden of proof test.

115.2 If the claimant succeeds at the first stage then that means the burden of proof is shifted to the respondent and the claim is to be upheld unless the respondent proves the contravention did not occur.

116. In Efobi v Royal Mail [2021] UKSC 33, the Supreme Court made clear that the changes to the wording of the burden of proof provision in EQA compared to the wording in earlier legislation do not represent a change in the law. Thus when assessing the evidence in a case and considering the burden of proof provisions, the Tribunal can have regard to the guidance given by the Court of Appeal in, for example, Igen v Wong [2005] EWCA Civ 142 and Madarassy v Nomura International [2007] EWCA Civ 33.

117. As per paragraph 57 of Madarassy, "could decide" in section 136(2) EQA is equivalent to: a reasonable tribunal could properly decide from all the evidence before it.

118. The burden of proof does not shift simply because, for example, the claimant proves that there was a difference in treatment (in comparison to someone whose relevant protected characteristics were different) and/or that there was unwanted conduct and/or that there was a protected act. Those things only indicate the possibility of discrimination or harassment or victimisation. They are not sufficient in themselves to shift the burden of proof; something more is needed.
119. It does not necessarily have to be a great deal more: Denman v Commission for Equality and Human Rights 2010 EWCA Civ 1279. For example - depending on the facts of the case - an evasive or untruthful answer from a respondent or an important witness, could be the “something more” that is required. In some circumstances, it may simply be the context of the act itself. In SRA v Mitchell EAT 0497/12, the EAT upheld a tribunal’s decision that the burden of proof shifted based on a finding that the employer had given a false explanation for the less favourable treatment. That being said, it is important for us to remind ourselves that the mere fact alone that a Tribunal rejects the employer’s explanation for some particular act or omission does not mean that the burden of proof necessarily shifts, see for example Raj v Capita Business Services EAT 0074/19.
120. Recent EAT cases have re-emphasised the importance of actually adhering to the two stage approach set out in section 136. We have taken note of the comments in Field v Steve Pye and Co (KL) Limited and ors [2022] EAT 68 and of the fact that several subsequent EAT decisions have cited those comments with approval.
121. As per Essex County Council v Jarrett [2015] UKEAT 0045/15/0411, where there are multiple allegations, the Tribunal has to consider each allegation separately when determining whether the burden of proof has shifted in relation to each one.
- 121.1 That does not mean that we must ignore the rest of the evidence when considering one particular allegation.
- 121.2 The opposite is true. When there are multiple allegations, and/or a lot of facts found as part of the background information, a Tribunal has to stand back and consider all of the evidence in the round to consider whether any inference of discrimination/victimisation should be drawn: see Qureshi v Victoria University of Manchester. There must be no failure to consider ‘the bigger picture’, as it was described in Humby v Barts Health NHS Trust [2024] EAT 17.
- 121.3 We assess separately, for each allegation, whether the burden of proof shifts or not, taking into account all of the facts which we have found.

Time Limits for EQA complaints

122. In EQA, time limits are covered in s123, which states (in part):

- (1) Subject to sections 140A and 140B proceedings on a complaint within section 120 may not be brought after the end of—
 - (a) the period of 3 months starting with the date of the act to which the complaint relates, or
 - (b) such other period as the employment tribunal thinks just and equitable.
- (3) For the purposes of this section—
 - (a) conduct extending over a period is to be treated as done at the end of the period;
 - (b) failure to do something is to be treated as occurring when the person in question decided on it.
- (4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—
 - (a) when P does an act inconsistent with doing it, or
 - (b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it

123. In applying Section 123(3)(a) of EA 2010, the tribunal must have regard to the guidance in Commissioner of Police of the Metropolis v Hendricks ([2002] EWCA Civ 1686; [2003] ICR 530); Lyfar v Brighton and Hove University Hospitals Trust [2006] EWCA Civ 1548. Applying that guidance, the Court of Appeal has noted that in considering whether separate incidents form part of an act extending over a period, one relevant but not conclusive factor is whether the same or different individuals were involved in those incidents: Aziz v FDA 2010 EWCA Civ 304. The tribunal must consider all relevant circumstances and decide whether there was an act extending over a period or else there was a succession of unconnected or isolated specific acts. If it is the latter, time runs from the date when each specific act was committed.

124. A crucial distinction is between – on the one hand – an invariable rule which will inevitably result in a discriminatory outcome each time and – on the other hand – a discretionary decision made under a policy, in which the discretionary decision may sometimes result in an employee getting the desired outcome, and sometimes not. In the latter case, the discretionary decision causes the time to run (for a complaint based on that decision), regardless of arguments about whether the policy itself is discriminatory.

125. In considering whether it is just and equitable to extend time the Tribunal should have regard to the fact that the time limits are relatively short. That being said, time limits are there for a reason and the default position is to enforce them unless there is a good reason to extend. That does not mean that the lack of a good reason for presenting the claim in time is fatal. On the contrary, the lack of

a good reason for presenting the claim in time is just one of the factors which a tribunal can take into account, and it might possibly be outweighed by other factors.

126. The Tribunal has a broad discretion to extend time when there is a good reason for so doing. Parliament has chosen to give the Employment Tribunal the widest possible discretion. Unlike, say, the Limitation Act 1980, s 123(1) of the Equality Act does not specify any list of factors to which the tribunal is instructed to have regard, and it is wrong to interpret it as if it contains such a list. A tribunal can consider the list of factors specified in s 33(3) of the Limitation Act 1980, but if it does so, should only treat those as a guide, and not as something which restricts its discretion.

127. The factors that may helpfully be considered include, but are not limited to:

127.1 the length of, and the reasons for, the delay on the part of the claimant;

127.2 the extent to which, because of the delay, the evidence is likely to be less cogent than if the action had been brought within the time limit specified in Section 123;

127.3 the conduct of the respondent after the cause of action arose, including the extent (if any) to which it responded to requests for information or documents

128. In particular, it will usually be important for the Tribunal to pay attention to (and, where necessary, make specific findings about) “whether the delay has prejudiced the respondent (for example, by preventing or inhibiting it from investigating the claim while matters were fresh)”: Abertawe Bro Morgannwg University Local Health Board v Morgan [2018] EWCA Civ 640.

Definition of Direct Discrimination – section 13 EQA

129. Direct discrimination is defined in s.13 EQA.

(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

130. There are two questions: whether the respondent has treated the claimant less favourably than it treated others (“the less favourable treatment question”) and whether the respondent has done so because of the protected characteristic (“the reason why question”).

131. For the less favourable treatment question, the comparison between the treatment of the claimant and the treatment of others can potentially require decisions to be made about whether another person is an actual comparator and/or the circumstances and attributes of a hypothetical comparator.

Paragraphs 54 to 65 of Martin v The Board Of Governors Of St Francis Xavier 6th Form College [2024] EAT 22 provide a recent and clear summary of the types of arguments about comparators (and the proper role of section 23 EQA) that might be presented to us, and we have taken it into account.

132. When considering the “reason why question” for the treatment the Tribunal has found to have occurred, it must analyse both the conscious and sub-conscious mental processes and motivations of the decision makers which led to the respondent’s various acts, omissions and decisions.
133. The mere fact alone that a respondent, or a particular individual, has behaved unreasonably and/or treated the claimant badly or unfairly will not, in itself, be sufficient to cause the burden of proof to shift. For one thing, there may also need to be consideration of whether the “bad” treatment is comparable to the way in which others were treated. However:
 - 133.1 The greater the difference between the Claimant’s treatment and that of another employee in similar circumstances, the more likely it is that the Tribunal will decide that an inference of discrimination could be drawn. Likewise, the more closely the circumstances of the claimant and the alleged comparator match, and/or the greater the number of comparators who have had “better” treatment, the more likely it is that the burden of proof will shift.
 - 133.2 The more unreasonable the treatment, the more likely it is that the Tribunal will decide that it calls for an explanation and the more likely that the Tribunal might decide that it is possible to infer that a hypothetical comparator would have been treated differently.
 - 133.3 Where the Respondent offers an explanation for the Claimant’s treatment (and/or the differences between the Claimant’s treatment the alleged comparator’s treatment), then the burden of proof might shift where the Tribunal decides that the explanation is dishonest, and/or if different explanations have been put forward which are contradictory to each other.
134. The Tribunal must seek to identify who took the relevant decisions and who is responsible for the relevant omissions. That might be a single individual, if there are acts/omissions by several people, it will be necessary to seek to identify all of those persons.
135. Once the Tribunal does identify the particular individuals responsible for a particular act or omission, it examines their reasons, including any subconscious reasons.

Constructive Dismissal

136. Section 95(1)(c) ERA and section 39(7)(b) EQA refer to something colloquially known as “constructive dismissal”. In order to prove constructive dismissal the employee must prove

136.1 that the employer has committed a serious breach of contract and

136.2 that the employee resigned because of that breach (or at least partly because of that breach; it does not necessarily have to be the only reason) and

136.3 that the employee must also prove they has not waived the breach by affirming the contract.

136.4 In London Borough of Waltham Forest v Omilaju [2004] EWCA Civ 1493, the court, at paragraph 14, stated that:

The following basic propositions of law can be derived from the authorities:

1 The test for constructive dismissal is whether the employer's actions or conduct amounted to a repudiatory breach of the contract of employment: Western Excavating (ECC) Ltd v Sharp [1978] 1 QB 761

2 It is an implied term of any contract of employment that the employer shall not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee: see, for example, Malik v Bank of Credit and Commerce International SA [1998] AC 20, 34H–35D (Lord Nicholls) and 45C–46E (Lord Steyn). I shall refer to this as “the implied term of trust and confidence”.

3 Any breach of the implied term of trust and confidence will amount to a repudiation of the contract see, for example, per Browne-Wilkinson J in Woods v WM Car Services (Peterborough) Ltd [1981] ICR 666, 672A. The very essence of the breach of the implied term is that it is calculated or likely to destroy or seriously damage the relationship (emphasis added).

4 The test of whether there has been a breach of the implied term of trust and confidence is objective. As Lord Nicholls said in Malik at page 35C, the conduct relied on as constituting the breach must “impinge on the relationship in the sense that, looked at objectively , it is likely to destroy or seriously damage the degree of trust and confidence the employee is reasonably entitled to have in his employer” (emphasis added).

5 A relatively minor act may be sufficient to entitle the employee to resign and leave his employment if it is the last straw in a series of incidents. It is well put at paragraph [480] of Harvey on Industrial Relations and Employment Law:

“[480] Many of the constructive dismissal cases which arise from the undermining of trust and confidence will involve the employee leaving in response to a course of conduct carried on over a period of time. The particular incident which causes the employee to leave may in itself be insufficient to justify his taking that action, but when viewed against a

background of such incidents it may be considered sufficient by the courts to warrant their treating the resignation as a constructive dismissal. It may be the 'last straw' which causes the employee to terminate a deteriorating relationship."

137. The implied term (sometimes referred to as "the Malik term") that the employer "*shall not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee*" is one which the employee can allege was breached by a single incident or by the cumulative effect of different treatment.
138. "Last straw" arguments do not do away with the need for the employee to establish that there has been a fundamental breach of contract, but are significant when considering – based on the specific incident which caused the employee to resign – whether the employee resigned because of the fundamental breach.
139. The last straw might be relatively insignificant, but it must not be utterly trivial. An entirely innocuous act on the part of the employer cannot be a final straw even if the employee genuinely but mistakenly interprets the act as hurtful.
140. In Kaur v Leeds Teaching Hospitals NHS Trust [2018] EWCA Civ 978, the Court of Appeal clarified the analysis in Omilaju and added to it. It reiterated that the last straw doctrine is only relevant to cases where the repudiation relied on by the employee takes the form of a cumulative breach and that the last straw doctrine does not have any application to a case where the alleged repudiation consists of a one-off serious breach of contract.
141. In Kaur, the Court of Appeal made clear that - in a last straw case - the fact that the employee might have affirmed a contract after some of the earlier conduct does not mean that it is not possible for the Claimant to rely on that earlier conduct as part of a cumulative breach argument. In paragraph 55 of its decision it summarised the correct approach.

1 What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or her resignation?

2 Has he or she affirmed the contract since that act?

3 If not, was that act (or omission) by itself a repudiatory breach of contract?

4 If not, was it nevertheless a part (applying the approach explained in Omilaju) of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a (repudiatory) breach of the Malik term? (If it was, there is no need for any separate consideration of a possible previous affirmation ...)

5 Did the employee resign in response (or partly in response) to that breach?

142. Where the answer at point (4) is “no” (for example the act that triggered the resignation was entirely innocuous), it is necessary to go back and see whether there was any earlier breach of contract that has not been affirmed, and which was a cause of the resignation. See Williams v Governing Body of Alderman Davies Church in Wales Primary School EAT 0108/19.
143. In considering whether a contract has been affirmed after a breach, it is necessary to have regard to the entirety of the circumstances. A gap in time between the act relied on and the resignation is a significant factor but it is by no means the only factor; in other words, a delay is not necessarily fatal to the employee’s argument for constructive dismissal. The reasons for the delay would be relevant as would consideration of what had happened in the intervening period, such as was the employee working and receiving pay amongst other things.
144. Where an employee succeeds in the argument that there was a constructive dismissal, then the dismissal “reason” is the employer’s reason for the conduct which caused the employee to treat themselves as dismissed.
145. It is open to an employer to argue that the dismissal was for a potentially fair reason and was, in all the circumstances, a fair dismissal.
146. Section 98 of the Employment Rights Act 1996 (“ERA”) deals with fairness.
147. In considering discriminatory dismissal arguments, the Tribunal must take care not to conflate tests for whether a dismissal was a breach of the Equality Act with tests for whether the dismissal was unfair contrary to the Employment Rights Act.
148. Not every tortious act amounts to a repudiatory breach of contract. Even if a tribunal finds that an employee suffered an act discrimination and that they resigned in response to that incident of discrimination, it would be an error of law to decide that such conclusions must mean that a decision that there was a constructive dismissal automatically follows. Amnesty International v Ahmed 2009 ICR 1450, EAT.
149. In this case, the repudiatory breach relied upon is that there was an alleged breach of the term requiring trust and confidence (and, as discussed above, any breach of that term will be a repudiatory breach). If the Tribunal decides that that term was breached, and that the Claimant resigned in response to that breach, and it has also decided that some (or all) of the conduct that caused that breach amounted to discrimination, then it follows that the (constructive) dismissal was a contravention of section 39(2)(c) EQA.

Disciplinary Processes alleged to be breach of contract

150. Where an employer actually informs the employee that the employer has decided to dismiss the employee for disciplinary reasons, the fairness of that dismissal is to be judged against the requirements of section 98 ERA.
151. It is not the role of the tribunal to assess the evidence and to decide whether the claimant should or should not have been dismissed. It is not the Tribunal's role to substitute its decisions for the decisions made by the respondent.
152. A clear and recent discussion of the applicable principles appears at paragraphs 29 to 63 of the EAT decision in Lamb v Teva UK Ltd [2026] EAT 8.
153. As per British Home Stores Limited v Burchell [1978] IRLR 379, the Employment Tribunal should first decide whether the Respondent has demonstrated the factual reason for the dismissal, and, if so, will go on to decide if the employer had reasonable grounds for concluding that the employee had committed the misconduct in question and whether they followed a reasonable procedure.
154. Even if the employer passes those tests, the dismissal might be unfair if the sanction of dismissal was outside the band of reasonable responses.
155. In Sainsburys Supermarket Ltd v Hitt [2002] EWCA Civ 1588, [2003] ICR 111 the Court of Appeal held that the band of reasonable responses test also applies the assessment of whether the investigation into a disciplinary allegation was reasonable or not.
156. The band of reasonable responses is wide, but it is not infinite.
157. The relevant circumstances for assessing the reasonableness of the investigation include the seriousness of the alleged misconduct and the potential effect upon the employee of a finding that they committed such conduct.
158. There is no requirement that the employer adopts the safeguards of a criminal trial.
159. A conscientious investigation of the facts should be carried out and inquiries should focus just as much on any potential evidence that might point towards the employee's innocence as the evidence that might prove the allegation are true..
160. Where there is an allegation of misconduct and the evidence consists of conflicting accounts of an alleged incident with no, or very little, evidence to provide corroboration one way or the other, an employer is not obliged to simply believe one account and to disbelieve the other.
161. The evidence of an accuser should usually be tested by the employer, rather than simply being believed without challenge.

162. Gross misconduct is a jargon term which has no statutory definition. However, it is often used, including by employers producing disciplinary rules or contracts of employment, as short hand for the type of conduct that merits dismissal without notice.
163. However, in this case, the Respondent did not decide that the Claimant should be dismissed.
164. The Respondent decided that the Claimant had committed gross misconduct, but there should be a sanction short of dismissal. It is the Claimant's case that what the Respondent did, including, but not limited to, the finding of gross misconduct, and the sanction imposed, breached the implied term
165. A breach of an express requirement of a disciplinary procedure may or may not amount to a repudiatory breach of contract by the Respondent, depending on the precise details.
166. In principle, the employer's compliance with the express requirements of a disciplinary procedure is not fatal to the employee's argument that there was a breach of trust and confidence: See the High Court decision in Stevens v University of Birmingham 2017 ICR 96, QBD.
167. In Gogay v Hertfordshire County Council 2000 IRLR 703, the court of appeal considered the application of the implied term in the context of suspending an employee and commencing a disciplinary investigation. The court accepted that suspension and accusations of serious misconduct were likely to damage the relationship of trust and confidence. Thus the crucial issue was whether there was "reasonable and proper cause" for the suspension. This is essentially a finding of fact for the Tribunal to make. On the facts of Gogay, the employer breached the implied term when it suspended the employee. On the facts of in Agoreyo v London Borough of Lambeth 2019 ICR 1572, there was no breach. A knee jerk reaction to the mere fact that allegations have been made might be a breach; however, a considered decision to suspend, following a brief assessment of the credibility of the allegations and of the necessity of suspension might not be.
168. The ACAS Code of Practice on Disciplinary and Grievance Procedures must be taken into account by the Employment Tribunal if it is relevant to a question arising during the proceedings (see section 207(2) of the Trade Union and Labour Relations (Consolidation) Act 1992).
169. The code is not incorporated into contracts of employment and so a breach of the code is not necessarily a breach of contract. However, if there were a number of serious and unexplained departures from the requirements of the code, that

would be relevant to an assessment of whether the implied term had been breached.

170. A final written warning (or any written warning) is something that can potentially be taken into account by a reasonable employer when deciding whether to dismiss.
171. In Wincanton Group plc v Stone [2013] IRLR 178, at para 37 Langstaff P gave the following summary of the law on warnings in misconduct cases:

We can summarise our view of the law as it stands, for the benefit of Tribunals who may later have to consider the relevance of an earlier warning. A Tribunal must always begin by remembering that it is considering a question of dismissal to which section 98, and in particular section 98(4), applies. Thus the focus, as we have indicated, is upon the reasonableness or otherwise of the employer's act in treating conduct as a reason for the dismissal. If a Tribunal is not satisfied that the first warning was issued for an oblique motive or was manifestly inappropriate or, put another way, was not issued in good faith nor with prima facie grounds for making it, then the earlier warning will be valid. If it is so satisfied, the earlier warning will not be valid and cannot and should not be relied upon subsequently. Where the earlier warning is valid, then:

- (1) The Tribunal should take into account the fact of that warning.
- (2) A Tribunal should take into account the fact of any proceedings that may affect the validity of that warning. That will usually be an internal appeal. This case is one in which the internal appeal procedures were exhausted, but an Employment Tribunal was to consider the underlying principles appropriate to the warning. An employer aware of the fact that the validity of a warning is being challenged in other proceedings may be expected to take account of that fact too, and a Tribunal is entitled to give that such weight as it sees appropriate.
- (3) It will be going behind a warning to hold that it should not have been issued or issued, for instance, as a final written warning where some lesser category of warning would have been appropriate, unless the Tribunal is satisfied as to the invalidity of the warning.
- (4) It is not to go behind a warning to take into account the factual circumstances giving rise to the warning. There may be a considerable difference between the circumstances giving rise to the first warning and those now being considered. Just as a degree of similarity will tend in favour of a more severe penalty, so a degree of dissimilarity may, in appropriate circumstances, tend the other way. There may be some particular feature related to the conduct or to the individual that may contextualise the earlier warning. An employer, and therefore Tribunal should be alert to give proper value to all those matters.
- (5) Nor is it wrong for a Tribunal to take account of the employers' treatment of similar matters relating to others in the employer's employment, since the treatment of the employees concerned may show that a more serious or a less serious view has been taken by the employer since the warning was given of circumstances of the sort giving rise to the warning, providing, of course, that was taken prior to the dismissal that falls for consideration.
- (6) A Tribunal must always remember that it is the employer's act that is to be considered in the light of section 98(4) and that a final written warning always implies, subject only to the individual terms of a contract, that any misconduct of

whatever nature will often and usually be met with dismissal, and it is likely to be by way of exception that that will not occur.

172. In Bandara v BBC 2016 WL 06639476, the EAT confirmed (having considered both Wincanton and also the Court of Appeal's review in Davies v Sandwell Metropolitan Borough Council [2013] IRLR 374) that a tribunal assessing an unfair dismissal claim can, in an appropriate case, decide that the sanction of final written warning for a prior incident was a manifestly inappropriate sanction. A tribunal should only take that step if there is something that is drawn to the tribunal's attention which enables it to conclude that the sanction plainly ought not to have been imposed, and this requires more than simply deciding that the sanction of final written warning had been outside the band of reasonable responses.
173. However, in this case, I am not being asked to decide whether a later decision to dismiss – which partly relied on an earlier warning – was fair. I have to decide a different question, which is whether the employer's issuing of the warning formed part of a breach of contract.

Whether a sanction short of dismissal is a breach of contract

174. Where an employer has a reasonable basis for suspecting an employee of misconduct, the mere fact alone that it instigates a disciplinary process will not breach the implied term. That is because the employer is likely to be able to show that it had reasonable and proper cause to follow a disciplinary procedure in such circumstances.
175. If the employer decides that the employee did commit misconduct, then it is open in principle for the employee to argue that such a finding amounts to breach of trust and confidence. In a (very) different context, the Supreme Court analysed the employer's contractual obligations when it has to make findings of fact as part of a decision-making process, and about the court's role in deciding whether there has been a breach of contract. See about matters which affects its Braganza (Appellant) v BP Shipping Limited and another (Respondents) [2015] UKSC 17.
176. The court is not the primary decision-maker but will seek to ensure that - where there is a conflict of interest for the party making a decision under the contract (and especially where there is a significant imbalance of power between the contracting parties) – the employer's contractual powers are not abused. The standard of review of contractual decisions is akin to that adopted for judicial review of administrative action. There are two limbs: the first focusing on the decision-making process and the second focused on its outcome. The court or tribunal must imply a term into the contract that the decision-making process be lawful and rational in the public law sense, ie that the decision is made rationally,

in good faith and consistently with its contractual purpose. The decision in any given case depends very heavily on the context of the particular contract / contractual terms.

177. If an employer purports to implement a sanction short of dismissal, the employer must still ensure that the disciplinary sanction is permitted within the express terms of the contract.
178. In Hilton v Shiner Ltd 2001 IRLR 727, EAT, the employer's underlying motive or the reasonableness in seeking to alter an employee's job description were not factors that could legitimately be taken into account when seeking to determine whether there had been a repudiatory breach of contract. On the facts, the alternative work offered to the employee had been a demotion in terms of status and job satisfaction. Since there was no express term permitting it, the implementation of the demotion required his consent. Whether the consequent breach of contract was sufficient to amount to repudiation was an objective matter which had to be assessed by reference to the impact upon the employee. Once the breach was of sufficient materiality to be repudiatory, the motive for the breach became irrelevant
179. In Mr Adrian Smith v Trafford Housing Trust [2012] EWHC 3221 (Ch), the High Court dealt with a case in which (unlike in Hilton) the express terms of the contract did allow for demotion if there was gross misconduct. The decision makes clear that the court's duty was to decide whether the Claimant had indeed committed gross misconduct. If he had not, then the employer had breached the contract by demoting him.
180. The approach then is similar to the exercise that Employment Tribunal is familiar with when addressing breach of contract arguments, ie similar to the assessment that must be performed when (in a case of an actual dismissal without notice) the employee's argument is that there was no proper basis for dismissing without notice. That is, the approach set out in Boston Deep Sea Fishing v. Ansell (1888) 39 Ch D 339 and subsequent cases.
181. Where the employer terminates the contract without good cause, or without providing the employee with sufficient notice, the claimant might have grounds to succeed in a claim for wrongful dismissal.
182. The amount of notice to which an employee is entitled is determined by the contract but subject to the statutory minimum. In other words, if the contract allows the employee more notice than the statutory minimum then the employee is entitled to bring a claim for that period of notice.
183. For the employer to prove that there has been conduct by the employee which entitles it to dismiss without notice then the conduct must be such that it must so

undermine the trust and confidence which is inherent in the particular contract of employment that the employer should no longer be required to retain the employee in employment (see Neary v Dean of Westminster [1999] IRLR 288). The jargon phrases “gross misconduct” and “gross negligence” are sometimes used. There is no clear dividing line between them and, in any event, the decision is whether the contract has been breached and whether the employee has acted in such a way that they are deemed to be ignoring their contractual obligations, and/or showing that they do not acknowledge that they are bound by them. Gross misconduct is often used to refer to things which an employee has done deliberately. Gross negligence, however, also includes serious failure to carry out their contractual duties even if that is because of an inability to comply with the contractual obligations.

184. In defending itself against a claim that it is required to pay damages for failure to give notice to an employee which it dismissed, the employer is entitled to rely upon facts not known at the time. In other words, the employer is not only entitled to rely on the reasons that caused it to dismiss the employee; it is entitled to rely on any other repudiatory breach that it later discovers.

Lawful Orders

185. An employee who disobeys his or her employer's lawful instructions is likely to be in breach of the implied duty of cooperation,
186. However, not all acts of disobedience are repudiatory breaches. In Laws v London Chronicle (Indicator Newspapers) Ltd, the Court of Appeal stated that, to be repudiatory, the disobedience must connote a deliberate flouting of the requirements of the contract of employment.
187. A single act of disobedience or insubordination may amount to a repudiation. In Kempster v Cantor Fitzgerald (UK) Ltd, a bond broker, was told by a superior to return to his desk as he was distracting other brokers. The employee swore at the superior in front of the other brokers and refused to do as he was asked. He was summarily dismissed for misconduct. The Court of Appeal upheld the judge's decision that it had been permissible to dismiss without notice, on the basis that the employee had refused to obey a lawful and reasonable instruction. The Court referred to Laws case and, on the facts, and notwithstanding that it was a one off act, lasting a short period of time, was satisfied that there was a sufficient basis to decide that the employee had wilfully flouted his obligation to comply with a lawful order in circumstances which showed that the employee was repudiating the contract.

Analysis and conclusions

188. Here are my decisions on the complaints as set out in list of issues. References below to "item" or "paragraph" or "allegation" are to the corresponding number in list of issues, which is set out in full above.
189. I have taken into account all of the facts that I have found when deciding each of the complaints, and when deciding whether the burden of proof shifts, and when assessing the reasonableness or otherwise of the actions of the Respondent and its employees.
190. For ease of exposition, I will discuss the discrimination arguments first.
191. If I do decide that there have been contraventions of the Equality Act 2010 ("EQA"), then knowing that would be relevant to my decisions about whether or not has been a repudiatory breach of contract by the employer.
192. Item 4.1.1 asks whether Ms Ciocirlan (Ms Giogu as she was known at the time) presumed or regarded the claimant as aggressive because he is a man.
193. In short, there are no facts from which I could conclude that that is what she did.
194. As discussed in findings of fact, Ms Ciocirlan's comments about the Claimant were contained in near contemporaneous written documents. I also have her written statement and her oral evidence.
195. Her accounts of what the claimant did were supported by other people. Her account is that he raised his voice. He refused to do what she asked on 19 October when she asked him to supplying the information (which he claimed he had written down) about what work he had done on the partially completed pallet. She said that he was angry with her on 16 October, after she had asked him to explain to her why he told her that a pallet had been completed when it actually had not been completed.
196. For item 4.1.1, it is not particularly important
- 196.1 whether the claimant is right or wrong that he had given a truthful and sufficiently accurate account of the work he had completed when asked about it around 8.30pm on 16 October.
- 196.2 whether the claimant was entitled (as he has maintained in the tribunal hearing) to keep his own documents private (and that he did not have to hand over the notes about the work on the 19 October pallet, because contained within the same paper / notebook was personal information that Ms Ciocirlan had no right to see).

What I have to decide is whether there are any facts from which I could conclude Ms Ciocirlan would have acted differently if the claimant had been a woman and my decision is that there are no such facts. Further, had a hypothetical woman reacted in the same way that the Claimant reacted, there are no facts from which I could conclude that Ms Ciocirlan would not have regarded this hypothetical comparator's conduct as being other than aggressive.

197. Allegation 4.1.1 fails.
198. Allegations 4.1.2 asks whether Ms Ciocirlan (i) actively constructed and promoted a false narrative which (ii) portrayed the claimant as an aggressive bully. The complaint being that she did this because he is a man.
199. There are several sub-issues to deal with.
200. My finding is that Ms Ciocirlan has not actively constructed and/or actively promoted "a false narrative". I am satisfied that she has told the truth as she sees it, not only in these employment tribunal proceedings, but, more relevantly, to her employer at the relevant time.
201. She provided her description of what (in her honest belief) the claimant said and did. She claimed that she did not feel safe the fact that she did not feel safe is supported by the contemporaneous evidence of Ms Zanfir, who herself said that she was also shaken by the claimant and that she observed Ms Ciocirlan in tears.
202. I do not find that Ms Ciocirlan has exaggerated her description of the claimant's conduct towards her, either to colleagues such as Ms Zanfir and Cristian, or to her managers, or to the Employment Tribunal.
203. I certainly do take account of the fact that the Claimant denies any aggressive words or behaviour. It is also true, however, that the Claimant does not dispute the fact that on 16 October he firmly maintained that he had not been dishonest, and that he regarded Ms Ciocirlan's questions to him then as inappropriate or that on 19 October, he firmly believed that he should not have to hand over his notes to Ms Ciocirlan, and that he told her so.
204. Since I do not find that the factual component of allegation 4.1.2 (the creation of a false narrative) has been proven, the allegation fails. However, for completeness there are no facts from which I could concluded that Ms Ciocirlan would have said different things to her employer about a hypothetical comparator. A hypothetical comparator would be a woman who said and did the same things that the Claimant said and did on 16 and 19 October.
205. Allegation 4.1.3 is similar to allegation 4.1.1, but the alleged perpetrator is Ms Ani-Ungureanu. The complaint is also that the suspension was an act of direct discrimination.

206. The facts do not support the allegation that Ms Ani-Ungureanu “presumed” the claimant was aggressive. I am satisfied, on the facts, that an allegation was passed to her to deal with, and I am satisfied that she followed appropriate processes (with the guidance of HR) before making any decisions. She interviewed other witnesses. She interviewed the claimant. Having done so, she made a decision to suspend.
207. There are no facts from which I could decide that a woman would not have been suspended by Ms Ani-Ungureanu if the allegations against that hypothetical woman were the same as those that were made about the claimant, and if the evidence from the interviews was sufficiently similar.
208. I have to take account of unconscious thought processes as well as conscious reasons. However, there are no facts which cause me to suspect that Ms Ani-Ungureanu was unconsciously influenced by the fact that the Claimant is a man.
209. Ms Ani-Ungureanu made the decision to take the matter further (and to suspend the Claimant pending investigation) after taking account of what was said to her when she spoke to the claimant as well as to some of the witnesses. She was not influenced by the sex of anyone involved.
210. Allegation 4.1.3 fails.
211. Allegation 4.1.4 is that there was a one-sided investigation.
212. I do not regard the investigation as one-sided. Both Ms Ciocirlan (Ms Giogu) and the claimant were given the opportunity to put forward the names of other witnesses in terms of the particular incidents. All of the witnesses who were suggested as being witnesses for those two October 2023 incidents were spoken to (and interview notes were produced).
213. It is true that the claimant did put forward 10 names of people and that not all of those 10 were approached by the Respondent. The Respondent correctly assessed that what the Claimant was suggesting was that these were what could be called “character witnesses”. That is, they had not been in the vicinity on 16 or 19 October, and they had no first hand knowledge of the incidents. Rather, they were being put forward on the basis that they could say that the alleged conduct (which was denied by the Claimant) would be out of character. In other words, the decision-maker, Mr Niedzielski, was going to be asked to decide that, since such alleged conduct would have been out of character, then it had not occurred.
214. In my assessment, a hypothetical employer, acting reasonably, could have taken a different approach to the one adopted by the Respondent. For example, the employer could have varied the terms of the Claimant’s suspension, and told him that he had permission to approach all of the names on his list and to obtain

written statements from each of them. Alternatively, and this would have been onerous, Mr Niedzielski could have agreed to contact all the suggested witnesses himself, or delegated that task to someone else, and asked for a written report about what each witness said.

215. However, the question I have to ask for paragraph 4.1.4 is whether the burden of proof shifts. Are there facts from which I could conclude that if a woman had asked for a 10 character references to be taken into account, or 10 potential character witnesses to be contacted by the employer, the employer would have acted differently?
216. I have not received witness testimony from Ms Davey, but I have been able to read what she wrote in the contemporaneous correspondence. What she says there is very plausible and I am satisfied that I should take it at face value. The Claimant was given an explanation of the Respondent's decisions and the reasons for those decisions. The fact that it is true that the Respondent could have made different decisions does not make me suspicious that the actual decisions it made in this case were at all influenced – whether consciously or unconsciously – by the fact that the Claimant is a man.
217. The Claimant does not agree with the decision to limit him to two character witnesses. He made that clear at the time. However, there is no evidence from which I could conclude that the Respondent was in any way influenced by the fact that the claimant is a man (or by the fact that Ms Ciocirlan is a woman).
218. To the extent that the allegation is that the investigation was one-sided because it relied on predominantly female witnesses, as the respondent pointed out in submissions, that is simply numerically incorrect. The Claimant and Ms Ciocirlan were interviewed (one man and one woman). The other witnesses were Ms Zafir, Cristian and Joshua Miles, so one woman and two men.
219. In terms of - according to the claimant – “excluding as irrelevant female witnesses put forward by the claimant”, I have already said that my decision is that the Respondent's treatment of the suggested character witnesses was not because the Claimant is a man. There are also no facts from which I could conclude that the Respondent's decisions about the character witnesses was influenced by whether the proposed witnesses were men or were women (or in what percentages).
220. Allegation 4.1.4 fails.
221. Allegation 4.1.5 related to the disciplinary outcome, specifically to the decision to “move the claimant to a different department”.
222. As stated in findings of fact, Mr Niedzielski made this decision.

223. The Claimant relies on Ms Zanfir as a comparator. As discussed in findings of fact, she was not moved to a different department when disciplinary allegations were upheld.
224. My decision is that there is a material difference in circumstances. The allegations against the Claimant and Ms Zanfir had some significant similarities, but also some important differences. They were each found to have committed a failure to comply with a reasonable management instruction.
- 224.1 A similarity it that, in both cases, it was suggested that the superuser spoke to the employee several times and “demanded” (for want of a better word) that the employee take a certain course of action.
- 224.2 A similarity it that, in both cases, the superuser gave the instruction several times and the employee refused several times.
- 224.3 A material difference is that the claimant was also accused of breaching the dignity at work policy.
- 224.4 A material difference is that, in the Claimant’s case, the superuser expressed a reluctance to work with the Claimant in the future.
225. My decision is that, even taking account of the similarities in the cases, and the differences in the outcomes, assessing the facts as a whole, there is no “something more”. The facts do not lead me to conclude that the burden of proof should shift. The Respondent does have, within its procedures, the ability to “demote” as a disciplinary sanction. It follows that it envisages that there are some circumstances in which that penalty might be used. Any reasonable employer which decides that so-called “gross misconduct” has been committed must take account of the fact that “fairness” requires that there are, in principle, several possible outcomes. One possibility might be dismissal, but another must be a sanction short of dismissal. For some employers, because of the way their contracts are written, the highest sanction short of dismissal might be final written warning. Demotion might not be an option. (See Hilton v Shiner Ltd, discussed above). However, for this respondent, the outcomes from a gross misconduct decision hypothetically included any of:
- 225.1 Dismissal
- 225.2 Not dismissal, but demotion
- 225.3 Not dismissal or demotion, but a warning.
226. The fact that they went for option 3 in Ms Zanfir’s circumstances, but option 3 in the Claimant’s circumstances is not inherently suspicious, taking the facts as a whole.

227. For that reason, allegation 4.1.5 fails.
228. However, if I am wrong about that, and if the burden of proof does shift, then I accept Mr Niedzielski' evidence about the reasons and that he made his decision to move the claimant to a different department.
229. I accept that Mr Niedzielski made his decision having considered what all of the witnesses said, both male and female.
230. Mr Niedzielski made a decision that the employer had a responsibility to move the claimant to another department and based on the comments that those witnesses made about working with the claimant in future.
231. I am satisfied that Mr Niedzielski was not in any way consciously or unconsciously influenced by the fact that the claimant is a man, or that Ms Ciocirlan is a woman.
232. Therefore, even if I had decided that the burden of proof should shift, the Respondent has discharged its burden. Allegation 4.1.5 would fail in any event.
233. I now discuss the issue of unfair dismissal.
234. Paragraph 2.1.1 asked if the respondent did certain things. There were 4 sub-paragraphs, one of those had 4 sub-paragraphs of its own.
235. Paragraph 2.1.1.1 said that the Respondent followed an unfair disciplinary process.
236. In terms of failing to obtain relevant CCTV footage, my decision is there was no breach of contract, and no unreasonable behaviour by the Respondent or its employees. In particular, Mr Niedzielski was willing in principle to take the contents into account, but when steps were taken to look at the recordings for the relevant times, they were blank. If the argument is that there can be no basis for this type of allegation to be upheld, unless supported by video evidence, I reject that. If the allegation is that the fact that the video was blank should have led Mr Niedzielski to conclude that – by some means – Ms Ciocirlan or someone else had arranged for the deletion of relevant evidence, I do not accept that. No evidence was provided to Mr Niedzielski to suggest that that had happened.
237. In terms of only listening to one side, that is not true, for the reasons mentioned above when addressing paragraph 4.1.4. The Respondent / Mr Niedzielski listened to both sides.
238. The allegation of failing to take into account relevant witness statements also fails in that the Respondent did take into account all of the evidence from the

people who (according to either the Claimant or Ms Ciocirlan) potentially witnessed either the 16 October or 19 October incident.

239. While it is true that some of the Claimant's suggested witnesses were not approached, that was not conduct which was calculated or likely to destroy the relationship of trust and confidence, and nor was it without reasonable cause. The Respondent's reasons for its decision were explained to the Claimant at the time.
240. In terms of allegedly lacking concrete evidence, the respondent had reasonable grounds to reach the decision that it did, namely that the claimant had acted in a particular way on the 16 and 19 October 2023.
241. In terms of the suspension (paragraph 2.1.1.2), I repeat the comments made when discussing paragraph 4.1.3.
242. My decision is that the employer in this case did not fall into the trap that the employer fell into in the Gogay case. There was not a knee-jerk reaction. The employer considered what Ms Ciocirlan had alleged, assessed whether it had potential credibility. The employer is not required at that stage to decide whether the allegation is true or not; in terms of plausibility, it is just required to assess and whether it is so implausible that suspension would be inappropriate because of the lack of plausibility. There is no default position that plausible allegations lead to suspension, but a lack of plausibility is a strong reason to decide against suspension.
243. The Respondent gave the claimant the opportunity to comment before making a decision. I am satisfied that the reasons for the suspension were those given to the Claimant at the time, and that the Respondent acted in accordance with the terms of its contract. It was entitled to suspend by the terms of its express contract with the Claimant and my decision is that it did not breach the implied term of trust and confidence when it did so.
244. In terms of paragraph 2.1.1.4, I have decided that the discrimination complaints fail.
245. The most relevant issue to my assessment of the claimant's arguments of constructive dismissal is the one that set out paragraph 2.1.1.3.

On 22 February 2024 impose a disproportionate sanction by moving the claimant to a different department which had the consequence that the claimant moved from skilled rate to semi-skilled rate

246. I have to decide whether or not (whether in itself, or in conjunction with the other treatment), it was a breach of trust and confidence to demote the Claimant, reduce his pay, and/or move him to a different department.

247. Further, as per Smith v Trafford, I also have to take an approach that is analogous to deciding whether a summary dismissal was a breach of contract. In other words, if the Respondent cannot prove that (i) the Claimant committed the conduct in question and (ii) that that conduct amounted to the type of conduct for which the contract permitted dismissal, then the Respondent has committed a repudiatory breach of contract by the demotion (including reduction in pay, and in status).
248. The two questions overlap but are not identical. On the one hand, if I decide that the Claimant had not committed (what I will loosely call) a dismissable offence, then it was a breach of contract to demote him (as an alternative to dismissal) and I do not necessarily need to decide whether the demotion was (also) a repudiatory breach of contract by any other route. On the other hand, if I decide that the Claimant had in fact committed a dismissable offence, then it does not follow that the only possible conclusion is that there has been no breach of the term requiring trust and confidence.
249. I do accept that demoting the Claimant was likely to destroy or seriously damage the relationship of trust and confidence between employer and employee.
250. However, I also accept that this was not done without reasonable cause. I refer back to the points made above when discussing the discrimination allegations and paragraph 2.1.1.1. The Respondent received an apparently credible allegation from a supervisor, investigated it thoroughly and found that there was evidence to support it. There was reasonable evidence from which it could conclude that the Claimant had breached the policies, and breached his contract of employment, in circumstances in which dismissal would have been a possible outcome. It decided on demotion, rather than dismissal which (subject to the second question, discussed below) was an option which the contract envisaged as a potential response by the employer to allegations of this type which were upheld.
251. Thus, my decision is that there was no breach of the so-called “Malik term”.
252. I have to go on to decide whether the claimant had committed misconduct which could have led, according to the contract, to a decision to dismiss him. If he had not done so, then the employer did not have the contractual right to demote him. (That is, the particular changes implemented by Mr Niedzielski would have required the Claimant’s consent, and he did not have that consent.)
253. As I said above, my interpretation of the contract is NOT that an employee could only be demoted as an alternative to “summary dismissal”. That is, demotion was not an option only available to the employer if there was so-called “gross misconduct” or conduct which justified dismissal without notice. The contract also described the type of circumstances which would lead (potentially) to

dismissal with notice. I am satisfied that both a literal interpretation of the contract, as well as a common sense interpretation of the contract, means that demotion was a potential alternative to the latter type of dismissal, as well as the former.

254. What is notable, however, is that the Respondent did not (for example) issue notice of termination of one contract, and tell the Claimant that, from the end of that contract, he would be demoted into a different role / different contract. Rather, the Respondent purported to implement the demotion with immediate effect (from the start of the following week). Thus, in effect, unless the Claimant committed (what I will loosely call) gross misconduct, there was a breach of contract by the lack of notice of the demotion.
255. The evidence satisfies me, on the balance of probabilities, that the claimant did speak angrily to his superuser on two occasions
256. Of course, I totally acknowledge that the Claimant denies misconduct and that, on the claimant's account he thinks there was justification for his responses to Ms Ciocirlan. He thinks that she was treating him badly and he was acting reasonably by (in my words, not his) sticking up for himself and by telling her what he had done and why his actions had been reasonable.
- 256.1 For 16 October, in the Claimant's opinion, what he said was entirely reasonable and appropriate because (i) Ms Ciocirlan was effectively accusing him of lying about what work he had completed when (ii) as far as the Claimant was concerned, he had not lied, he had simply included work which he expected to be able to complete (but which, contrary to his expectations, he had not completed) by the end of the shift. Furthermore, she suggested that he had "hidden" the pallet (so that the fact it was incomplete would not be noticed by Ms Ciocirlan) whereas he regarded the pallet as being in a totally normal and expected location within the workspace.
- 256.2 For 19 October, in the Claimant's opinion, what he said was entirely reasonable and appropriate because (according to his alleged perception) she was demanding that he hand over private documents.
257. In relation to 16 October, the Respondent has not persuaded me that the Claimant had a contractual obligation, before the end of his shift, to specifically inform his supervisor, Ms Ciocirlan, that he was leaving a partially incomplete pallet, or to identify the specific location of the item to her. I accept that that may well be how the people higher up the chain of command thought that the system was supposed to work at the end of a shift. However, I accept that – as the Claimant has argued - in practice, incomplete pallets were sometimes left to be picked up by the next shift, without a formal record of that being kept. I do accept

that the paperwork for a pallet was supposed to be completed contemporaneously as the work continued, meaning that (apart from other implications) a new worker taking over someone else's work would simply be continuing the task and the paperwork that someone else had commenced. To the extent that the Claimant has argued (as relevant to 19 October) that paperwork did not have to be filled in contemporaneously as the work progressed, I reject that. The Respondent has proven that the forms did have to be filled in as the worker was unpacking the pallet and making decisions on whether each time was salvageable, hazardous waste or non-hazardous waste. There would have been no way for the next shift to pick up the partially completed pallet otherwise.

258. Of the two sets of incidents, 19 October is more significant than 16 October to the Respondent's assertions that the Claimant fundamentally breached his contract of employment.
259. The Claimant's account - as said in the findings of fact - differed slightly in this tribunal hearing to the contemporaneous record. At the time he accepted that the official company paperwork had not been completed and at the time he said that this was because he had not had time to do it yet, but that he could do so in due course by examining the notes he had made on his own paper.
260. In other words, at the time he said that he did have the ability to complete that official paperwork. He said he had the product numbers (the SKUs) written down and details of the decisions for each item, and he had these details in his own possession and he therefore had the ability to transfer those details onto the company paperwork.
261. His account in this tribunal hearing was that he was not obliged to hand that document over to Ms Ciocirlan. He says it was his personal information.
262. I do not ignore the fact that the Claimant says that the paper or notebook that he was referring to did not just include the product numbers, but included other things as well. That is, information that he believed the company had no right to (or, at the very least, that the company could not require that he let Ms Ciocirlan see).
263. However, the actual information about the work done on that shift - that the claimant claims that he had in his possession – would not have been the Claimant's own data / information. Assuming he had that information written down, that was the company's information. The company was entitled to have the details of the work that the claimant had done on the partially completed pallets and the claimant had no entitlement correspondingly, to take the information away with him at the end of the shift. He had no right to remove the written information (that he claims he possessed) from the company premises.

The fact (if true) that he had chosen to write it down somewhere on a piece of paper that also included other information (personal information) does not convert the information about the products which he had handled (and the decisions he made for each item) from being company information to being his personal data / information.

264. I regard this as a similar situation to that in Kempster v Cantor Fitzgerald (UK) Ltd. Although it was a single occasion, the Claimant was asked multiple times during that single occasion to hand over the information and refused multiple times. He also did not hand it over later. I accept that he was off sick immediately after 19 October. However, firstly he did not have the right to take the information home with him, and secondly, his sickness absence would not have prevented him supplying the information to the Respondent by some method.
265. By his actions, and his refusal to comply with the reasonable instructions of the Respondent (given by Ms Ciocirlan), the Claimant demonstrated a lack of willingness to be bound by the terms of the contract.
266. Taking into account what Ms Ciocirlan has said, both contemporaneously and in the litigation, as well as what Ms Zafir and Cristian said to the Respondent, I am satisfied that he demonstrated a degree of belligerence and that he showed a willingness to carry out those of his contractual obligations that he saw fit to carry out, rather than those which Ms Ciocirlan instructed him to do.
267. Disobedience on one particular occasion is not always “gross misconduct”. At least some of the time, the employer would be required to give a warning that a repeat would lead to dismissal, rather than dismissing for the one example of refusing to follow instructions.
268. However, on the particular facts of this case, the claimant had numerous opportunities to comply with the instructions which Ms Ciocirlan gave. Far from accepting that he should have done so, and confirming he would do so in future, the Claimant and his union representative argued that there was wrongdoing on the part of Ms Ciocirlan to repeat the instructions after the Claimant had said that he was not willing to hand the information to her.
269. The claimant accepts that he repeatedly refused to hand the information over. I do not accept that the claimant misunderstood what she was asking for. He knew that the “official” paperwork for the pallet was incomplete and he knew that he had told her it was not completed, and he knew that he had told her that he could complete it, and he knew that she was asking for the notes that he claimed to possess that would enable him to complete it. He knew that it was those notes that he was refusing to hand over to Ms Ciocirlan.

270. Even if the claimant did not understand that the respondent was entitled to the information, the fact is that it was and the claimant - by refusing to hand that information over and by purporting to keep information for himself - was flouting of his contractual obligations.
271. In those circumstances, he had committed conduct which would have entitled the respondent to terminate his employment without notice. Therefore, when Mr Niedzielski decided to demote the claimant and to move him into a different department, the Respondent had the contractual right do so. The Respondent was not required to give notice of the demotion in these circumstances.
272. For that reason, the allegation that the claimant was dismissed fails. There was no dismissal and within the meaning of section 95(1)(c) ERA. For completeness, no dismissal within the meaning of section 39 EQA either.
273. The unfair dismissal complaint is not well-founded.
274. For these reasons, all the complaints failed, regardless of any time limit questions.

Approved by:
Employment Judge Quill
on Date: 8 June 2026

REASONS SENT TO THE PARTIES ON
9 June 2026

FOR EMPLOYMENT TRIBUNALS