



EMPLOYMENT TRIBUNALS

Claimant: Mr Mason

Respondent: FD Copeland & Sons Ltd

Held At: London South

On: 9-12 February 2026 (in person)
13 February 2026 (in chambers)
17-18 February 2026 (in person)
19-20 February 2026 (in chambers) and
21 April 2026 (CVP)

Before: Employment Judge Hart, Mr Singh and Ms Forecast

Representation:

For the claimant: Mrs Mason (wife and lay representative)

For the respondent: Mr Canning (counsel)

JUDGMENT having been sent to the parties on 29 April 2026 and written reasons having been requested by the claimant in accordance with Rule 60(3) of the Employment Tribunal Procedure Rules 2024, the following full reasons are provided:

FULL REASONS

INTRODUCTION

1. Mr Mason (the claimant) worked for the respondent for 39 years. He brought two claims to this Tribunal. The first claim (claim number 2306528/2023) submitted on 26 November 2023 was for non-payment of his bonus. At the time he was still employed by the respondent. On 2 February 2024 Mr Mason was dismissed for gross misconduct. The second claim (claim number 2303830/2024) was submitted on 26 April 2024 for ordinary unfair dismissal, whistleblowing detriment / automatic unfair dismissal and direct sex, race and age discrimination.

THE HEARING

2. The hearing took place over 10 days. Mr Mason was represented by Mrs Mason (his wife and a lay representative); the respondent was represented by Mr

Cannings (counsel). They are both thanked for their representation and assistance during the hearing.

3. For the hearing we were provided with the following documents:
 - 3.1 an agreed hearing bundle of 1064 pages, the references to page numbers in this judgment are to the pages in this bundle;
 - 3.2 an agreed supplementary bundle of 63 pages, this is referred to in the judgment as SB followed by page number;
 - 3.3 a witness statement bundle;
 - 3.4 an agreed chronology and cast list; and
 - 3.5 a reading list.
4. Mr Mason gave evidence on his own behalf. The respondent called Mr May, Mr White, Mr Torre, Mr Sargent and Ms Macdonald. Ms Wood provided a statement but was not called since she was not a witness of fact, having only had overview of the investigation rather than any direct involvement.
5. On completion of the evidence both parties provided written submissions supplemented by oral submissions. Prior to the receipt of oral submissions the Tribunal provided the parties with an extract from Harvey on Industrial Relations and Employment Law (issue 323) on “Discretionary Bonus Payments” (para B1.1.A(5)).
6. The judgment and summary reasons on liability were provided on day 10. The remedy hearing took place the same day and for this we were provided with the following additional documents:
 - 6.1 claimant’s pay slips; and
 - 6.2 respondent’s counter schedule of loss. [The claimant’s updated schedule of loss had been included in the agreed hearing bundle at pages 141-142), along with remedy documents.
7. On 29 April 2026 Mrs Mason applied for summary written reasons. I have decided to provide full reasons, to enable Mr Mason to have a full understanding the findings of fact which led to the conclusions reached by the tribunal and to seek advice if necessary. It also avoided potential delay caused by leave over the summer period.

DURING THE HEARING

8. The hearing was initially listed for 9-17 February 2026. On day 1, the parties were informed that the Tribunal could not sit on 16 February 2026. On day 4 the Tribunal agreed the respondent’s application to have day 5 as a reading day and for Mr Sargent (a key witness who had a bereavement during the course of the hearing) to give his evidence on day 6 (17 February 2026) with closing submission on day 7 (18 February 2026) and deliberations on days 8-9. A further date (21 April 2026) was listed for judgment (and remedy hearing if necessary).

CLAIMS / ISSUES

9. It was agreed at the outset that the claims and issues were as set out in the Case Management Order made on 19 September 2024 (**pp. 110-127**) (see appendix A).- Mrs Mason confirmed during this discussion that Mr Mason was not bringing a complaint for disability discrimination, and that evidence as to his mental health was only relevant to remedy.

FINDINGS OF FACTS

10. We have only made findings of fact in relation to those matters relevant and necessary for the issues to be determined. Where there were facts in dispute we have made findings on the balance of probabilities. It has not been necessary, and neither would it be proportionate, to determine each and every fact in dispute. The Tribunal has not referred to every document it read and/or was taken to in the findings below but that does not mean it was not considered if it the Tribunal were taken to the document in evidence or as part of a reading list.

About Mr Mason

11. Mr Alan Mason worked for the respondent for 39 years. This was his first and only job. His brother had also worked for the respondent until his retirement 4 years ago.
12. Mr Mason had no previous disciplinary warnings (formal or informal). No other female member of staff had raised any issue with the respondent about Mr Mason.
13. In appraisals, the respondent recorded that Mr Mason was seen as an “asset” to the company. He was a good worker, very knowledgeable and kept to deadlines (see eg appraisal 27 May 2022: **p. 239**). At work, Mr Mason would joke around and engage in what he saw as banter with colleagues. For example Mr Mason made some pretend binoculars that he would use to “spy” on management and would give nicknames to staff such as “shifters” to those whose role was to move goods. The respondent tolerated this behaviour and did not speak to Mr Mason about his behaviour at work and how it may affect his colleagues. Mr Sargent accepted in evidence that Mr Mason’s conduct should have been addressed at an earlier date.
14. Over time Mr Mason’s relationship with the respondent had deteriorated. He had lost trust in them following the refusal to let him return to “early starts”. Since 2020 he had been recording notes on his mobile phone. He no longer stayed at work to have his lunch, preferring to go to MacDonalds or sit in his car. In 2023 he was seen wearing a sign stating, “I am not important” which we consider was an indication of how he felt about his employment and management.
15. Mr May (line manager up to 2021) in evidence stated that Mr Mason did not speak to him in the last few years; Mr Mason would respond to a direct question on work issues but if he saw Mr May in the corridor he would “*put his head down*”

or go back into where he came from ... did not engage". Mr White (line manager from 2021) stated that Mr Mason would ignore him –*"not once, not twice, but he will keep doing it. I will go up to him, he will totally ignore me"*: p. 437. Mr White confirmed in evidence before us that Mr Mason treated Ms Howse (trainee manager) no differently in that respect.

About the respondent

16. The respondent was a manufacturer of essential oils. Its premises was located on one site with two buildings. Colanol House which accommodated the directors, finance, distillation, applications and maintenance staff, and a warehouse for production of the oils with offices above for quality control, sample department and production management. The warehouse itself was large with two separate sections one for goods in and the other for goods out; the sections were connected by a corridor. The quality system office was also located in the warehouse. Persons working upstairs would regularly access the warehouse.
17. At the material time, the respondent employed 42 employees. The gender breakdown in 2023 was as follows:
 - Directors (4 persons, all male: Mr Sargent, Mr Smith and Mr Pack (and previously Mr Torre (retired))
 - Finance (5 persons, all female)
 - Distillation and maintenance (4-5 persons, all male)
 - Applications (2 persons, 1 male and 1 female)
 - Quality systems (1 person, female: Ms Carrie Matthews). Ms Matthews was senior to Mr Mason, her role was to conduct audits. She had no line management responsibilities. Prior to the appointment of Ms Howse she was the only woman on the warehouse floor.
 - Quality control (3 persons, 2 female 1 male)
 - Sample (1 person, female)
 - Production manager (1 person, male: Mr White, previously Mr May)
 - Assistant production manager (1 Person, female: Ms Alison Howse). Ms Howse was brought in as a trainee to take over Mr White's role when he retired in 3 years' time. She was therefore in a line management position over Mr Mason.
 - Warehouse (all male). There were three main teams: goods in, goods out and blending. Mr Mason was in blending along with Mr Glen Moseley and Mr Ben Hines. Mr Jason Chapman was also in blending but worked on cleaning. Mr John Keen worked in goods out. Mr Steve Ruston was a driver. Mr Jason Woodward was the warehouse supervisor and Mr Peter Franklin the production supervisor.
18. Ms Howse was in her 20s. Mr Hines and Mr Moseley were in the age group 20-40s. Mr Mason, Mr Chapman and Mr Woodward were in their 50s. About a year before Ms Howse was employed another woman in her 20s had worked in the warehouse for a few months but was dismissed due to sickness absence. Other than this no women had worked in the warehouse before Ms Howse's appointment.

19. At the time of these events the respondent had no internal HR department but had access to lawyers that would provide advice.

Policies and procedures

The relevant contractual provisions

20. Paragraph 6. Bonus: *"You may be eligible to receive a variable discretionary bonus payment, the payment of, amount of and date of payment of any such bonus is entirely at the discretion of the Company. No bonus will be payable to you if you are not employed by the Company or are under notice of termination at the time when such payments are made": p. 176.*
21. Paragraph 9. Hours of Work: *"Your normal hours of work are set out in Schedule 1, with an hour for lunch. The Company reserves the right to vary these times and, in particular, to require you to work additional hours as the needs of the business may from time to time demand": p. 177.*
22. Schedule 1 provided that: hours of work was *"7am to 2:30pm (30 minutes Lunch as agreed) and such further hours as are necessary for the proper discharge of your duties": p. 184.*
23. The respondent had disciplinary, grievance and whistleblowing policies and an equal opportunities and anti-harassment policy.

Chronology of events

24. On 24 March 1986 Mr Mason commenced employment with the respondent: **pp. 174–18.**
25. On 14 June 2011 the respondent wrote to Mr Mason agreeing new contractual hours of work (7am to 3:30pm) and reduced hours paid on a pro-rata basis: **pp. 172–173.** He was informed that this was initially on a 3 month trial basis to be made permanent upon review. In the accompanying letter it was stated:

"Because of the health and safety rules that apply to those working in the Warehouse, we have only been able to agree to accommodate your request on the basis that your colleague, Daryl Davidson, will also change his working hours to match yours.... The new hours are therefore conditional upon this Daryl Davidson continuing to be employed on the same working pattern as you. It is important, therefore, that you understand that this arrangement can only continue for as long as Daryl Davidson remains employed by the Company and working on the same pattern as you."

Mr Mason was further informed that if either he or Mr Davidson were unable to work (due to holiday or pre-notified sickness) the other would need to revert to normal hours (8:30am to 5pm).

26. Mr May stated in evidence that sometimes this arraignment worked "OK" and other times was "difficult", that it relied on the goodwill of other employees

including himself and it meant that Mr Mason and Mr Davidson were not present in the afternoon which was the respondent's busiest time.

27. In 2018, during his appraisal with Mr Torre (Managing Director) it was recorded that Mr Mason referred to the disruptive nature of Mr Moseley, in particular that Mr Mason did not like the noise "*crashing and banging*": p. 189. Mr May in evidence confirmed that Mr Moseley was noisier than the other workers and that other workers would regularly complain about it. Mr May also stated that Mr Moseley would complain about Mr Mason in relation to stock control and stated that these complaints were valid. Neither Mr Mason nor Mr Moseley escalated these complaints by making a formal complaint against each other.
28. On 16 May 2019 Mr Mason says he orally complained to Mr Franklin (his then line manager who reported to Mr May) and Mr Torre, about the danger posed by Mr Moseley welding on the floor of the warehouse around highly flammable drums (**Disclosure 1**). This was disputed by Mr Torre. Mr Mason did not give evidence as to what he said to Mr Torre and Mr Franklin. Mr Mason recalled the date because he took photographs: p. 192. This showed a welder sitting on top of a drum, albeit it does not show Mr Moseley using the welder, nor does it show whether the drum in question contained flammable liquids. Mr Mason accepted in evidence that he did not show the respondent these photographs. He said that this was because he "*feared for my job because already been warned*". Mr May accepted that Mr Moseley should not be doing welding in the warehouse, if that was what he was doing. In absence of any evidence to the contrary from Mr Franklin (who did not attend to give evidence) we accepted Mr Mason's evidence that he did orally complain to Mr Franklin about the health and safety risk, since he would not have taken the photograph had he not been concerned. In the absence of clear evidence from Mr Mason as to what he said to Mr Torre, we do not find that he separately complained to Mr Torre. We have taken into account that memories fade over time and consider that Mr Mason was mistaken about this.
29. On 16 June 2019 Mr Mason orally complained to Mr May, about the danger posed by Mr Moseley having made some repairs to a menthol pot holding oils of up to 80 degrees temperature, which Mr Mason considered an inadequate repair carried out by someone not qualified to do so (**Disclosure 2**). When it was put to Mr Mason that the date he relied on was a Sunday, Mr Mason stated that this was the date that he had made a note on his phone. This was not in the bundle and Mr Mason was unable to locate it. We found that he was mistaken about the date. Again Mr Mason had taken photographs but did not disclosed these to Mr May at the time: pp. 194-195. The dates on the photographs were 21 May and 1 August 2019. Mr May did not dispute that Mr Mason had raised this issue with him. However he did not agree that the photographs showed any wrongdoing, since there was no evidence of welding, and the repair was purely the use of sticky tape to protect wiring.
30. During his appraisal on the 23 September 2019 Mr Torre had with him Mr Mason's contract with his hours underlined and stated "*don't make things bad for yourself*": p. 196.

31. On 23 March 2020, due to COVID, the respondent introduced a Covid Contingency Plan requiring all employees to work 8am–4pm on alternate days: **pp. 201–204**. This meant that Mr Mason and Mr Davidson were put on the same hours as their full-time colleagues (**Detriment 2**).
32. On 22 April 2020 Mr Mason texted Mr Sargent stating: *“can you confirm that my pay is no longer pro rated for this pay period, and that I will receive the 10 hours that were short in last months pay, this month?”*: **p. 206**. Mr Sargent responded the same day stating that he had *“originally thought / was told that it was to be taken as holiday”* and agreed that Mr Mason would revert to full pay: **p. 207**.
33. On 4 May 2020 Mr Sargent emailed Mr Torre and Mr Smith (the other Directors) explaining the situation and that the respondent would need to address the reduction in salary in 2011 for Mr Mason and Mr Davidson *“so that they are not treated any less favourably”*: **p. 211**. He referred to it as “unfortunate timing”. We take judicial note that for businesses the early period of the Covid-19 pandemic was a time of great stress and financial uncertainty. Mr Mason was requesting more money (to revert to full pay) at a time when he was only being asked to work alternate days (50% of full-time hours). We considered that the reference to “unfortunate timing” showed that Mr Sargeant was frustrated with Mr Mason’s request.
34. In May 2020 Mr Mason received £374.40 in back pay: **p. 220**. This was less than he should have received. The respondent had wrongly calculated the shortfall as 10 hours pa not 10 hours pm.
35. On 22 May 2020 Mr Mason spoke to Mr Sargent regarding the shortfall (**Detriment 3**): **p. 221**. Mr Mason’s evidence was that during this conversation Mr Sargent threatened him with a written warning. This was denied by Mr Sargent. On the same day at 12:17 Mrs Mason sent Mr Mason a text *“Let them do their worst and dont let them hold the job over u. If anything comes of it I will take legal advice”*: **p. 218**. We considered that this was a reference to the meeting that Mr Mason had had with Mr Sargent. In a note made on his iPhone on 9 August 2020 Mr Mason recorded that *“my wife had sent me a text working out what it should be and I showed him it and he wasn’t happy threatening letter to my house and said we only worked 19 hours this month which was there choice due to CVID as did every one else then said maybe I will only pay u 19 hours money then if u moan in front of hr”*. On the basis of this evidence we found that Mr Sargent did threaten Mr Mason.
36. Around August 2020 Mr Mason emailed Mr Sargent stating *“I presume me and Mr Davidson will be going back to our hours of 7 till 2:30”*: **p. 997**. Mr Sargent responded *“I have to look at that Alan to see if the CV19 protocols will work. You have to be temperature checked before you enter the buildings. So leave it with me”*: **p. 997**. On 2 August 2020 Mr Sargent informed Mr Mason that due to the *“protocols that we have to have in place for the safe reintegration of production etc”* he would have to work 8am to 4pm *“until further notice”*: **p. 223**.
37. In early September 2020 Mr Mason met with Mr May and Mr Torre about the shortfall in his pay. He showed them Mrs Mason’s calculations (**p. 224**). Mr May

confirmed that there had been a shortfall and this was rectified in Mr Mason's 25 September 2020 pay slip: **p. 226**.

38. In early 2021 Mr Mason says that he orally complained to Mr May that warehouse staff's training was out of date, and that people were driving forklift trucks without a licence (**Disclosure 3**). Mr Mason's training record recorded that his NVQ forklift truck qualification expired on 9 August 2012: **p. 1064**. Mr May stated that was different from forklift licenses which was for life. Mr May was also clear that the conversation he had was not with Mr Mason but with his brother. He recalled it because Mr Mason's brother informed him that Mr Mason has said that the forklift truck licenses were out of date. Mr May had responded that if someone had an issue they should come to speak to him himself, he asked that Mr Mason come to speak to him and that he never did. We prefer Mr May's evidence, he came across as a credible witness and clearly recalled this discussion.
39. Sometime prior to 7 January 2021 Mr Mason again asked Mr Sargent if he could revert to his pre-Covid hours. Mr Sargent responded "*Leave it with me Alan. I shall talk it through with Greg [May] and see what we come up with.....We need to factor in there being two of you in as well as temperature checks and the CV19 protocols. I'll come back to you.*" **p. 1031**
40. On 15 January 2021 Mr Mason says he orally complained to Mr Franklin that Mr Moseley was touching the circuit board in the hot room, which he was not qualified to do, and stated that this was not safe (**Disclosure 4**). Mr Mason had made a note of this concern on his phone which referred to "*Glenn opened hot room Cubard electric voltage door and started messing about with circuit board resulting in warm room heating up wrong spoke to my manager told him it wasn't safe and he shouldn't touch it [a]s he ain't qualified to touch electric but manager watches while Glenn reopens it again to reset*": **p. 229**. Mr Franklin was not called to give evidence. In the absence of any evidence to the contrary we accept that Mr Mason raised this issue with Mr Franklin, particularly because he was always complaining about Mr Moseley. Mr May agreed that if Mr Moseley was touching the circuit board then that was dangerous. He did, however, point out that the hot room contained a control panel with switches that could be used to turn the heat up and down and that the circuit board could only be accessed if the control panel was dismantled. He doubted that the control panel had been removed and stated that Mr Mason's brother had regularly accessed the cupboard to turn the heating up or down.
41. On 15 February 2021 Mr White took over from Mr May as Production Manager.
42. On 15 March 2021 Mr Mason wrote to Mr Sargent asking to return to his pre-Covid hours: **pp. 231–232**. He stated that "*if mornings are a problem due to temperature checks or previous management now a new manager is in place*" he would accept a reduction in salary and that he needed to "*reduce his hours in the afternoon*" for childcare reasons.
43. In evidence Mr White stated that he was unaware of the 2011 agreement to work 7-2:30 or that it had only been changed due to Covid. We do not consider

it credible that Mr White did not know about the 2011 agreement, since it was highly likely that Mr Mason would have referred to it being a contractual agreement.

44. On 29 March 2021 Mr White had a discussion with Mr Davidson and informed him that *“as I understand it the hours are not going to be returned”*: pp. 233–234 and 1052. His evidence was that earlies would not work and that it left the respondent short in the afternoon. He asked Mr Davidson what he needed and agreed that he could take a half hour lunch and leave at 3:30pm. Mr White then informed Mr Mason that he had spoken to Mr Davidson and made the same offer to him. Mr Mason responded that it was *“no bloody help to me at all”*. Mr White stated the offer was on the table and left it at that.
45. On 31 March 2021 Mr Sargent refused Mr Mason’s request to revert to his pre-Covid working hours (**Detriment 1; SD act 3**): pp. 235–236. The rejection letter provided the following reasons:
- *“Impose an unreasonable burden of additional costs on the company;*
 - *Have detrimental impact on performance;*
 - *Have a detrimental impact on quality; and*
 - *Create unacceptable difficulties for the company to make arrangements to reorganise work amongst other staff to cover periods any of periods of leave, including sick leave and annual leave.*

The above reasons apply largely for health and safety reasons. As you are aware you cannot work alone in your role. This means that between 07.00 and 08.00 an additional warehouse worker is required to adjust their hours to align with those requested by you. Despite this, it is also necessary to find other employees (potentially at very short or no notice) to cover.”

Mr Sargent offered to accommodate an earlier finish to your current workday (3:30pm), and asked Mr Mason to let him know if that was something that he would be interested in and could discuss further. Mr Mason did not take up this offer.

46. Mr Sargent stated in evidence that it was his understanding that Mr Davidson no longer wanted to work earlies. This was undermined by Mr White’s evidence that Mr Davidson was told that he would not be returned to pre-Covid hours. It was not disputed that female staff who worked in the office were permitted to revert to their pre-Covid working hours for childcare responsibilities.
47. On 13 May 2021 Mr Mason orally complained to Mr White and Mr Franklin that the stairwells were blocked (**Disclosure 5**). Mr White agreed that this was a health and safety risk and thanked him for bringing it to his attention. He put in place yellow hatch tape to mark the stairwell as a designated walkway and to remind staff not to place drums on the stairwell. This resolved the issue.
48. The respondent had two air circulation systems: an air handling unit which removed the fumes from the premises and pumped clean air in, and the fans which circulated air around the building (but did not filter it). The two systems were independent of each other. On 10 June and 17 June 2021 Mr Mason orally complained to Mr White that the air handling fans had been turned off by Mr

Moseley (**Disclosures 6 and 7 respectively**). Mr Mason relied on a photograph of a switch which had a sticker stating, “do not turn off”. Mr May stated that he put up the sticker. The switch that Mr Mason was referring to related to the fans and that this was not a health and safety issue but a room temperature issue and he put the sticker up to stop Mr Moseley turning the switch off. Mr White investigated Mr Mason’s complaint and explained this to Mr Mason.

49. On numerous occasions in 2022 and 2023 Mr Mason orally complained to Mr White that Mr Moseley, without qualifications, was manufacturing and fabricating machinery for 5 to 10 kg filtering final products which would go to clients and the wider public (**Disclosure 8**). Mr White stated that Mr Moseley had designed a new piece of machinery to resolve an ongoing technical problem. He had spoken to Mr White about it and Mr White discussed it with the technical director and quality manager who both agreed it was a good solution. Mr Moseley built the machine at home and was reimbursed for the materials. The final product was checked by maintenance and an external company before it was rolled out for use. Mr Mason refused to use it and encouraged Mr Hines not to do so.
50. On 1 December 2022 Ms Howse commenced employment as a trainee supervisor. A woman in her 20s, she had previous relevant experience of working in a male dominated warehouse environment. Mr White was intending to retire in the next three years and was training her to replace him, rotating her across the different sections of the warehouse to learn the business. Mr White intended Mr Mason to provide training on blending.
51. Sometime after Ms Howse commenced employment Mr Mason raised with Mr White that he did not want to train Ms Howse because he felt “uncomfortable” around her; he stated that Mr Hines had agreed to train her. Mr Mason complained that Ms Howse spoke about her periods and called her colleagues “babes”. Mr Mason said that he also complained that Ms Howse had informed him that she “hated men”; Mr White denied this and we found that that this was not raised at this stage. Mr White thought Mr Mason was “overreacting” and that it would resolve itself, so he did not investigate Mr Mason’s complaint but did informally speak to Ms Howse to be more mindful. Mr Mason denied that he said he would not train Ms Howse. We find that Mr Mason did refuse to train her since this was what Mr White understood at the time and what Mr White recalled at the investigation interview (see below).
52. Mr White stated that on a number of occasions Ms Howse had complained to him that she was finding Mr Mason’s and Mr Chapman’s behaviour difficult. One of the issues that she raised was Mr Mason ignoring her, to which Mr White had responded *“if we went to court and say he keeps coming down and not talking to [you] the judge would say are you some sort of idiot”*: p. 438. Mr White did not investigate because he thought over time it would sort itself out. Mr White did not speak to Mr Mason or do anything to resolve the situation.
53. Around February 2023 Mr Mason says he orally raised concerns to Mr White that there were drugs being taken by some members of staff working in the warehouse (**Disclosure 9**). Mr White denied that Mr Mason had raised this

issue with him, stating that it was Rentokil who informed him that they had found the remnants of cannabis smoking in the maintenance corridor when carrying out checks on rodent traps. Mr Sargent also recalled that it was Rentokil that alerted the respondent. The respondent took this very seriously, it was investigated and the respondent was unable to identify who was responsible. Staff were informed that taking drugs at work would not be tolerated and that it was dangerous in an environment with highly flammable materials. We found that Mr Mason did not raise this issue, he was unable to provide any details of this conversation or Mr White's response, whereas Mr White and Mr Sargent gave clear evidence.

54. In August 2023 Mr Mason says he orally complained to Ms Howse that the air handling fans had been turned off by Mr Moseley (**Disclosure 10**). Ms Howse did not attend to give evidence. In the absence of any evidence to the contrary, we found that Mr Mason did raise this issue with Ms Howse, since this was something that he had raised previously.
55. On 14 September 2023 Ms Howse had a meeting with Mr White and Mr Sargent during which she alleged bullying by Mr Mason and Mr Chapman: **pp. 547–550 (SD act 1)**. During the meeting she confirmed that she wished to make a "formal complaint" and made specific allegations consistent with her later written complaint (see below).
56. Due to the gravity of the allegations Mr Sargent and Mr White spoke to Mr Pack and Mr Smith (other Directors) and it was agreed to conduct an initial investigation to see if Ms Howse's allegations were corroborated and then speak to their legal advisers: **pp. 548–550 (SD act 2)**. An initial investigation interview was conducted with Mr Hines and Mr Franklin. Mr Hines, on being asked if he had witnessed any bullying, initially stated "No". In response to a question that there was a difference between banter and discriminatory remarks, he stated that *"there was friction between AH [Ms Howse] and AM [Mr Mason] – AM called her a parasite. Mr Hines said AM is careful and if AH retaliated or tried to stop it AM would do it more"*. He referred to Mr Mason calling Ms Howse "Mary" and stated that Mr Mason did not like working for a woman. Mr Franklin (Ms Howse's mentor and supervisor) stated that he had heard of comments being made "second hand" but not heard anything himself.
57. On 15 September 2023 there was an incident between Ms Howse and Mr Woodward in relation to an instruction that Ms Matthews had given Ms Howse to paint the drums: **pp. 551-560**. Mr Woodward shouted at Ms Howse and stated that what she was doing was a major health and safety breach. Mr Rushton and Mr Keen were present. Ms Howse alleged that following the incident Mr Woodward was seen laughing with Mr Mason and Mr Chapman and that one of them had said *"I think it's time for you to put the white coat on and sort this out"*. Ms Howse broke down and went home. Ms Howse reported this incident in a text exchange with Mr Sargent: **pp. 551-564**.
58. On 18 September 2023 Mr Rushton and Mr Keen were interviewed about the 15 September incident: **p. 570**. Both confirmed that Ms Howse was upset. Mr Rushton stated that Mr Woodward was loud and confrontational and there was

a suggestion that Mr Woodward had been “wound up” by Mr Mason and Mr Chapman to act as he did. Mr Woodward was suspended.

59. The same day, Ms Howse sent a WhatsApp to Mr Sargent about not attending work and seeing her GP. Ms Howse was signed off sick until 22 September 2023: **pp. 841-843**. In this exchange, on two occasions, Ms Howse ended her messages with an “x”. Mr Sargent did not do so.
60. On 19 September 2023 Ms Matthews provided an email report setting out the sequence of events leading up to the 15 September incident: **p. 571**.
61. On 20 September 2023 Ms Howse provided a written complaint “*about the workplace bullying and sexual discrimination I have been experiencing by Jason Chapman and Alan Mason that started a few weeks into my employment 01/12/2022 to the present day*”: **p. 543**. She stated that the behaviour was “unacceptable” and had had “*an impact on my morale and productivity and mental health*” and caused her “*significant emotional distress on several occasions, to the point I have now been prescribed anti-anxiety medication from my GP*”. The allegations in relation to Mr Mason included:
 - 61.1 That the week commencing 19 December 2022 Mr Mason has said in the presences of Mr Chapman “*Listen, firstly women should not be working here, it’s not women’s work, we had a girl who worked here before and she didn’t even last 5 minutes and secondly, we don’t even need a supervisor*”: **p. 574**.
 - 61.2 That Mr Mason had refused to work with her.
 - 61.3 That Mr Mason never said good morning or hello to her; he would loudly address everyone one by one by name and say good morning but purposely ignore her and that this occurred periodically throughout the day: **p. 575**. That on 13 September 2023 Mr Mason kept greeting Mr Keen and Mr Rushton “upwards of 20 times” and then deliberately look at Ms Howse and smirk. Ms Howse asked him to stop because it was getting excessive. Mr Mason’s response was to continue “*to ask them even more and greet them even louder*”. The next morning Mr Mason stood in the middle of production, did a star jump, waving his arms and shouted as loudly as he could “*GOOD MORNING JOHN!*” *looked at me, laughed and went to his section*”: **p. 545**.
 - 61.4 When she had gone to the café with Mr Keen and Mr Rushton, Mr Chapman was pretending to console Mr Hines who he claimed was upset because Ms Howse was seeing Mr Keen behind his back. Mr Mason joined in with this joke: **p. 575**. Ms Howse interpreted this as suggesting that she was in a multiple sexual relationship with her team.
 - 61.5 That Mr Mason and Mr Chapman used nicknames, for example she was called “Bonnie” as in “Bonnie and Clyde” and that she, Mr Franklin and Mr Keen were called “shifters” since they had only been employed to shift products.

We found that it was receipt of this written complaint that prompted the decision to suspend Mr Mason and Mr Chapman pending investigation.

62. On 21 September 2023 Mr Mason was suspended and escorted off the premises; he found that very distressing. By letter he was informed that his suspension was pending an independent disciplinary investigation into allegations against him of gross misconduct, namely bullying and harassment in relation to sex and race: **pp. 250–251**. The letter stated that the suspension did not constitute disciplinary action, and that during his suspension he would be paid his salary *“in the normal way”* and that *“you are also entitled to your normal contractual benefits”*. He was told not to communicate with any of the respondent’s employees unless authorised in advance.
63. The same day Mr Sargent emailed the other directors (Mr Torre, Mr Smith and Mr Pack) about the year 2022 bonus payments (**bonus**): **pp. 249**.

“Obviously in view of ongoing allegations there wont be anything for Messrs Woodward, Chapman and Mason.”

This was the bonus for the financial year 2022/23 and the decision to award the September bonus was based on company and personal performance in that year. Mr Mason’s undisputed evidence was that he had always received a September bonus. Mr Sargent informed us that this was the first time that an employee had been suspended and that the only previous occasion where a bonus was not paid was due to poor performance.

64. On 29 September 2023 Mr Sargent emailed Mr Mason to inform him that an independent external company, Ibex Gale, had been appointed to conduct the investigation: **pp. 256**. The terms of reference requested that Ibex Gale conduct a fact finding investigation into the allegations: **p. 408**. This was *“[T]o be conducted in accordance with the relevant provisions contained within the Organisation’s disciplinary policy and procedures”*: **p. 409**. Mr Boyd was appointed to conduct the investigation.
65. The same day Mrs Mason informed the respondent that Mr Mason had been referred for a mental health assessment. She also complained about the non-payment of the bonus: **pp. 256 and 258**.
66. On 2 October 2023 Mr Sargent responded stating *“I am sorry to hear that Alan’s mental health has been suffering and I hope that the assessment on 5 October is productive and that he can get the appropriate support that he needs”*: **p. 252**. In the same email Mr Sargent stated that as Mr Mason was suspended the Board did not consider it appropriate to pay him a bonus *“at this time. However, should the result of the investigation be that no further disciplinary action against Alan is recommended, then the Board will consider whether it is appropriate to pay him a bonus at that time”*: **p. 252**.

67. On 5 October 2023 Mr Mason submitted a grievance in relation to the non-payment of the bonus stating that this was an unlawful deduction of wages: **pp. 259–264**. Mr Pack was appointed to investigate.
68. On 6 October 2023 Mr Mason was invited to attend the fact finding interview with Mr Boyd at Colanor House: **pp. 266**. Mr Mason objected to this location and an off-premises venue was arranged: **p. 268** and **269**.
69. Between 10 October to 23 October 2023 Mr Boyd interviewed ten witnesses including Mr Mason (**AD act 1, SD act 2, RD act 1**): **pp. 412–542**. The following questions asked by Mr Boyd, or responses by witnesses, were relied upon by Mr Mason as evidence of discrimination:
 - 69.1 Mr White was asked: *“do you see them solely being because she’s female”* and whether he believed the treatment was *“in relation to her gender”* (**p. 435**); *“how old is Jason Woodward? Is he a bit younger than the two?”* (**p. 439**);
 - 69.2 Mr Hines was asked: *“Do you think any of the behaviours for any one of the individuals or all 3 of them are in any way relating to Alison being female? Do you think if she would have been a bloke?”*: **p. 456**. And *“Would he had said that to a bloke if they were a supervisor?”*: **p. 457**.
 - 69.3 Ms Matthews was asked: *“I wanted to speak to you as you were there on the day, and you’re a woman, I’m trying to understand if it’s a male-dominated thing. Is that your view?”*: **p. 465** Are you aware of any other females that have had issues with them?: **p. 461**
 - 69.4 Mr Franklin was asked: *“have you ever heard any derogatory comments made about females? If so, please provide detail?”* and *“[h]ave any of the staff ever raised concerns about derogatory comments being made about females? If so, please provide detail”*: **p. 532**
 - 69.5 Mr Rushton was asked: *“So what would they have said, was it derogatory comments about female?”* **p. 473**; *“do you believe that any of this is in relation to Alison’s gender?”*: **p. 475** and *“Do you believe they would have behaved in this manner if she was a middle aged man?”*: **p. 475**
 - 69.6 Ms Howse was asked: *“how old is he?”*: **p. 425**.
 - 69.7 Ms Matthews referred to Ms Howse as *“a very small woman”* and stated that *“Overall, there is a general, ‘I don’t like being told.’ There probably is a, ‘I don’t like being told by a woman,’ adding to that, ‘I don’t like being told by a very small woman.’”*: **p. 462**. Further Ms Matthews stated: *“There may well be a huge element of sexual discrimination just because she’s a small young woman”*: **p. 465**. We noted that Mr Mason also referred to Ms Howse as a *“small petite lady”*: **p. 327**.
70. In her interview (**pp. 412–430**) Ms Howse confirmed that Mr Mason had made the “women’s work” comment (**p. 415**) and that she had been given the nicknames “Nancy” and “Bonnie and Clyde” (**p. 424**). Further,
 - 70.1 in response to a question about Mr Mason not saying hello, she stated: *“If you asked anybody they’d say it was just me, occasionally he does it to Pete”*: **p. 423**; and
 - 70.2 she referred to Mr Mason’s conduct on the 13 September 2020 as the *“breaking point when Alan was greeting people 20 times in an hour.*

You've got the production line, I'm at the front, going through the papers. Steve was working on Glen's section, Glen to the left of me then Steve. He went, 'Morning John,' bellowing, 'Morning Steve, Morning, Alan.' Then he's gone down, 'Hello Steve, hello John.' Sometimes he pushes it, to see how many times he can get people to say it. Not even going down for anything, just coming down. Steve went, 'Stop it, now,' but he was still saying hello to John, it started at 8:00 and went on": p. 424-425. Ms Howse said to Mr Mason "that's enough" but Mr Mason continued and got louder: p. 425. She stated that she had to leave because it was "relentless".

71. In his interview (and subsequent commentary) (p. 281-307 and 494-521 Mr Mason:
 - 71.1 requested that *"all of the colleagues that I have worked with over the years"* be interviewed: p. 495. In his commentary Mr Mason clarified that he was referring to other women that he had worked with over the years;
 - 71.2 denied that he had said the "women shouldn't be working here": p. 286. He admitted informing Ms Howse that "we got by without any manager" and that Ms Howse had reported this to Mr White: p. 285;
 - 71.3 denied that he had refused to train Ms Howse stating *"I said to her maybe she would be better with Ben"*: p. 286 and that he had said to Mr White *"that I felt uncomfortable as she kept approaching me and saying inappropriate things and I asked Ben if he would train her up instead and he seemed happy to"*: p. 497;
 - 71.4 admitted referring to Ms Howse and Mr Keen as "the shifters" but denied using any other nickname;
 - 71.5 admitted that on 14 September 2025 he had repeatedly asked John, "how's it going" and stated that it was banter: p. 298. He denied that it was 10-20 times and in his commentary stated possibly twice: p. 512; and
 - 71.6 made a number of counter allegations against Ms Howse: that she had talked to him "about her *"hate of men"*, called Mr Chapman "tramp stamp" and called him and colleagues "babes": (pp. 284, 288 and 497). He also complained about Ms Howse referring to her period stating: *"She then said to my face, 'You shouldn't wind me up when I'm on my period,' and I didn't eat lunch that day as I've never heard anything like it, in all my years, someone telling me about their personal things. I found that quite difficult to deal with really"*: p. 299.
72. In their interviews, Mr Chapman and Mr Woodward also denied all the allegations against them.
73. Mr Boyd interviewed 6 other witnesses: Mr Hines, Mr Rushton, Mr White, Mr Keen, Mr Franklin and Ms Matthews. Mr White accompanied Mr Hines to his interview. Mr Moseley was interviewed but then withdrew his statement and his evidence was not provided to the respondent, therefore this interview had no role in the decision-making. The evidence from the 6 witnesses included:
 - 73.1 Mr Hines confirming hearing the *"women shouldn't be working here"* comment: p. 456. Mr Boyd asked Mr Hines, "was it Alan?": p. 456. Mr

Hines responded *"it was one of the 2. I can't remember"*. Mr Rushton stating that he was not present on that occasion *"But when I've been up in that area, that's pretty much exactly what they do say. Alison wasn't there at the time. That is the gist of how they felt at the time: p. 473.*

- 73.2 Mr Keen and Mr Franklin stating they had not heard Mr Mason making such comments but both stated they worked in different areas: **pp. 489 and 532** respectively.
- 73.3 Mr Hines confirming that Mr Chapman would console Mr Keen stating that Mr Mason was cheating on him and wind Mr Keen up by saying *"Ben's got the right hump"*: **p. 450.**
- 73.4 Mr Hines and Mr Keen confirming that they had heard Mr Mason referred to Ms Howse as "Bonnie" with Mr Keen referring to it as "banter": **p. 448 and 491.** Mr Hines and Mr Rushton stated Mr Mason used the nickname "Mary", because she had little lambs: **pp. 448 and 481** respectively. Mr Chapman also stated that "many" referred to Ms Howse as "Mary" (email dated 27 November 2023: **p. 614**). Mr Rushton stated that Mr Mason had called Ms Howse "the Joker" and that this was a reference to her makeup (a reference to the grotesque character in Batman): **p. 481.** The witnesses all denied that they had heard Mr Mason say anything that could be construed as racist.
- 73.5 Mr Hines, on being asked if Ms Howse joined in with the banter, responded that she was not a prude *"I just feel like she's had a little bit of a tough time with a few characters and it's been difficult for her and it's built up. The banter, sometimes if it's a good day there's a bit of back and forth and another day she's got the hump. I don't mean this like he's really being horrible but his wind ups-, you know what I mean"*. Mr Boyd then asked: *"Is it Alan, does he use nicknames a lot in the building?"* and Mr Hines responded "yes": **p. 447.**
- 73.6 Mr Rushton stated: *"Alan made a lot of comments, like 'men and women are supposed to be equal' when Alison had to collect a load of 25k drums. He just watched as she handled them. There was also a comment by Alan about her as a girl reading a map correctly when we were discussing the route I was taking in my lorry. There have been other times but I can't remember specifics. But a few times Alison has been very upset, and although didn't say exactly what was said she did say they (Alan and Jason W) are so sexist it's a joke"*: **p. 475.**
- 73.7 In his interview Mr White stated: *"They've made it quite clear they don't need management, they don't need supervision, they know what they're doing, they've been there long enough"*: **p. 435.** In response to whether the behaviours were in relation to Ms Howse's gender, Mr White stated: *"I think there's a large portion of that but I also think they treat virtually anybody like that"*: **p. 435.**

- 73.8 Mr White confirmed that Mr Mason had refused to work with Ms Howse, stating: *"Then I said to Alan, 'Right, okay. You've got Ali next week.' He said, 'I'm not doing that.' I said, 'Why?' 'I don't want to.'"* p. 439.
- 73.9 Mr Rushton confirmed that Mr Mason would ignore Ms Howse stating: *"Alan has done it a few times. He comes down and he's very loud. He'll say, 'How are you, Peter? Are you alright? John, are you okay? Are you alright, mate?' Alison is next in line and he literally goes past"*: p. 475. Mr Rushton was asked about the 13 September 2023 incident and stated: *"... He was doing it over and over, being really loud, saying, 'Hello, how are you?' to everybody except Alison"*. He was asked how often and whether it was obvious and responded: *"Really obvious, at least 3 times, I'd say. It wasn't just that. He kept coming down and when he got to dispatch area, he kept saying, 'There's definitely an atmosphere, it's different here.' Then he'd step away and say, 'It's fine here.'"* p. 476. Mr Rushton asked Mr Mason to stop but he continued; he could see from Ms Howse's face that it was "not funny", that it was getting to her and that it was "relentless": p. 476-477. Mr Keen stated, *"When we kept coming down to put an entry, he'd go, 'Alright, John?' And he kept coming down and saying that, Steve and Alison didn't like it"*: p. 492. Mr Keen thought it was just banter.
- 73.10 Mr White and Mr Keen confirmed that Mr Mason would also ignore others. Mr White stated: *"I will go up to him, he will totally ignore me"*: p. 346. Mr Keen stated, *"but its not just her, he comes in sometimes he won't say hello to Pete..."* and that he considered it a joke: p. 489-90.
74. On or around 10 October 2023 Mr Mason was not included in an email to staff informing them of the death of a colleague's wife and that the office would be closed on the day of the funeral: p. 472.
75. On 18 October 2023 Mr Boyd sent Mr Mason a copy of his investigation meeting notes, providing him with the option to make changes: p. 277.
76. On 26 October 2023 Mr Mason commenced early conciliation in relation to the first claim: p. 9. On 22 November 2023 Mr Mason received the early conciliation certificate: p. 9. On 26 November 2023 Mr Mason presented his first claim form for non-payment of the bonus: pp. 10-2.
77. On 21 November 2023 Mr Mason's grievance on non-payment of the bonus was not upheld: pp. 379-381. Mr Mason did not appeal this decision.
78. On 22 November 2023 Mr Mason submitted a grievance for whistleblowing, bullying and harassment: pp. 388-389. He referring to unspecified health and safety concerns that he had raised with management and that as a result he had been subjected to *"constant references to his salary"*, the withdrawal of part-time hours and the *"constant barrage of additional alleged allegations"*. He also submitted a grievance for lack of support and impact on his mental health and time taken for the investigation. In relation to his mental health Mr Mason informed the respondent that he was *"now on regular prescribed medication and continue to be under the doctor and mental health nurse"*.

79. On 29 November 2023 Mr Sargent emailed Mr Mason informing him that Mr Day had been appointed to investigate the grievance and asking him to confirm if he could attend a meeting *“to further elaborate on your grievances”*. He further stated that if Mr Mason could not attend a meeting the grievance would be dealt with in writing papers and Mr Day would provide a list of questions: **pp. 713–715**.
80. On 29 November 2023 Mr Sargent received the investigation report: **pp. 390–712**. The report was 18 pages long and analysed the evidence gathered. It attached the terms of reference, notes of all the interviews conducted and documentary evidence including the original complaint and interviews conducted by Mr Sargent with Ms Howse, Mr Hines and Mr Franklin. Mr Boyd concluded that:
- 80.1 Mr Mason had bullied and harassed Ms Howse. Specifically that Mr Mason had made the “women’s work” comment, that Mr Mason had ignored Ms Howse, that he had been involved in comments about Ms Howse’s personal relationship and encouraging Mr Woodward on the 14 September 2023, that he had been central in the giving of nicknames particularly “Joker” which was considered to be hurtful, and “Mary”: **p. 405-6**. He concluded that the conduct towards Ms Howse was sex discrimination.
- 80.2 Mr Mason had bullied and harassed colleagues by calling seniors/managers ‘*useless cunts*’: **p. 406**
- 80.3 Mr Boyd only partially upheld the allegation that Mr Mason had refused to work with Ms Howse, this was because it was not a full refusal, the reason for the refusal was unclear and *“management were not strong in their handling of Alan”*: **p. 396**
- 80.4 Mr Boyd dismissed Ms Howse’s allegation that Mr Mason had made racist comments: **p. 407**.
81. The original report was a combined report against all three accused. Mr Sargent asked for three separate reports, each one dealing with the particular accused. This caused a delay due to the need for redactions along, and further delay was caused by the Christmas break.
82. On 30 November 2023 Mr Mason requested that the respondent respond to his whistleblowing grievance in writing: **pp. 713**. The same day Mr Mason was signed off sick until 28 December 2023 due to a *“[m]ental health issue relating to current work investigation”*: **p. 716**. In the narrative, the GP note stated that Mr Mason was *“[s]uffering social anxiety and panic attacks. Unable to attend meetings at work”*.
83. On 1 December 2023 Mr Sargent emailed Mr Mason asking for further information on the health and safety complaints (what had been raised, when and to whom): **pp. 718**.
84. On 6 December 2023 Mr Sargent informed Mr Mason that *“unless we receive the responses to these questions by 5pm Friday 8th December, we will be unable to investigate your grievance and will instead proceed with the next*

stage of the disciplinary process”: **p. 718**. Mr Mason responded the next day expressing surprise that the respondent was requesting details of his health and safety complaint stating, *“there must be a paper trail”* and that *“I am not listen to”*: **p. 717**. He did not provide the requested details.

85. On 4 January 2024 the respondent invited Mr Mason to attend a disciplinary meeting: **pp. 773–774**. He was informed of the allegations against him and that his actions towards Ms Howse *“could reasonably be considered discriminatory on the grounds of sex”*. The letter stated that the investigation report was attached, however due to an error this was only provided to Mr Mason on 12 January 2024. Mr Mason was asked to let the respondent know if there were *“any other potential witnesses, who have not already been interviewed by Ibex Gale”* and to provide any relevant documents that he wanted to refer to during the meeting. Mr Mason was informed of his right to be accompanied by a workplace colleague or trade union representative.
86. On 5 January 2024 Mr Mason emailed Mr Sargent: **p. 775-778**:
- 86.1 objecting to his involvement accusing him of bias with reference to the WhatsApp messages between him and Ms Howse;
 - 86.2 providing a detailed commentary on the investigation report; and
 - 86.3 stating that he had been provided with insufficient time to get someone to accompany him, he referred to his mental health and not wanting to prolong matters and requested that he be accompanied by his wife.
87. On 5 January 2024 Mr Sargent emailed Mr Mason extending the date of the disciplinary hearing to enable him to arrange for a companion to accompany him: **p. 775**.
88. On 8 January 2024 Mr Sargent refused Mr Mason’s request to be accompanied by his wife: **p. 784**
89. On 12 January 2024 Mr Sargent informed Mr Mason that his observations regarding the investigation could be raised at the disciplinary hearing: **p. 784-792**. In a separate email Mr Sargent informed Mr Mason that the respondent was *“unable to properly investigate your grievance based on the limited information that you provided and therefore cannot uphold it”*: **pp. 809**.
90. On 15 January 2024 Mr Mason emailed Mr Sargent stating that he had been unable to secure someone to attend the disciplinary hearing stating *“I want a colleague to accompany me as I feel that I need a witness there for protection”* and he identified a number of persons: **p. 810**. Mr Sargent responded suggesting that Mr Mason make contact with the work colleagues he had identified to see if they were prepared to be his companion. The hearing was delayed to enable Mr Mason to contact colleagues.
91. On 24 January 2024 Mr Mason emailed Mr Sargent stating that he would be attending on his own because there was no neutral colleague that he could bring and stated *“hence my request to bring my wife”*: **p. 821**. In evidence Mr Sargent stated that the reason Mr Mason was not permitted to be accompanied by his wife was because he had spoken to the respondent’s legal advisors and

been advised that it was better to stick to ACAS guidelines and that a trade union official would be more “au fait” with respondent’s procedures and protocols. He referred to Mr Chapman and Mr Woodward being accompanied by a union representative. Asked why, at the point it was obvious that Mr Mason was not accompanied by a union representative, Mr Sargent did not permit Mr Mason to be accompanied by his wife, Mr Sargent responded that he: *“felt it was better for everyone to have the disciplinary hearing because that was causing stress all round and felt that prudent to at least start the process.”*

92. On 26 January 2024 Mr Mason attended the disciplinary hearing with Mr Sargent, Mr Day and Mr Pack: **pp. 823–825**. Mrs Mason remained downstairs. Mr Sargent’s evidence was that he was only aware that Mrs Mason had attended after the hearing, he did not know that Mrs Mason had been greeted by Mr Day. We do not consider it believable that Mr Day would not have mentioned that Mrs Mason was at the venue.
93. The hearing lasted 24 minutes and at one point Mr Mason left the meeting. It was clear from the notes of the meeting that Mr Mason was in an agitated state. In response to Mr Sargent reading out the allegations and conclusion of the investigation Mr Mason stated that he had “no comments” and referred to his “statement of facts” which contained a detailed commentary and attached documentary evidence: **pp. 826-848**. Mr Mason denied the allegations and referred to the lack of female character witnesses. At the end of the meeting Mr Mason stated that *“he has dates, times and photographic evidence that I am not prepared to show now”*: **p. 825**.
94. On 1 February 2024 Mr Mason was sent the disciplinary outcome letter: **pp. 849–853**. The conclusions of the panel were as follows:
 - 94.1 That Mr Mason did say that “women should not be working in the environment” comment, that Mr Mason regularly and purposely ignored and excluded Ms Howse while greeting all other colleagues, and that Mr Mason had referred to Ms Howse as “Mary” and “Joker”.
 - 94.2 That Mr Mason had referred to Mr Franklin and Mr White as “useless c*nts”.
 - 94.3 That there was “insufficient evidence” that Mr Mason had encouraged Mr Woodward to approach Ms Howse on 15 September 2023.
 - 94.4 That Mr Mason’s actions towards Ms Howse was discrimination on grounds of sex and a breach of the respondent’s equal opportunities and anti-harassment and bullying policy.
 - 94.5 That the conduct was “gross misconduct”.
 - 94.6 Turning to sanction the panel stated: *“Given that you have failed to grasp the seriousness of your actions and your apparent lack of remorse for what you have done, the Panel has concluded that your dismissal without notice or pay in lieu of notice is entirely justified and that no lesser sanction would have been appropriate in your case in spite of your length of service and previous disciplinary record.”*
95. On 2 February 2024 Mr Mason was summarily dismissed: **pp. 849–853 (AD act 2)**. He was informed of his right to appeal.

96. The same day Ms MacDonald (owner of Face2Face) was engaged to provide HR advice on a retained basis.
97. On 4 February 2024 Mr Mason submitted an appeal against his dismissal to Mr Torre: **pp. 854–891**. Mr Torre did not acknowledge receipt of this appeal.
98. Between 5 February to 22 February 2024 Mr Mason sent a number of emails to Mr Torre regarding his appeal: **pp. 892–894**. Mr Torre admitted that he did not respond to any of these emails. His evidence was that Mr Sargent had assured him that he would respond since he was dealing with legal matters. Mr Sargent in evidence admitted that he had not responded to these emails and could not recall that he had said to Mr Torre that he would do so.
99. On 14 February 2024 Mr Mason submitted a complaint to Ibex Gale about the investigation report: **pp. 895–918**.
100. On 19 February 2024 Mr Smith invited Mr Mason to an appeal hearing to be heard by himself and Mr Torre: **p. 920**. Mr Mason objected to their involvement in his appeal and Ms MacDonald was appointed to hear the appeal: **pp. 923, 924–925**. Ms MacDonald decided to permit Mr Mason to be accompanied by his wife due to his mental health.
101. On 14 March 2024 Mr Mason attended the appeal hearing accompanied by Mrs Mason: **pp. 937–944**. Ms MacDonald arrived by car with Mr Sargent. In evidence Mr Sargent accepted in hindsight it would have been better to arrive separately. Under the terms of the respondent's disciplinary policy the purpose of the hearing was to go through the grounds of the appeal, it was not a rehearing. The notes of that meeting recorded that Ms MacDonald went through each ground of appeal and Mr Mason and Mrs Mason were provided with the opportunity to provide further comments.
102. On 22 March 2024 Mr Mason's appeal against dismissal was rejected: **pp. 947–951**. In evidence Ms MacDonald considered dismissal was the appropriate sanction because "*that kind of behaviour was not appropriate in the workplace*".
103. On 3 April 2024 Mr Mason commenced ACAS Early Conciliation in relation to the second claim. He received the early conciliation certification on 8 April 2024: **p. 45**. On 26 April 2024 Mr Mason presented his second claim form: **pp. 46–59**.

THE LAW

UNFAIR DISMISSAL

104. Section 94 of the Employment Rights Act 1996 (ERA 1996) confers on employees with 2 years' continuous service the right not to be unfairly dismissed. Section 98 deals with the fairness of dismissals. There are two stages.

105. First, the respondent must show they had a potentially fair reason for the dismissal. In this case the respondent relies on conduct. The burden of establishing the reason, or principal reason, for the dismissal is on the respondent. In other words they must establish the '*set of facts known to the employer, or it may be of beliefs held by him, which cause him to dismiss the employee*': **Abernethy v Mott, Hay and Anderson** [1974] ICR 323 (NIRC).
106. Second, even if a dismissal is potentially fair, the tribunal must go on to consider, without there being any burden of proof on either party, whether the dismissal was fair or unfair having regard to all the circumstances and the equity and substantial merits of the case. When considering fairness the tribunal must not substitute its view for that of the employer. The test to be applied is whether the employer's action fell within the range of reasonable responses of a reasonable employer: **BHS v Burchell** [1978] IRLR 379. This applies not just to the reasonableness of the decision but also the conduct of the investigation: **J Sainsbury plc v Hitt** [2003] ICR 111.
107. The case of **Mr R Ogden v Booker Limited** (case no 2400482/2024), relied upon by the claimant, is an employment tribunal case and therefore is not binding on us.

PUBLIC INTEREST DISCLOSURES

108. The ERA 1996 provides that a protected disclosure must satisfy two conditions:
- (1) it must be a disclosure under s. 43B(1); and
 - (2) it must be made to a specified person/ body which includes the worker's employer. That is not disputed in this case.
109. The definition of a protected disclosure under s. 43B (1), requires consideration of five elements:
- (1) there must be a disclosure of "information";
 - (2) the worker must subjectively believe that the disclosure is in the public interest;
 - (3) that belief must be objectively reasonable;
 - (4) the worker must subjectively believe that the disclosure "tends to show" one or more of the specified wrongdoings; and
 - (5) that belief must be objectively reasonable.
- The definition is concerned with what the worker believed at the time when they made the disclosure, not what they may have come to believe later on: **Dodd v UK Direct Solutions Limited** [2022] EAT 44.
110. The specified wrongdoings in s. 43B(1) are that:
- (a) *a criminal offence had been, was being or was likely to be committed;*
 - (b) *a person had failed, was failing or was likely to fail to comply with any legal obligation;*
 - (c) *a miscarriage of justice had occurred, was occurring or was likely to occur;*
 - (d) *the health or safety of any individual had been, was being or was likely to be endangered;*
 - (e) *the environment had been, was being or was likely to be damaged;*

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

111. A qualifying disclosure is a disclosure of information (as opposed to a mere allegation). It must have sufficient factual content and specificity such as is capable of tending to show a specified wrongdoing and should be assessed in the light of the context in which it is made: **Kilraine v London Borough of Wandsworth** [2018] ICR 1850 (CA). Two or more communications can be read together; it is a question of fact for the tribunal whether to do so in any particular case: **Norbrook Laboratories (GB) Ltd v Shaw** [2014] ICR 540 (EAT).
112. Whether a disclosure has been made in the public interest will depend on the circumstances of the case: **Chesterton Global Ltd v Nurmohamed** [2018] ICR 731 (CA). The essential point is that the disclosure has to serve a wider interest than the private or personal interest of the whistleblower.
113. The case of **Cavendish Munro Professional Risks Management Ltd v Geduld** [2010] ICR 325, relied upon by the claimant, was a case that pre-dated the amendment introduced by the Enterprise and Regulatory Reform Act 2013 (to include the concept of public interest), and in any event does not add anything to the above summary.

Detriment

114. Under s. 47B ERA 1996 a worker has the right not to be subject to any detriment by "any act, or any deliberate failure to act" by an employer done on the grounds that she had made a protected disclosure.
115. Detriment means some form of disadvantage, to be assessed from the viewpoint of a reasonable worker in all the circumstances: **Shamoon v Chief Constable of the Royal Ulster Constabulary** [2003] ICR 337 (HL). An unjustified sense of grievance cannot amount to a detriment.
116. Section 47B is infringed if the protected disclosure materially (i.e. more than trivially) influences the employer's treatment of the worker: **Fecitt and Ors v NHS Manchester (Public Concern at Work intervening)** [2012] ICR 372 (CA).

Automatic unfair dismissal

117. Under s. 103A ERA 1996 an employee has the right not to be unfairly dismissed "*if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure*". The causation test is higher than for detriment in that the protected disclosure must be the sole or principal reason (i.e. more than a material influence) for the dismissal: **Fecitt and Ors v NHS Manchester (Public Concern at Work intervening)** [2012] ICR 372 (CA).
118. When considering the reason for dismissal the tribunal should identify the real reason for the dismissal and whether this is separate from or closely connected

to the protected disclosure: **Kong v Gulf International Bank (UK) Ltd** [2022] ICR 1513.

DIRECT DISCRIMINATION

119. Section 13 of the Equality Act 2010 (EA 2010) defines direct discrimination as being subjected to less favourable treatment because of a protected characteristic. Where the protected characteristic relied upon is age, then there is a defence of justification, if the respondent can show that the treatment complained of was a “*proportionate means of achieving a legitimate aim.*”
120. The concept of less favourable treatment presumes an actual or hypothetical comparator. The relevant circumstances of the comparator must be “the same, or not materially different”: s. 23 EA 2010. The circumstances need not be precisely the same, provided they are close enough to enable an effective comparison: **Hewage v Grampian Health Board** [2012] UK SC 37.
121. When considering the reason for any less favourable treatment, the tribunal is considering the mental processes of the discriminator. Discrimination may be, and often is, unconscious and unintended, therefore the Tribunal’s decision will often depend on what inference it is proper to draw from all the relevant surrounding circumstances: see **Qureshi v Victoria University of Manchester** [2001] ICR 863 EAT and **Anya v University of Oxford** [2001] EWCA Civ 405.
122. Under section 136 of the EA 2010, the burden of proof is initially on the claimant to establish primary facts from which the tribunal could decide in the absence of any other explanation that discrimination took place (stage 1). The burden then shifts to the respondent to establish that the reason for the treatment was not because of the protected characteristic in question (stage 2). Guidelines on the application of the burden of proof provisions is set out in **Igen Ltd (Formerly Leeds Career Guidance) and Oth v Wong** [2005] ICR 931.

UNLAWFUL DEDUCTION OF WAGES

123. Section 13(1) of the ERA 1996 provides that an employer shall not make a deduction from wages of a worker employed by him unless the deduction is “authorised” by statute, a written term of the contract or by agreement. Section 27(3) defines wages as including “*any ... bonus.... whether payable under his contract or otherwise*”. An employee is only entitled to claim unlawful deduction in relation to what is ‘properly payable’. This has been interpreted as that which a worker is legally entitled to under their contract or otherwise: **New Century Cleaning Co v Church** [2000] IRLR 27. In order to be “properly payable” a discretionary bonus would need to be declared and quantified: **Farrell Matthews and Weir v Hansen** [2005] IRLR 160; **Traditional Securities and Futures SA v Mouradian** [2009] EWCA Civ 60.

BREACH OF CONTRACT

124. The terms of an employment contract may be expressly agreed or implied. A term may only be implied if it does not contradict an express term.

125. A term may be implied by custom and practice where that custom and practice is “reasonable, notorious and certain”. Relevant factors include whether the policy was drawn to the attention of the employees, whether it was followed without exception for a substantial period, the number of occasion it was followed, whether payments were made automatically, whether the nature of the communication of the policy supported the inference that the employers intended to be contractually bound, whether the policy was adopted by agreement, whether employees had a reasonable expectation that the enhanced payment would be made, whether the term were incorporated in a written agreement and whether the terms were consistently applied: **Albion v Automotive Ltd v Walker** [2002] All ER (D) 170.
126. Where a contract provides for a discretionary bonus scheme, the exercise of that discretion is subject to the implied term that the employer must not act in a manner which is irrational or perverse and it must not ignore factors that are relevant or take into account irrelevant considerations: **Clark v Normura International plc** [2000] IRLR 766. The bar for claimants is still high, and whilst the employees’ reasonable expectations is a factor that may be taken into account it is not determinative: **IBM v Dalgleish** [2017] EWCA Civ 1212.
127. Damages are to be assessed on normal common law principles.

TIME LIMITS

Equality claims

128. Section 123(1) of the EA 2010 requires a complaint of discrimination to be submitted within three month of the date of the act or last act complained of or “*other period as the employment tribunal thinks just and equitable*”. Conduct extending over a period (continuous act) is to be treated as done at the end of the period. This arises where there is an “*an ongoing situation or continuing state of affairs*”: **Hendricks v Commissioner of Police for the Metropolis** [2003] IRLR 96 (CA). This is to be distinguished from a single or isolated act with continuing consequences.
129. Time limits are to be applied strictly and the onus is on the claimant to persuade the tribunal to exercise its discretion in his favour. Tribunals have a wide discretion to extend time. In exercising this discretion the tribunal should take into account all the relevant factors including the reason and length of the delay and the respective prejudice to the parties: **Adedeji v University Hospitals Birmingham NHS Trust** [2021] EWCA Civ 23, para 37-38, and **Secretary of State for Justice v Johnson** [2022] EAT 1, para 16

Public Interest Disclosure claims

130. It was not disputed that the unfair dismissal / automatic unfair dismissal claim was submitted in time.

131. In relation to detriment claims, s. 48(3) ERA 1996 requires a complaint to be submitted within three month of the date of the act or date of the last of a series of acts complained or if it was not “*reasonably practicable*” for the claim to have been submitted in time then within “*such further period as the tribunal considers reasonable*”. Again the burden of proof is on the claimant and tribunals have a wide discretion. However, not “reasonably practicable” means something like “reasonably feasible”, and it is a stricter test that the “just and equitable” test to be applied in discrimination cases.

DISCUSSION AND CONCLUSION

PUBLIC INTEREST DISCLOSURE

132. In her closing submission Mrs Mason referred to the disclosures as ones identifying health and safety wrongdoing (which was consistent with the evidence before us). Therefore we have only considered whether Mr Mason reasonable believed one or more of the disclosures tended to show that the health or safety of any individual had been, was being or was likely to be endangered and if so whether Mr Mason reasonably believed the disclosure was in the public interest. In relation to disclosure 9 (drug taking) we also considered whether Mr Mason reasonably believed that a criminal offence had been, was being or was likely to be committed.
133. In order to succeed in a claim for protected disclosure a claimant needs to join the dots. It is not just a matter of establishing that (1) there was a protected disclosure and (2) that there was a detriment but also (3) importantly to identify evidence from which it could be inferred that the protected disclosure more than trivially influenced the detriment in question. Mrs Mason was repeatedly reminded of the need to do this during the hearing.

On 16 May 2019, Mr Mason orally complained to Mr Franklin and Mr Torre about the danger posed by Mr Moseley welding on the floor of the warehouse around highly flammable drums (Disclosure 1)

134. We have found that Mr Mason did raise this matter with Mr Franklin (but not Mr Torre), although he did not show Mr Franklin the photograph that he had taken. We considered that the disclosure was specific enough to amount to disclosure of information. We accepted Mr Mason’s evidence that he believed that this tended to show that health and safety was endangered, since he took a photograph of it. We considered that belief to be reasonable since a welding machine was visible on top of a drum. Even if the drum did not contain flammable material it was in a workhouse which contained flammable material. We also accepted that Mr Mason believed that the disclosure was in the public interest and considered this belief reasonable since an explosion would have endangered not just Mr Moseley’s health but also those working with him. Accordingly we accept that this was a protected disclosure.

On 16 June 2019 Mr Mason orally complained to Mr May about the danger posed by Mr Moseley having made some repairs to a menthol pot holding oils of up to 80 degrees centigrade in temperature which Mr Mason considered an inadequate repair, carried out by someone not qualified to do so (Disclosure 2)

135. It was not disputed that Mr Mason orally complained about the repair to the menthol pot to Mr May. We considered that this was a disclosure of information since Mr Mason's complaint contained specific detail. We found that Mr Mason believed that this tended to show that health and safety was endangered, since he took a photograph of it. However we did not consider this belief to be reasonable. Mr May's evidence was that this was a temporary fix with no health and safety concerns since the tape was purely to cover up wiring. Accordingly this disclosure was not a protected disclosure.

In early 2021 Mr Mason orally raised concerns to Mr May about the fact that the warehouse staff's training was out of date, and that people were driving forklift trucks without a licence (Disclosure 3)

136. We have found on the facts that Mr Mason did not raise this matter with Mr May. Accordingly this allegation is dismissed.

On 15 January 2021 Mr Mason orally complained to Mr Franklin that Mr Moseley was touching the circuit board in the hot room, which he was not qualified to do, and expressed the concern that this was not safe (Disclosure 4)

137. We have found that Mr Mason did raise this matter with Mr Franklin, although it was unclear what he raised. We found that Mr Mason believed that Mr Moseley was doing something that endangered health and safety however we did not consider his belief to be reasonable. The note that Mr Mason made on his phone did not record that that Mr Moseley had actually removed the control panel. Further we took into account Mr May's evidence that Mr Mason's brother used to regularly access the cupboard to turn the heating up or down. We also noted that Mr Moseley was being supervised by his manager and therefore consider it unlikely that he had removed the control panel or done anything to endanger health and safety. In the absence of clear evidence as to the concerns that Mr Mason had raised we found that this disclosure was not a protected disclosure.

On 13 May 2021, did Mr Mason made an oral complain to Mr White and Mr Franklin about the fact that the stairwells were blocked (Disclosure 5)

138. It was not disputed that Mr Mason had raised this issue. We considered that Mr Mason disclosed sufficient information since Mr White acted on it. We accepted that Mr Mason believed that it was a health and safety risk and that this belief was reasonable since Mr White took action to resolve and prevent recurrence by putting in place yellow hatching tape to mark the stairwell as a designated walkway.
139. We also accepted that Mr Mason believed that it was in the public interest. We considered that this belief was reasonable since there was an obvious risk of

injury to self or others using the warehouse. Accordingly we find that this disclosure was a protected disclosure.

On each of 10 June and 17 June 2021, Mr Mason complained to Mr White that the air handling fans had been turned off by Mr Moseley (Disclosures 6 and 7 respectively)

140. It was not disputed that Mr Mason had raised this issue on these and other occasions. We considered that Mr Mason did disclose information since Mr White acted on it by investigating whether or not Mr Mason's concerns were valid.
141. We did not consider that Mr Mason genuinely believed that turning off the air handling fan was a health and safety risk. This issue had previously been raised with Mr May who had put a notice on the switch stating, "do not turn off". This was nothing to do with health and safety but to stop arguments between Mr Mason (and his colleagues) and Mr Moseley over room temperature. We considered that this would have been explained to Mr Mason at the time. Even if he did continue to believe that the fans contributed to the removal of fumes from the warehouse, we considered that this belief was not reasonable given that Mr Mason had been informed that the respondent had a separate air filtration system to remove fumes. Therefore this disclosure was not a protected disclosure.

On numerous occasions in 2022 and 2023, Mr Mason orally complained to Mr White that Mr Moseley, without qualifications, was manufacturing and fabricating machinery for 5 to 10 kg filtering final products which would go to clients and the wider public (Disclosure 8)

142. We have found that Mr Mason did raise this issue with Mr White and considered that it was specific enough to be a disclosure of information. We accepted that Mr Mason believed that it posed a health and safety risk because he refused to use the machinery and encouraged others not to do so (eg Mr Hines). However we considered Mr Mason's belief to be not reasonable. Mr Moseley was not required to be qualified to create this piece of machinery. The original design was approved by the respondent and the machinery was checked both internally and externally by qualified personnel. Further we did not consider that it was reasonable for Mr Mason to believe that the disclosure was in the public interest. We considered that the reason Mr Mason had refused to use this piece of machinery was nothing to do with health and safety but because it had been designed by Mr Moseley. Accordingly, we did not consider this disclosure was a protected disclosure.

Around February 2023, Mr Mason orally raised concerns to Mr White that there were drugs being taken by some members of staff working in the warehouse, an environment where there are highly flammable items (Disclosure 9)

143. We have found on the facts that Mr Mason did not raise this matter with Mr White. Therefore this complaint is dismissed.

In August 2023, Mr Mason made an oral complaint to Ms Howse that the air handling fans had been turned off by Mr Moseley (Disclosure 10)

144. In the absence of evidence to the contrary from Ms Howse we have found that Mr Mason did complain to Ms Howse about the air handling fans and considered the complaint specific enough to be a disclosure.
145. We did not find that Mr Mason reasonably believed that the disclosure tended to show that health or safety of any individual had been, was being or was likely to be endangered or that the disclosure was in the public interest for the same reasons as for disclosures 6 and 7.

DETRIMENTS

In the period 23 March 2020 to October 2020, when Mr Mason's working hours were adjusted in response to Covid-19 requirements, was Mr Mason's pay pro-rated, whereas his colleagues' pay was not. Whilst these errors in the calculation of Mr Mason's pay were corrected in October 2020, the delay in resolving it meant Mr Mason was underpaid for that period (Detriment 2)

146. We have found that during this period Mr Mason was paid pro-rata (based on his hours in the 2011 agreement) when his colleagues were not. We further found that this was not intentional but a mistake that arose due to the change in Mr Mason's hours back to full-time, following the implementation of Covid restrictions in the workplace. The respondent submitted that this was not a detriment in law since Mr Mason was receiving more pay per hour since he only worked alternate days.
147. When considering whether an act or omission by an employer constituted a detriment the test is whether a reasonable worker might take the view that the conduct in question disadvantaged them. We found that it was reasonable for Mr Mason to consider that he was disadvantaged, in that the consequence of the change in his hours of work was that he was in effect paid less than his colleagues for the same hours of work since those colleagues also only worked alternate days. Accordingly we found that this was a detriment.

Causation

148. The only alleged protected disclosures that pre-dated this act were disclosures 1 and 2, of which we have found only disclosure 1 to be proven.
149. Disclosures 1 and 2 were made to Mr Franklin, Mr Torre and Mr May regarding health and safety concerns about Mr Moseley. Mr Sargent denied that he was aware of these disclosures and Mr Mason accepted in evidence that other than his belief that his disclosures "*would go around because Mr May ran the company*" he had no evidence that Mr Sargent was aware of these two particular disclosures. Further Mr Davidson was also initially paid pro-rata despite having made no disclosure; this undermined Mr Mason's case that the reason for the detriment was more than trivially influenced by any disclosure.

150. In any event, we have found that the sole reason that Mr Mason (and Mr Davidson) were “underpaid” between March 2020 and May 2020 was due to a genuine error that arose out of the decision to move to 8am-4pm on alternate days due to Covid. When Mr Mason raised it, Mr Sargent agreed that he would receive back pay in his May pay slip. The reason why Mr Mason was subsequently “underpaid” between May and September 2020 was due to a calculation error (the respondent had calculated the shortfall as 10 hours pa not 10 hours pm). There was no evidence to suggest that either of these errors was because of, or influenced by, any protected disclosure. Therefore this complaint is dismissed.

Treat Mr Mason with disrespect and discourtesy in relation to responding to the CV-19 Pay Issue, including threatening to issue him with a written warning (Detriment 3)

151. We have found as fact that on 22 May 2020 Mr Sargent threatened Mr Mason with a written warning. We considered that a reasonable worker would consider the threat to be a detriment.

Causation

152. The only disclosures that pre-dated this act were disclosures 1 and 2. We have found that only disclosure 1 was a protected act. Mr Sargent was unaware of both disclosures 1 and 2 for the same reasons as above.
153. In any event, we considered that Mr Sargent acted as he did due to his frustration about the respondent being asked to pay Mr Mason his full salary, despite only being required to work alternate days (i.e. 50%). We took judicial note that this was at a time of huge financial pressure and uncertainty for employers. We considered it likely that Mr Sargent saw this request as ungrateful given that the respondent was prepared to continue to pay staff their pre-Covid salary. There was no evidence to suggest that any of this frustration was because of, or influenced by, any protected disclosure that Mr Mason had made, for the same reasons as above. Therefore this complaint is dismissed.

On 31 March 2021, refuse Mr Mason’s request to revert to his pre-Covid working hours pattern to accommodate his childcare responsibilities, when female staff were permitted to revert to their pre-Covid working hours for equivalent childcare responsibilities (Detriment 1)

154. In 2011 it was agreed that Mr Mason’s contractual hours of work was 7am to 2pm. This was conditional on the matters set out in the accompanying letter, which included Mr Davidson working the same hours.
155. In March 2020, due to Covid, Mr Mason’s and Mr Davidson’s hours of work were changed to 8am to 4pm (alternate days). Mr Mason did not object to the variation in his hours, but he did object to his pay continuing to be on the basis of his fractional hours rather than full hours. As a result in effect his contract changed back to a full time one. We considered that the understanding was that once the Covid restrictions were lifted Mr Mason and Mr Davidson would revert back to their previous fractional contract, subject to the same conditions as

previously. This is was supported by Mr Sargeant's responses in August 2020 and January 2021 which referred to the Covid restrictions as the reason Mr Mason could not yet revert to his pre-Covid hours. Therefore we found that the refusal to permit Mr Mason to revert to his pre-Covid hours once the Covid restrictions were lifted was a detriment.

Causation

156. The disclosures that pre-dated this detriment were disclosures 1-4. Of those we have found only disclosure 1 was a protected disclosure and that Mr Sargent was unaware of this disclosure for the reasons set out above. We also found that he was unaware of disclosures 2, 3 and 4 for the same reasons: none of them were made to him and Mr Mason had adduced no evidence to suggest that he was made aware of them. There was also no evidence that Mr White was aware of any of these disclosures. We accepted that Mr May was aware of disclosures 2 and 3, however there was no evidence that he was involved the decision to refuse Mr Mason's request to revert to his pre-Covid hours once the Covid restrictions had been lifted.
157. In any event we find the sole reason why this decision was made was nothing to do with any protected disclosure that Mr Mason had made. Mr Davidson was also informed that he would not be permitted to return to his pre-Covid hours and there was no evidence that he had made any protected disclosure. In relation to the reason why this decision was made, we noted that the original agreement had been conditional due to the health and safety restrictions on lone working in the warehouse and that the arrangement did cause some difficulties for the respondent. Mr May gave evidence that the agreement relied on goodwill and that the respondent was short of employees in the afternoon, which was the busiest time of day.
158. Mr Mason asked the tribunal to draw an inference in his favour from Mr Torre's comment during a 2019 appraisal meeting where he had stated with reference to his contractual hours: *"don't make bad for yourself"*. We considered that this was a threat but the appraisal record recorded that the discussion was about Mr Mason's hours and made no reference to any protected disclosure. Therefore we did not consider that this was evidence from which we could infer that the reason for the decision to refuse Mr Mason to return to his pre-Covid hours was because of, or influenced by, any protected disclosure. Therefore this complaint did not succeed and was dismissed.

AUTOMATIC UNFAIR DISMISSAL

159. It was not disputed that Mr Mason was dismissed and that it post-dated all the disclosures.
160. This complaint can only succeed if one or more protected disclosures were the reason or principal reason for the dismissal. We have only found two disclosures were protected disclosures (disclosure 1 (welding) and disclosure 5 (blocked stairwells)). In relation to disclosure 1, there was no evidence that this was anything other than a one off instance that was addressed at the time. There was no evidence that Mr Franklin had any involvement in Mr Mason's

dismissal and we have not found that any disclosure was made to Mr Torre. In relation to disclosure 5, Mr White took immediate action, there was no evidence to suggest that the disclosure put the respondent to any inconvenience or that Mr White bore any resentment towards Mr Mason for raising it. The issue raised was easily remedied and had no operational impact. Indeed Mr White came across in evidence as appreciative of Mr Mason raising this matter with him.

161. In any event there was no evidence that any of the directors involved in Mr Mason's dismissal were aware of any of the disclosure relied upon by Mr Mason, nor have we found any evidence of Mr Mason being subjected to a detriment as a result of making a protected disclosure or indeed raising any concerns. Seven of the disclosures that Mr Mason relied upon occurred 3-5 years prior to dismissal, and the other three a year before dismissal. There was simply no evidence that these disclosures singularly or cumulatively were the main or principal reason for Mr Mason's dismissal.

DIRECT AGE DISCRIMINATION

162. Mr Mason's age group was "over 50s" and he compared his treatment with people in the age group "20s to 40s".

During the investigation of the complaint raised by Ms Howse, repeatedly referred to Mr Mason as a "white middle-aged man" (AD act 1)

163. Mrs Mason submitted that Mr Boyd, the investigator, repeatedly referred to Mr Mason as a "white middle aged male". Her submission was based on the questions that Mr Boyd asked of interviewees. We have found that:
- 163.1 Ms Howse was asked whether she thought she would have the same treatment as a "white middle aged man"; and
- 163.2 Mr Ruston was asked whether he thought "they" (a reference to Mr Mason and Mr Chapman) would have behaved in this manner if Ms Howse was a "middle aged man".

Therefore we did not find that Mr Boyd repeatedly referred to Mr Mason as a "white middle-aged man" since in fact he was referring to the characteristics of a "hypothetical comparator"; i.e. the question was whether Mr Mason would have treated that hypothetical comparator (a middle aged man) differently to Ms Howse.

164. In any event, we did not consider that these questions amounted to a detriment. It was a legitimate and necessary line of questioning in order to evaluate whether there was any discriminatory reason for the treatment that Ms Howse had complained of. Whilst Ms Howse had not specifically complained of age discrimination, Ms Matthews had referred to Ms Howse's age as a reason for the treatment and there was evidence that it may have been a factor (for example whether Mr Mason also ignored other managers who were older). Having explored this issue Mr Boyd did not conclude that the conduct was age discrimination.

165. Further and in any event, there was no evidence from which we could infer that Mr Mason was treated less favourably than a hypothetical younger employee would have been treated in the same material circumstances. We considered that the same questions would have been asked of a younger employee accused of discrimination.

Reason why

166. Further, the reason why Mr Mason was asked these questions was because Ms Howse had complained of discrimination and harassment and the respondent needed to explore the reason for the treatment complained of.

After completion of a disciplinary investigation, decide to dismiss Mr Mason summarily (AD act 2)

167. It was not disputed that Mr Mason was dismissed. Mrs Mason submitted that, in dismissing Mr Mason he was treated less favourably than two comparators in the age range 20s-40s: Mr Moseley and Mr Hines.
168. There was no evidence that Mr Mason complained (informally or formally) of bullying and harassment by Mr Moseley. Mr Mason relied on the entry in his 2018 appraisal, however this was merely a complaint about Mr Moseley being noisy. It was not a complaint that Mr Moseley bullied and harassed him.
169. Mr Mason referred to Mr Hines' social media posts in his submissions to the disciplinary panel, but other than this, as far as we are aware, neither Mr Mason nor anyone else had made any complaint against Mr Hines. It is not known if Mr Hines was subjected to a disciplinary investigation, but even if he was it did not concern findings of bullying, harassment and discrimination against another member of staff.
170. Accordingly neither of the comparators Mr Mason relied upon were in the same or not materially different circumstances. Further there was no evidence from which we could infer that Mr Mason was treated less favourably than a hypothetical younger accused would have been treated. We considered that had the same findings been made against a younger accused then he would also have been dismissed. If anything Mr Mason's length of service was a significant factor in his favour and was taken into account when making the decision to dismiss.

Reason why

171. Further and in any event, the reason that Mr Mason was summarily dismissed was because the respondent considered that the findings of bullying, harassment and sex discrimination amounted to gross misconduct entitling the respondent to dismiss him without notice; it was nothing to do with his age. Therefore this complaint does not succeed.

DIRECT SEX DISCRIMINATION (EQUALITY ACT 2010 SECTION 13)

172. Mr Mason is male and compares himself to female employees.

On 31 March 2021, refused Mr Mason's request to revert to his pre-Covid working hours pattern to accommodate his childcare responsibilities, when female staff were permitted to revert to their pre-Covid working hours for equivalent childcare responsibilities (SD act 3)

173. We have found that the respondent did refuse Mr Mason's request to revert to his pre-Covid hours to accommodate his childcare responsibilities, for the reasons set out above.

Less favourable treatment

174. Mrs Mason submitted that, in refusing Mr Mason's request to revert to his pre-Covid hours, he was treated less favourably than female staff: Kiely, Leach and Alison who worked in Accounts and Erica who worked in the office above the warehouse. We did not consider them to be appropriate comparators since they did not work in an environment that prohibited lone working for health and safety reasons. Therefore we considered a hypothetical comparator, a female working in the warehouse.
175. We considered whether there was evidence from which we could draw an inference, in the absence of any other explanation, that the reason for the refusal was because of Mr Mason's sex and that he would have been treated differently if he was a woman. We noted that:
- 175.1 Pre-Covid Mr Mason had been permitted to work 7am-2:30pm hours for childcare reasons. These hours were only changed in order to comply with Covid restrictions (as was made clear in correspondence refusing Mr Mason's request to revert to part-time hours in August 2020 and January 2021). Therefore there was no reason why Mr Mason could not revert to these hours once those restrictions were lifted.
- 175.2 The women in the office were permitted to revert to their pre-Covid hours.
- 175.3 There was no attempt to consult Mr Mason or assess how the agreement had operated for 10 years. We took into account that the mere fact that this was unreasonable does not give rise to an inference of discrimination, but we considered it unlikely that the respondent would have refused to return to a similar agreement with a female employee without consultation.
- 175.4 We did not accept Mr White's evidence that he was unaware of the 2011 agreement as credible.
- 175.5 Mr White gave inconsistent evidence as to why a return to the 2011 agreement was refused, suggesting that Mr Davidson had requested that he revert back to normal hours, which was contrary to the contemporaneous documents which recorded that Mr Davidson was given no choice.

Taking all the above into account we considered that the burden of proof shifted onto the respondent for an explanation.

Reason why

176. The respondent relied on business reasons as the reason for the refusal: additional costs, detrimental impact on performance, detrimental impact on quality and creation of unacceptable difficulties to arrange for cover. We noted that the 2011 agreement did cause some inconvenience for the respondent, however we did not consider that this was sufficient to justify the refusal. For 10 years the respondent had been prepared to accommodate the inconvenience caused. The 2011 agreement had addressed the difficulties in arranging cover. Prior to making the decision the respondent made no attempt to assess how the 2011 agreement had operated and discuss it with Mr Mason. In evidence Mr White and Mr Sargent were unable to satisfactorily explain why continuation of this arrangement was no longer possible post-Covid. We therefore considered that the respondent failed to adduce cogent evidence that the reason was in no sense whatsoever because of Mr Mason's sex.
177. Accordingly, this complaint would have succeeded had it not been out of time (see below).

Upon receipt of a complaint about Mr Mason raised by Ms Howse on 14 September 2023, investigate Mr Mason's conduct without investigating Ms Howse's conduct or character (SD act 1)

178. It was not disputed that Ms Howse had made a formal complaint against Mr Mason on the 14 September 2023 and that the respondent had investigated Mr Mason's conduct and not Ms Howse's.
179. In relation to Ms Howse's conduct, we considered that Ms Howse was at times over familiar with her colleagues (referring to periods and calling male colleagues "babes") and that it made Mr Mason uncomfortable. We have also found that Mr Mason raised this with Mr White around the beginning of 2023. However crucially there was no evidence that he ever made a formal complaint, either prior to or upon receipt of Ms Howse's complaint against him. In particular, Mr Mason submitted two grievances on 5 October 2023 and 27 November 2023; neither of these were complaints about Ms Howse's conduct or character. Therefore the circumstances involving Ms Howse was not the same and Mr Mason was not treated less favourably.

Reason why?

180. The respondent investigated Mr Mason's conduct because Ms Howse had made a formal complaint against him. It did not investigate Ms Howse's conduct because Mr Mason did not submit a formal's complaint against her. In other words the decision was nothing to do with Mr Mason's sex.

During the investigation of the complaint raised by Ms Howse, repeatedly refer to Mr Mason as a "white middle-aged man" and Ms Howse as a "small woman" (SD act 2)

181. For the reasons already stated above Mr Boyd did not refer to Mr Mason as a "middle aged male" (the reference was to a hypothetical comparator). Nor did

he refer to Ms Howse as a “small woman”. The only persons who referred to Ms Howse as a “small woman” was Ms Matthews and Mr Mason.

182. We did not consider that these questions amounted to a detriment. Ms Howse had complained of sex discrimination, and this was a legitimate and necessary line of questioning in order to evaluate whether this was the reason for any of the treatment that Ms Howse had complained of.
183. Further, and in any event, there was no evidence from which we could infer that Mr Mason was treated less favourably than a hypothetical woman would have been treated in the same material circumstances. We considered that the same questions would have been asked of a female employee accused of sex discrimination.

Reason why

184. Further, the reason why Mr Mason was asked these questions was because Ms Howse had complained of sex discrimination it was not because of his sex. Therefore this complaint is dismissed.

DIRECT RACE DISCRIMINATION

185. Mr Mason referred to himself as “white”. He relied on a hypothetical comparator who was non-white.

During the investigation of the complaint raised by Ms Howse, repeatedly refer to Mr Mason as a “white middle-aged man” (act 3)

186. For the reasons already stated above Mr Boyd did not refer to Mr Mason as a “white middle-aged male” (the reference was to a hypothetical comparator).
187. In any event for the reasons stated above the questions were not a detriment, and having explored this issue Mr Boyd did not make any findings of race discrimination.
188. Further and in any event, there was no evidence from which we could infer that Mr Mason was treated less favourably than a hypothetical non-white employee would have been treated in the same material circumstances. We considered that the same questions would have been asked of a non-white employee accused of race discrimination.

Reason why

189. Further, the reason why Mr Mason was asked these questions was because Ms Howse had complained of race discrimination it was not because of his race. Therefore this complaint is dismissed.

UNFAIR DISMISSAL

190. The parties agreed that Mr Mason was dismissed by the respondent with effect from 2 February 2024.

What was the reason or principal reason for dismissal

191. The respondent says the reason was conduct. The burden of proof was on the employer. We found that this was the reason for Mr Mason's dismissal. It was the reason provided in the dismissal letter and followed an investigation which found the allegations against Mr Mason to be proven. Further there was no evidence that the respondent had any other reason to dismiss Mr Mason. Mr Mason was a long serving employee with a good employment record and considered to be a good worker.
192. Mrs Mason submitted that Mr Mason was dismissed for making protected disclosures. Mrs Mason relied on the 2019 "threat" that Mr Torre made, submitted that the respondent were prepared to threaten to change his hours (and later did change his hours) because of his health and safety complaints. For the reasons set out above we did not agree that any threat and / or the change in his hours was because of any complaints (whether or not they were protected disclosures) that Mr Mason had made. In any event, due to the passage of time there was no obvious connection between the "threat" in 2019 and dismissal in 2024.
193. Alternatively, Mrs Mason submitted that the principal reason that Mr Mason was dismissed was because of his repeated complaints about the removal of his part-time hours. Again due to passage of time there was no obvious connection between the refusal to permit Mr Mason to revert to his pre-covid hours in March 2021, and his dismissal in March 2024. Other than the fact that Mr Mason was clearly unhappy with that decision, he had complied and reverted to full-time working.

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

194. When considering this issue we considered the evidence before the respondent at the time of dismissal and whether the respondent acted within a range of reasonable responses. We accepted the respondent's submission that it did not need to prove, and the tribunal do not need to find, that Mr Mason was actually guilty of misconduct.

Were there reasonable grounds for that belief

195. Yes. The respondent's belief was based on the findings and evidence in the investigation report conducted by Mr Boyd. Mr Mason accepted in evidence that, if true, the allegations amounted to bullying by him.

At the time the belief was formed had the respondent had carried out a reasonable investigation

196. We noted that Mr and Mrs Mason were deeply unhappy with the conclusions of the investigation report. They submitted a detailed critique to the disciplinary and appeal hearings and a complaint to Ibex Gale, the company that employed

Mr Boyd. Throughout the hearing Mrs Mason was asked to identify what Mr Mason considered was inconsistent or wrong with the report. In closing submissions we were provided with a number of page and paragraph references. We used our best endeavours to interpret this, and our detailed response is set out as Appendix A. Having considered the points raised by Mrs Mason we did not accept that the questions asked by Mr Boyd were inappropriate or that there were significant inconsistencies and inaccuracies in the investigation report such as to undermine the fairness of the investigation. We took into account that investigations do not have to be perfect as long as they fall within the range of reasonable responses.

The findings

197. We noted that some witnesses (Mr Franklin and Mr Keen) had not witnessed any of the behaviour alleged by Ms Howse. However this could be explained by an unwillingness to provide evidence against a long-standing colleague (Mr Franklin's interview notes indicated that there were a number of questions that were not answered and Mr Keen's interview was cut short because he appeared to be uncomfortable). Alternatively, it could be explained by the fact that they both worked in different areas.
198. Further we noted that some of the evidence given by Ms Howse was contradictory and that some of her allegations were not supported by other witnesses. Whilst we considered that this potentially undermined Ms Howse's credibility, it did not undermine the conclusions reached by Mr Boyd and the disciplinary panel. This was because those matters found proven against Mr Mason were those where there was corroborative evidence, particularly from Mr Hines and Mr Rushton. Mrs Mason submitted that Mr Hines and Mr Rushton's evidence was not reliable because they got on well with Ms Howse, however there was no evidence that they were giving false evidence. Neither witness wholly corroborated Ms Howse's account and both were clear as to what they did and did not see and hear. It was therefore permissible for the respondent to accept their evidence as credible and use it as the barometer against which to assess the evidence before it. Further Mr White confirmed in his evidence that Ms Howse had raised her concerns with him on a number of occasions and that he had failed to do anything or intervene thinking that the situation would improve.
199. In relation to those allegations found proven the evidence was as follows:
200. Women's work comment: Ms Howse's evidence was that Mr Mason made this comment to her shortly after she commenced employment with the respondent. Mr Hines confirmed that that the comment was made and that he had heard it being said. His evidence was that it was said by Mr Mason or Mr Chapman. Mr Rushton confirmed that whilst he had not heard that particular comment it was "exactly" something that Mr Mason and Mr Chapman would say, and that it had been said when Ms Howse was not present. Both Mr Mason and Mr Chapman denied that the comment was made. Faced with two conflicting accounts it was within the range of reasonable responses for the respondent to accept the evidence of Ms Howse (partially corroborated by Mr Hines and Mr Rushton) over the bare denials by Mr Mason and Mr Chapman.

201. The use of inappropriate nicknames: The only nickname that Mr Mason admitted to using was “shifters”, however a number of witnesses stated that Mr Mason called Ms Howse “Bonnie” (Ms Howse, Mr Hines and Mr Keen), “Mary” (Mr Hines and Mr Rushton) and “Joker” (Mr Rushton). It was therefore within the range of reasonable responses for the respondent to conclude that Mr Mason had used those nicknames. Of those considered to be inappropriate (Mary and Joker), we considered that “Mary” was inoffensive, but “Joker” was offensive and derogatory since it was a reference to Ms Howse’s personal appearance. We noted that Mr Rushton had informed Mr Mason and Mr Chapman at the time that it was “wrong” to call her that.
202. “Useless cunts” comment: During his interview Mr Rushton had stated that Mr Mason referred to Mr White and Mr Franklin as “*useless cunts*”. This was denied by Mr Mason. Faced with conflicting evidence, and one person’s word against the other, it was within the range of reasonable responses for the respondent to accept the evidence of one witness over the other. In this case Mr Boyd provided his reason for doing so, namely the reliability of Mr Rushton’s evidence throughout the investigation.
203. Ignoring Ms Howse. Ms Howse’s evidence that Mr Mason never said good morning or hello to her and would loudly greet her colleagues and purposely ignore her, was supported by Mr Rushton. In relation to the specific incident on 14 September 2023, Mr Mason accepted that he had asked Mr Keen “how’s it going” but stated it was only twice. Mrs Mason relied on Mr Rushton’s evidence that it only occurred “3 times” as evidence undermining Ms Howse allegation that it was 20 times. However Mr Rushton stated that it was “at least 3 times” and also referred to Mr Mason doing it “over and over, being really loud”, and that it was “relentless”. Mr Keen also referred to Mr Mason repeatedly saying, “alright John” and that Mr Rushton and Ms Howse did not like it. Therefore it was within the range of reasonable responses for the respondent to conclude Mr Mason repeatedly ignored Ms Howse.

Was it reasonable for the respondent to conclude that Mr Mason’s conduct was sex discrimination?

204. We considered that the evidence on sex discrimination before the respondent was mixed. Ms Howse herself stated that Mr White was treated the same way and there was evidence that Mr Mason would ignore other managers, Mr White and Mr Franklin. We also heard evidence that Mr Mason considered this a joke. Had the evidence merely been that Mr Mason ignored and was rude to Ms Howse we may have concluded that Mr Mason’s treatment of her was bullying but that the reason was because she was a manager not because she was a woman. However, we considered that it was permissible for Mr Boyd and the disciplinary and appeal panels to conclude that Mr Mason’s conduct was more sinister. The evidence of Ms Howse and Mr Rushton was that Mr Mason’s conduct was more targeted at her (the only woman in the warehouse), and the evidence of Ms Howse and Mr Hines was that when she challenged him Mr Mason would do it more. Further, and crucially, the respondent had positively found that Mr Mason made the women’s work comment and given her the nickname “Joker” (referring to her make-up). Having made these findings it was not outside the range of reasonable responses for the respondent to conclude

that Mr Mason's behaviour towards Ms Howse was more than upwards bullying of a manager but was also because of her sex.

Did the respondent otherwise act in a procedurally fair manner

205. Mrs Mason in her written closing submissions raised a number of concerns about the fairness of the disciplinary process which are addressed below.
206. Mr Mason's complaint against Ms Howse was ignored whereas Ms Howse's complaint against Mr Mason was taken seriously: Prior to Ms Howse's formal complaint Mr Mason had complained that she made him feel uncomfortable, because she referred to her period, stated she hated men and called her colleagues "babes". Mrs Mason submitted that this complaint was ignored whereas Ms Howse complaint was taken seriously. We considered that the difference between the two complaints was that at no point did Mr Mason make a formal complaint against Ms Howse. We noted that when Ms Howse's informally complained about Mr Mason's and Mr Chapman's behaviour, Mr White also did not treat it seriously. She was told that a judge would think that she was "some sort of idiot". It was only when Ms Howse raised a formal complaint that the matter was taken seriously. Further and in any event, Mr Mason's complaints about Ms Howse (that she made him feel uncomfortable that she called people babes and referred to her period) were not of the same magnitude as the allegations of sustained sex discrimination and harassment that Ms Howse had made.
207. Date of suspension: Mrs Mason submitted that the respondent's witnesses (Mr Torre, Mr White and Mr Sargent) had stated in their witness statements that Mr Mason was suspended on 25 September 2023 when in fact he was suspended on 21 September 2023. The respondent's witnesses agreed that the date in their witness statements was wrong and they amended their statements. We did not consider that getting the date of suspension wrong was a significant matter; other than the fact that the date was wrong Mrs Mason did not explain why this made Mr Mason's dismissal unfair.
208. Suspending Mr Mason and escorting him off the premises: We appreciated that Mr Mason felt strongly that his suspension was badly handled. There was no doubt in our minds that the suspension did have a significant impact on his mental health. Whilst it is often said that suspension is a neutral act, that ignores the impact of suspensions on those who are suspended. This was particularly the case for someone who had been employed for 37 years, had only ever worked in that one workplace, and where work provided a support network. Whilst we considered that the suspension could have been handled with greater compassion, the mere fact that Mr Mason was suspended and escorted off the premises did not make the dismissal unfair. We considered that it was an indicator as to how serious the respondent was treating the allegations but it was not an indicator that the outcome had been predetermined. We noted that the decision to suspend was only made once Ms Howse had put her complaint in writing. We did not consider that this decision was outside the range of responses of a reasonable employer.

209. Failure to interview Mr Mason prior to instructing Ibex Gale to investigate: We considered that the respondent acted appropriately by having an initial meeting with Ms Howse to obtain her account of what had happened and to then test this by having a meeting with Mr Hines and Mr Franklin. Notes were taken of what was said in these meetings and disclosed to Mr Mason. Having conducted an initial investigation it was reasonable for the respondent to decide that Ms Howse's complaint required greater investigation and to refer it to Ibex Gale to investigate. Therefore we did not consider that the initial investigation was outside the range of reasonable responses.
210. Decision to use an external investigator: Mrs Mason objected to the decision to use an external investigator. We noted that the respondent was a small employer with no internal HR resource. Not only did we consider that it was reasonable for them to instruct outside investigators, but we also considered it commendable, since it ensured that the matter was investigated by an experienced investigator and one independent of the respondent.
211. Mrs Mason compared Mr Mason's treatment with that of Mr Hines, who was investigated internally in relation to his social media posts. We noted that Mr Hines' investigation would only have required looking at the posts and asking Mr Hines for an explanation. The investigation of the complaints against Mr Mason was far more complex; not only did it concern three accused but was also based on what was said or done, by whom, to whom, and therefore required interviewing a number of witnesses.
212. Fact finding or disciplinary investigation: Mrs Mason objected to the investigation being referred to as a disciplinary investigation. It was unclear why Mrs Mason considered this to be unfair. In any event, we did not consider that anything turned on whether the investigation was a fact finding investigation or disciplinary investigation. We noted that the Terms of Reference appointed Mr Boyd to conduct a fact finding investigation into the allegations. He was informed that the investigation was "[t]o be conducted in accordance with any relevant provisions contained within the Organisation's disciplinary policy and procedures". It therefore appeared clear to us that this was a disciplinary fact finding investigation.
213. Adding allegations: Mrs Mason submitted that it was unfair to add allegations to those under investigation. We did not agree, it is not unusual for a fact finding investigation to uncover additional matters. We noted that some of the allegations were also removed as a result of this process, namely the allegations of race discrimination. Under the ACAS Code the fundamental fair hearing principle is that the person accused should be informed in advance of the disciplinary hearing of sufficient information about the alleged misconduct to be able to prepare to answer the case against him at the hearing. Mr Mason was provided with the allegations along with the investigation report and the evidence to be considered by the disciplinary panel in advance of that hearing. Therefore he was adequately informed of the case against him and was able to prepare lengthy submissions responding to the case against him.

214. Gender and age based questions: We did not consider that these questions were inappropriate for the reasons set out above (under age and sex discrimination), since these were legitimate and necessary questions when investigating a complaint of discrimination.
215. Not being invited to attend a colleague's funeral: Mrs Mason submitted that Mr Mason should have been informed of a colleague's funeral, suggesting that the reason that he was not informed was because his dismissal had been predetermined. The respondent submitted that the reason why Mr Mason was not informed was because it was a matter for the family to identify who was to be invited. We noted that all the respondent had done was inform its employees that the premises would be closed on the day of the funeral to allow persons to attend. There was no need for Mr Mason to be informed of this since he had been suspended. Whilst it would have been courteous for the respondent to have copied Mr Mason into this email, we did not consider that this decision had any bearing on the disciplinary investigation or outcome, nor did we find that this was evidence that his dismissal was predetermined.
216. Delay in concluding the investigation: We noted that from the date of suspension the investigation took 2½ months. We did not consider that this length of time was such as to make the investigation unfair. It was a complex investigation concerning three different accused and we did not consider that the time it took was such as to be outside the range of reasonable responses.
217. Ignoring the Claimant: We noted that at times the respondent failed to respond to Mr Mason's emails, in particular relating to his appeal. Whilst this was discourteous, and must have been frustrating for Mr Mason, we did not consider that it had any impact on the fairness of the procedure. It appeared to have arisen due to a miscommunication between Mr Sargent and Mr Torre as to who should respond to emails relating to the appeal process. In any event Mrs Mason has not explained how this made the dismissal unfair.
218. Failure to take into account Mr Mason's mental health: From the documentation provided whilst Mr Mason repeatedly referred to his mental health he did not provide the respondent with details. Contrary to the submissions of Mrs Mason, Mr Sargeant did acknowledge Mr Mason's mental health on 2 October 2023. The only medical evidence provided was the sick note of 30 November 2023 which signed him off work until 28 December 2023. This confirmed that at that time he was suffering "social anxiety and panic attacks" and that he was unable to attend meetings at work. The respondent took this into account in that it did not arrange a meeting during this period. Following the expiry of this note, there was no further evidence provided at the time of any continuing ill health. Further Mr Mason did not inform the respondent that he was unable to participate in the disciplinary process due to his mental health or that he required adjustments to be made. Therefore we did not accept that the respondent acted unreasonably in its response to Mr Mason's mental health.
219. Not allowing Mr Mason to be accompanied by his wife: We considered that Mr Mason should have been permitted to be accompanied by his wife at the disciplinary hearing. The disciplinary procedure permitted this option and the

respondent were aware two days prior to the hearing that Mr Mason was not going to be accompanied by a colleague or trade union representative. We considered Mr Sargent's explanation as to why Mrs Mason was not permitted to accompany her husband to be unconvincing, particularly since she was present in the building on the day of the disciplinary hearing. It was clear from the disciplinary hearing notes that Mr Mason was not able to do himself justice, he had to leave the hearing at one point and the hearing lasted only 24 minutes. However we did not consider that this failure was sufficient on its own or in combination with any other failure to make the procedure unfair:

219.1 Mr Mason was given the opportunity to ask a colleague to attend, and the date of the hearing was delayed to enable Mr Mason to arrange this.

219.2 At no point did Mr Mason state that he wanted Mrs Mason to accompany him due to his mental health. He initially requested her attendance because he did not have sufficient time to get someone else to accompany him (5 January 2024 email), he then stated that he wanted her to attend because there was no neutral colleague (24 January 2024 email).

219.3 Mr Mason provided a comprehensive statement of facts to the disciplinary hearing which the panel were able to consider.

219.4 Mr Mason was permitted to be accompanied by Mrs Mason at the appeal hearing and therefore any unfairness was remedied at this stage.

220. Cold tone of the correspondence: Mrs Mason objected to the dismissal letter being "cut and paste" from the solicitors. We considered that there was nothing unfair in the respondent using their solicitors to help draft this letter. We noted that the tone of the correspondence was formal and must have been difficult for Mr Mason to receive given that he had been employed by the respondent for 37 years. Whilst we considered that the respondent could have been more compassionate and could have personalised the correspondence, the failure to do so did not impact on the fairness of the proceedings.

221. The appeal process: Mrs Mason submitted that Ms MacDonald was biased because she was not independent of the respondent, having been retained by them on 1 February 2024 and given a lift by Mr Sargent to the appeal hearing venue. We noted that Ms MacDonald was asked to conduct the appeal hearing because Mr Mason had objected to Mr Torre and Mr Smith conducting the hearing. The respondent only opted for an outside person because there was no-one employed by the respondent that was unconnected with the case. We considered the fact that Ms MacDonald was engaged by the respondent on the 1 February 2024 did not make the dismissal unfair: she was less connected with the respondent than an internal HR person or a Director would have been and had no prior involvement in the disciplinary process.

222. Whilst we agreed that it was unwise for Mr Sargent to have given Ms MacDonald a lift to the appeal venue, we did not consider that this was sufficient to conclude that Ms MacDonald was biased against Mr Mason and / or would not conduct a fair hearing.

Failure to take into account the WhatsApp messages between Ms Howse and Mr Sargent on 18 September 2023:

223. Mr Mason in evidence had objected to Mr Sargent's involvement in the investigation and disciplinary decision because of inappropriate WhatsApp exchanges. We noted that only Ms Howse ended her messages with an "x" and not Mr Sargent. This is evidence that Ms Howse was over familiar in a work setting but was not evidence of any conflict of interest or bias by Mr Sargent. We did not consider that this exchange was evidence of an unfair procedure.

Character evidence and Ms Matthews' evidence:

224. During evidence Mrs Mason had submitted (1) that Ms Matthews' interview should not have been permitted since it was character evidence against Mr Mason and (2) that he should have been permitted to call his own character witnesses. It was not disputed that Mr Mason had raised this issue in his investigation and at the disciplinary and appeal hearings.
225. We did not agree that Ms Matthews was purely a character witness. She had been interviewed because she was involved in the 15 September 2023 incident, had spoken to Ms Howse after the incident (and provided a statement). Whilst she provided a negative view of Mr Mason, Mr Chapman and Mr Woodward, we noted that her views were not relied upon by Mr Boyd in his investigation report. The mere fact that she was interviewed does not make the investigation unfair.
226. We considered it may have been advisable to allow Mr Mason to call 1 or 2 female character witnesses, however we did not consider that the respondent's refusal meant that the dismissal was unfair. None of his female colleagues had been Mr Mason's manager nor had they worked directly with Mr Mason in the warehouse; therefore their evidence was of limited relevance.

Overall fairness

227. We considered that overall the process was conducted fairly. An external independent investigator was commissioned and that investigator conducted a wide ranging investigation. Interviews were conducted with the complainant, the three accused and six other witnesses. Mr Boyd provided a detailed report and only upheld those allegations that were corroborated and / or where there was a reason to accept the evidence of a witness over that of Mr Mason. Mr Mason was provided with a copy of the report and the evidence gathered and given an opportunity to comment. He was invited to attend a disciplinary hearing and appeal hearing where he had the opportunity to respond to the allegations. The disciplinary panel did not just accept the investigation findings, since it considered that there was insufficient evidence to support the allegation that Mr Mason encouraged Mr Woodward on the 15 September 2023. It therefore reached its own conclusions.
228. We took into account that disciplinary process does not have to be perfect as long as it falls within the range of reasonable investigations. So the fact that we would have allowed Mr Mason to be accompanied by Mrs Mason at the disciplinary hearing and allowed one or two character witnesses to be called does not mean that the process was unfair.

Was dismissal within the range of reasonable responses.

229. Yes. We reminded ourselves that we must not substitute our own view. We may have come to a different conclusion and put more weight on Mr Mason's length of service, his good disciplinary record and the lack of any forewarning that the alleged behaviour was unacceptable. However we agreed with the respondent that the allegations were properly classified as gross misconduct. On the basis of the evidence before the respondent, and the conclusions drawn from that evidence, Mr Mason had repeatedly engaged in behaviour that was discriminatory towards a junior female member of staff in a male dominated environment. The conduct was aggravated since more than one accused was involved. It also had a significant impact on Ms Howse who had broken down at work, been signed off work sick and prescribed medication.
230. Therefore dismissal was a permissible option before the respondent based on the evidence before it at the time.

Lack of warning

231. Mrs Mason criticised Mr White's poor managerial skills, and we agreed that Mr White should have done more to address the tensions between Mr Mason, Mr Chapman and Ms Howse. Had Mr Mason and others been spoken to it may have prevented matters escalating as they did. In our view, the respondent failed both Ms Howse and Mr Mason in allowing it to continue. Whilst the failure to provide a warning can be a relevant mitigating factor, we did not consider that it was a significant factor in Mr Mason's case. He did not argue that he was unaware that his conduct was unacceptable and how it was affecting Ms Howse, instead he denied the allegations against him and made counter accusations against Ms Howse. Further there was evidence before the respondent that Mr Mason had been asked to stop the behaviour by Ms Howse and Mr Rushton and had not only failed to do so but increased the behaviour. See also Mr Hines's comments that "*AM is careful and if AH retaliated or tried to stop it AM would do it more*". Therefore on the facts of this case, we considered that it was within the range of reasonable responses to dismiss Mr Mason without giving him prior warning.

Inconsistent treatment

232. At various points during the investigation and / or this hearing Mrs Mason has suggested that Mr Mason was treated differently from others. For the reasons set out in greater detail above (under discrimination) we did not accept that he was treated differently to Ms Howse, Mr Moseley and Mr Hines.
233. In submissions Mrs Mason has also suggested that he was treated differently to Mr White, who had been accused of bullying by Abbie. We were unable to assess whether this was a comparable situation. It was not raised with the respondent during the disciplinary process and not dealt with in evidence before us. Accordingly Mr Mason has failed to establish that there had been any inconsistent treatment.

234. For all these reasons the complaint of unfair dismissal did not succeed and was dismissed.

NON-PAYMENT OF BONUS

235. The respondent submitted that because the bonus was discretionary this meant it could not be a contractual term. We disagreed, the bonus was expressly included in Mr Mason's contract of employment, therefore we considered it was a contractual entitlement, albeit a discretionary one.
236. Mr Mason's contract of employment contained an express provision stating that he "may be" eligible to a "variable discretionary bonus", payment, amount and date "entirely at the discretion of the Company". We considered that this gave the respondent a wide discretion. The clause also expressly identified the circumstances in which the bonus would not be paid. We considered that this clause was unambiguous and that, with the exception of the excluded circumstances, it entitled Mr Mason to a bonus to be awarded at the discretion of the respondent.

Unlawful deduction of wages

237. In order to succeed in a claim for unlawful deduction of wages it is a condition of liability that the complaint was in respect of "wages properly payable" i.e. an identifiable sum. Since the amount of the September 2023 bonus had not been declared or quantified, this complaint did not succeed and was dismissed.

Breach of contract

238. Whilst we have accepted that the respondent had a wide discretion as to whether or not to award a bonus, that discretion is not unfettered. It is well established that the exercise of discretion is subject to the implied term that the employer must not act in a manner which is irrational or perverse i.e. no reasonable employer would have acted in that manner.
239. The respondent's case was that it was "customary" for the respondent not to award bonuses *"to employees in their probationary periods, those currently involved in the disciplinary process or those who have been absent for work for a significant period of time"*. We did not accept that this was the respondent's "custom". In evidence Mr Sargent admitted that no employee had been previously been suspended and that the only example of a bonus being withheld was in relation to a single employee's performance with that person being paid at a later date. The respondent identified no other evidence of custom and practice, and we considered that a single instance of non-payment of bonus in different circumstances was insufficient to establish a custom and practice that the bonus would not be paid to those who were suspended or subject to a disciplinary process. Nor had such a custom been drawn to the attention of employees or agreed with them. We therefore did not consider that the express term in the contract identifying the circumstances in which a bonus would not be paid, had been varied by custom and practice.

240. On the basis of the terms of the contract we considered that the decision not to pay Mr Mason his bonus because he was suspended to be irrational or perverse:
- 240.1 The express term of the contract was specific as to the circumstances when there was no entitlement (not employed by the Company or under notice of termination). Had it been intended that it would also apply to employees subjected to a disciplinary process it would have said so. The respondent's decision not to pay the bonus was contrary to the express terms of the contract and therefore perverse.
- 240.2 Non-payment for underperformance (even if permitted under the contract) is very different from non-payment during a "suspension" which was expressly accepted as "neutral act" that did not affect Mr Mason's "*normal contractual benefits*".
- 240.3 Mr Mason had a reasonable expectation that he would receive his September bonus. His undisputed evidence was that he had always received his bonus in 37 years. Whilst not determinative this was a factor that we took into account.
- 240.4 We heard evidence that the bonus was in respect of the previous financial year April 2022 to March 2023, and there had never been any concerns about Mr Mason's performance to justify Mr Mason not being paid this bonus for that year.
241. If no bonuses had been paid in September 2023 then Mr Mason would not have had any entitlement to it, but it was not disputed that the bonuses were paid in the normal way. Having decided to pay the bonus to employees, we considered it to be irrational for the respondent not to pay bonuses to those who had been suspended, given that this was contrary to the express term of the contract.

TIME LIMITS

Discrimination

242. We have made a finding that the respondent discriminated against Mr Mason on grounds of sex (refusal to revert to his pre-Covid working hours) (**SD act 3**). The date of the act was 31 March 2021. To be in time this complaint should have been made to the Tribunal within three months of that date i.e. by 30 June 2021 (plus any early conciliation extension).
243. This was a single act (albeit with continuing consequences) and therefore does not amount to conduct extending over a period. The case of **Hendricks v Commissioner of Police for the Metropolis** [2003] IRLR 96 (CA), relied upon by Mrs Mason, does not apply.
244. We therefore considered whether the complaint was made within a further period that the Tribunal thinks is "just and equitable". The claim form was submitted in April 2024, almost three years later. Mr Mason provided no explanation as to why he did not submit a claim in relation to this complaint at an earlier date, including when submitting his first claim on 26 November 2023. The complaint was significantly out of time, and whilst we took into account that

it succeeded on the merits, that was not in itself sufficient to extend time in his favour.

Public Disclosure Detriments

245. Had we found that Mr Mason had been subjected to one or more of the three detriments relied upon, we would have found that they were out of time. The last detriment was the refusal to permit Mr Mason to return to his pre-Covid hours in March 2021. Mr Mason did not provide any reason as to why it was “not reasonably practicable” to have submitted his whistleblowing complaints in time or any evidence that it was then presented in further reasonable time. Accordingly had these complaints succeeded on the merits then they would have been dismissed as being out of time.

CONCLUSION ON LIABILITY

246. The panel concluded that the only complaint that succeeded was that for non-payment of the September 2023 bonus payments (breach of contract). All other complaints did not succeed and were dismissed.

REMEDY

247. At the remedy hearing the parties agreed that on 25 September 2023 Mr Mason would have been paid the full bonus of £2,803.05 plus interest of £352.33. The Tribunal awarded the figures provided by the parties.

This judgment has been approved by:
Employment Judge Hart
Date: 12 June 2026

Sent to the parties on:
Date: 30 June 2026

Public access to employment tribunal decisions

Judgment and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

APPENDIX A

EXTRACT FROM CASE MANAGEMENT ORDER MADE ON 19 SEPTEMBER 2024

The Issues

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

1. Time limits

- 1.1 Given the date the claim form for the Second Claim was presented and the dates of early conciliation, any complaint about something that happened before **4 January 2024** may not have been brought in time.
- 1.2 Were the [discrimination and victimisation 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?
- 1.3 Was the protected disclosure detriment complaint made within the time limit in section 48 of the Employment Rights Act 1996? The Tribunal will decide:
 - 1.3.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act complained of?
 - 1.3.2 If not, was there a series of similar acts or failures and was the claim made to the Tribunal within three months (plus early conciliation extension) of the last one?

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

2. Unfair dismissal

- 2.1 The parties agree that the Claimant was dismissed by the Respondent with effect from 2 February 2024.

- 2.2 What was the reason or principal reason for dismissal?

The Respondent says the reason was conduct. The Tribunal will need to decide whether the respondent genuinely believed the Claimant had committed misconduct.

The Claimant says that the sole or principal reason for his dismissal was that he had made protected disclosures.

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

- 2.3.1 there were reasonable grounds for that belief;
- 2.3.2 at the time the belief was formed the Respondent had carried out a reasonable investigation;
- 2.3.3 the Respondent otherwise acted in a procedurally fair manner; and
- 2.3.4 dismissal was within the range of reasonable responses.

3. Remedy for unfair dismissal

- 3.1 Does the Claimant wish to be reinstated to their previous employment?
- 3.2 Does the Claimant wish to be re-engaged to comparable employment or other suitable employment?
- 3.3 Should the Tribunal order reinstatement? The Tribunal will consider in particular whether reinstatement is practicable and, if the Claimant caused or contributed to dismissal, whether it would be just.
- 3.4 Should the Tribunal order re-engagement? The Tribunal will consider in particular whether re-engagement is practicable and, if the Claimant caused or contributed to dismissal, whether it would be just.

- 3.5 What should the terms of the re-engagement order be?
- 3.6 If there is a compensatory award, how much should it be? The Tribunal will decide:
 - 3.6.1 What financial losses has the dismissal caused the Claimant?
 - 3.6.2 Has the Claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?
 - 3.6.3 If not, for what period of loss should the Claimant be compensated?
 - 3.6.4 Is there a chance that the Claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?
 - 3.6.5 If so, should the Claimant's compensation be reduced? By how much?
 - 3.6.6 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
 - 3.6.7 Did the Respondent or the Claimant unreasonably fail to comply with it?
 - 3.6.8 If so is it just and equitable to increase or decrease any award payable to the Claimant? By what proportion, up to 25%?
 - 3.6.9 If the Claimant was unfairly dismissed, did they cause or contribute to dismissal by blameworthy conduct?
 - 3.6.10 If so, would it be just and equitable to reduce the Claimant's compensatory award? By what proportion?
 - 3.6.11 Does the statutory cap of fifty-two weeks' pay or £105,707 apply?
- 3.7 What basic award is payable to the Claimant, if any?
- 3.8 Would it be just and equitable to reduce the basic award because of any conduct of the Claimant before the dismissal? If so, to what extent?

4. Protected disclosure

- 4.1 Did the claimant make one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996? The Tribunal will decide:
 - 4.1.1 What did the claimant say or write? When? To whom? The claimant says they made disclosures on these occasions:
 - 4.1.1.1 On 16 May 2019, the Claimant orally complained to his line manager, Peter Franklin, and to Michael Torre, Managing Director, about the danger posed by Glen Mosley welding on the floor of the warehouse around highly flammable drums (**Disclosure 1**);
 - 4.1.1.2 On 16 June 2019 the Claimant orally complained to Greg May, Warehouse Manager, about the danger posed by Mr Mosley having made some repairs to a

menthol pot holding oils of up to 250°C in temperature which the Claimant considered an inadequate repair, carried out by someone not qualified to do so (**Disclosure 2**);

4.1.1.3 In early 2021, the Claimant orally raised concerns to Mr May, Warehouse Manager, about the fact that the warehouse staff's training was out of date, and that people were driving forklift trucks without a licence (**Disclosure 3**);

4.1.1.4 On 15 January 2021 the Claimant orally complained to Mr Franklin that Mr Mosley was touching the circuit board in the hot room, which he was not qualified to do, and expressed the concern that this was not safe (**Disclosure 4**);

4.1.1.5 On 13 May 2021, the Claimant made an oral complaint to Terry White, Warehouse Manager, and Peter Franklin, Supervisor, about the fact that the stairwells were blocked (**Disclosure 5**);

4.1.1.6 On each of 10 June and 17 June 2021, the Claimant complained to Terry White that the air handling fans had been turned off by Mr Mosley (**Disclosures 6 and 7** respectively);

4.1.1.7 On numerous occasions in 2022 and 2023, the Claimant orally complained to Mr White that Mr Mosley – without qualifications - was manufacturing and fabricating machinery for 5 to 10 kg filtering final products which would go to clients and the wider public (**Disclosure 8**);

4.1.1.8 Around February 2023, the Claimant orally raised concerns to Mr White that there were drugs being taken by some members of staff working in the warehouse, an environment where there are highly flammable items (**Disclosure 9**); and

4.1.1.9 In August 2023, the Claimant made an oral complaint to Ms Howse that the air handling fans had been turned off by Mr Mosley (**Disclosure 10**).

4.1.2 Did they disclose information?

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

4.1.4 Was that belief reasonable?

4.1.5 Did they believe it tended to show that:

- 4.1.5.1 a criminal offence had been, was being or was likely to be committed (Disclosures 1, 2, 3, 4, 8 and 9);
- 4.1.5.2 a person had failed, was failing or was likely to fail to comply with any legal obligation (Disclosures 1, 2, 3, 4, 8 and 9);
- 4.1.5.3 the health or safety of any individual had been, was being or was likely to be endangered (each of the Disclosures); and/or
- 4.1.5.4 information tending to show any of these things had been, was being or was likely to be deliberately concealed.

4.1.6 Was that belief reasonable?

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

5. Detriment (Employment Rights Act 1996 section 48)

5.1 Did the Respondent do the following things:

- 5.1.1 On 31 March 2023, refused the Claimant's request to revert to his pre-Covid working hours pattern to accommodate his childcare responsibilities, when female staff were permitted to revert to their pre-Covid working hours for equivalent childcare responsibilities;
- 5.1.2 In the period 23 March 2020 to October 2020, when the Claimant's working hours were adjusted in response to Covid-19 requirements, the Claimant's pay was pro-rated, whereas his colleagues' pay was not (the **CV-19 Pay Issue**). Whilst these errors in the calculation of the Claimant's pay were corrected in October 2020, the delay in resolving it meant the Claimant was underpaid for that period; and
- 5.1.3 Treat the Claimant with disrespect and discourtesy in relation to responding to the CV-19 Pay Issue, including threatening to issue him with a written warning?

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

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

6. Remedy for Protected Disclosure Detriment

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

- 6.2 Has the Claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?
- 6.3 If not, for what period of loss should the Claimant be compensated?
- 6.4 What injury to feelings has the detrimental treatment caused the Claimant and how much compensation should be awarded for that?
- 6.5 Has the detrimental treatment caused the Claimant personal injury and how much compensation should be awarded for that?
- 6.6 Is it just and equitable to award the Claimant other compensation?
- 6.7 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
- 6.8 Did the respondent or the Claimant unreasonably fail to comply with it?
- 6.9 If so is it just and equitable to increase or decrease any award payable to the Claimant? By what proportion, up to 25%?
- 6.10 Did the Claimant cause or contribute to the detrimental treatment by their own actions and if so would it be just and equitable to reduce the Claimant's compensation? By what proportion?
- 6.11 Was the protected disclosure made in good faith?
- 6.12 If not, is it just and equitable to reduce the Claimant's compensation? By what proportion, up to 25%?

7. Direct age discrimination (Equality Act 2010 section 13)

- 7.1 The Claimant's age group is "over 50s" and he compares his treatment with people in the age group "20s to 40s".
- 7.2 Did the Respondent do the following things:
 - 7.2.1 During the investigation of the complaint raised by Ms Howse, repeatedly refer to the Claimant as a "white middle-aged man"?
 - 7.2.2 After completion of a disciplinary investigation, decide to dismiss the Claimant summarily.
- 7.3 Was that less favourable treatment?

The Tribunal will decide whether the Claimant was treated worse (e.g., the sanction was harsher) 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 refers to the treatment of:

- Ben Hines, whose comments on social media were racist and sexist, who was not dismissed by the Respondent; and
- Glen Moseley, who bullied and harassed the Claimant, which is the same findings that was made against the Claimant. The Claimant was dismissed, Mr Moseley remains employed by the Respondent.

7.4 Was any difference in treatment, because of age?

7.5 Was the treatment a proportionate means of achieving a legitimate aim? The Respondent says that its aims were:

7.5.1 *[R to update its Ground of Resistance within 28 days of the date these Orders are sent by the Tribunal.]*

7.6 The Tribunal will decide in particular:

7.6.1 was the treatment an appropriate and reasonably necessary way to achieve those aims;

7.6.2 could something less discriminatory have been done instead;

7.6.3 how should the needs of the Claimant and the Respondent be balanced?

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

8.1 The Claimant is male.

8.2 Did the Respondent do the following things:

8.2.1 Upon receipt of a complaint about the Claimant raised by Alison Howse on 14 September 2023, investigated the Claimant's conduct without investigating Ms Howse's conduct or character?

8.2.2 During the investigation of the complaint raised by Ms Howse, repeatedly refer to the Claimant as a "white middle-aged man" and Ms Howse as a "small woman"?

8.2.3 On 31 March 2023, refused the Claimant's request to revert to his pre-Covid working hours pattern to accommodate his childcare responsibilities, when female staff were permitted to revert to their pre-Covid working hours for equivalent childcare responsibilities?

8.3 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 has identified Kiely Leach, Alison in Accounts and Erica who works in the office as comparators in relation to the matter described in paragraph 8.2.3. above.

8.4 Was any difference in treatment, because of sex?

9. **Direct race discrimination (Equality Act 2010 section 13)**

9.1 The Claimant is white.

9.2 Did the Respondent do the following things:

9.2.1 During the investigation of the complaint raised by Ms Howse, repeatedly refer to the Claimant as a "white middle-aged man"?

9.3 Was that less favourable treatment?

The Tribunal will decide whether the Claimant was treated worse (i.e., the sanction was harsher) 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.

9.4 Was any difference in treatment, because of race?

10. **Remedy for discrimination or victimisation**

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

10.2 What financial losses has the discrimination caused the Claimant?

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

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

- 10.5 What injury to feelings has the discrimination caused the Claimant and how much compensation should be awarded for that?
- 10.6 Has the discrimination caused the Claimant personal injury and how much compensation should be awarded for that?
- 10.7 Is there a chance that the Claimant's employment would have ended in any event? Should their compensation be reduced as a result?
- 10.8 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
- 10.9 Did the Respondent or the Claimant unreasonably fail to comply with it?
- 10.10 If so is it just and equitable to increase or decrease any award payable to the Claimant?
- 10.11 By what proportion, up to 25%?
- 10.12 Should interest be awarded? How much?

11. Unauthorised deductions - bonus

- 11.1 Did the Respondent make unauthorised deductions from the Claimant's wages in September 2022, and if so how much was deducted?

The Claimant says that he was entitled to be paid a bonus equal to one month's gross salary in September 2022, and that that was not paid to him.

The Respondent says that it operated a discretionary bonus scheme, that its Board of Directors exercised its discretion not to award a bonus to the Claimant given the conduct for which he was disciplined fell in the bonus performance period. In any event, it says the size of any bonus payment is discretionary, depending on the Respondent's and the individual recipient's performance in the relevant financial year.

12. Breach of Contract - bonus

- 12.1 Did this claim arise or was it outstanding when the Claimant's employment ended?

The position of the parties is as set out in relation to the Claimant's complaint of unauthorised deductions above.

- 12.2 Did the Respondent do the following:

- 12.2.1 Fail to pay the Claimant a bonus in September 2022 equating to one month's gross money?

12.3 Was that a breach of contract?

12.4 How much should the Claimant be awarded as damages?

APPENDIX B:

RESPONSE TO CLAIMANT'S SUBMISSIONS OF INCONSISTENCIES IN THE IBEX GALE INVESTIGATION REPORT

1. Being emailed at 21:31 on Sunday (p. 279): This was an email sent by Mr Boyd on 22 October 2023 updating Mr Mason on the progress of the investigation and responding to some of his concerns. It did not require an immediate response and had no bearing on the decision to dismiss.
2. Mr Boyd asking for notes back (p. 341-2): This was an email sent by Mr Boyd on 10 November 2023 asking Mr Mason if he had been able to review the investigation meeting notes sent on 18 October 2023. There was nothing unfair in this request, all Mr Boyd was doing was providing Mr Mason with the opportunity to correct the record of his investigation meeting, which Mr Mason duly did.
3. Mr Boyd not knowing date of the complaint (p. 296.87): This was a reference to an entry during the investigation meeting with Mr Mason which recorded that Mr Boyd stated that he was not sure of the date that Ms Howse made the complaint. It was not disputed that Ms Howse had made formal complaint and we did not consider that Mr Boyd forgetting the date during a meeting was a relevant consideration. Mr Mason appeared to consider the date was significant because he responded with the view that the case was "compromised" because he was not suspended until three days later. Mr Mason did not explain why he considered the case was compromised. Our factual findings were that the decision to suspend was made once Ms Howse had put her complaint in writing.
4. Mr Hines's investigation interview notes did not record that he was accompanied by Mr White (p. 443): We did not consider that this omission made the investigation unfair; there was nothing to suggest that it was anything other than inadvertent. Mr White stated that he attended because Mr Hines asked him to do so as a companion. There was no evidence that Mr Hines was put under pressure to give false evidence as suggested by Mrs Mason.

Ibex Gale Report

5. That there was a conflict in the investigation report (p. 394[17]-396[26]): This was a reference to Mr Boyd recording that Mr Hines remembered the women's work comment being made but could not recall if it was said by Mr Mason or Mr Chapman, yet he made a finding that Mr Hines recalled Mr Mason making the comment. We agree that this was an error in the report, however it did not undermine the conclusion reached that this comment had been made for the reasons set out in the main judgment.
6. Evidence that Mr Mason did not say hello to Mr Rushton as well as Ms Howse (p. 398[36]): We noted that this was the evidence that Mr Keen gave. However there was other evidence before Mr Boyd that suggested that Mr Mason's conduct on that day was directed towards Ms Howse (see Ms Howse's and Mr Rushton's evidence). Faced with two different accounts, Mr Boyd was entitled

to accept one over the other, particularly given that Mr Rushton was clear that he was “right there”, that Mr Mason was saying hello to everybody except Ms Howse and that he had asked Mr Mason to stop: **p. 475-476**.

7. The finding that witnesses had “not witnessed any discrimination of sort” (p. 400 [52]): We considered that this was a misrepresentation of Mr Boyd’s finding. His conclusion was that Mr Mason’s behaviour “was clearly directed” at Ms Hines. That was a finding he was permitted to reach regardless of whether that conduct was sex discrimination or harassment. He then stated: “*whilst witnesses have not referenced discrimination of any sort, Alison is the only female in this working area/ environment*” and that it was understandable that she would feel targeted and excluded. This finding was reached in the context of allegation 1 (whether Mr Mason had acted towards Ms Howse in a manner that could reasonably be considered bullying or harassment); the issue of sex discrimination which was addressed separately under allegation 3.
8. Mr Boyd referring to one individual’s word against another (p. 403[74]): This was a reference to Mr Boyd’s findings on the “useless cunt” allegation; it was a comment that Mr Rushton had referred to which Mr Mason denied. Mr Boyd noted that there was no corroborating evidence and therefore had to decide whose account to accept. He decided to accept Mr Rushton’s account and stated that the reason was the reliability of Mr Rushton’s evidence established during the investigation. An investigator making findings of fact is permitted to accept one person’s word over the other and take into account the respective reliability of their evidence when doing so.
9. Wrong date (p. 405 final para): This was a reference to Mr Boyd concluding that Mr Mason had encouraged Mr Woodward to approach Ms Howse on 14 September 2023 which led to her being upset, when in fact it was the 15 September 2023. Mrs Mason suggested that this allegation should therefore have been found “not proven”. There was significant evidence that an incident involving Mr Woodward had occurred on one of those days, and therefore the wrong date was not a significant error. In any event the disciplinary panel found this allegation against Mr Mason was not proven and therefore it was not taken into account in the decision to dismiss him.
10. Chinese whispers (p. 472.32): This was a reference to Mr Boyd using the term “Chinese whispers” in his interview with Mr Rushton. Mr Boyd was trying to explain to Mr Rushton why he was interested in direct evidence rather than hearsay. Regardless of whether the reference to “Chinese whispers” was inappropriate, it had no bearing on Mr Mason’s subsequent dismissal.

Ibex Gale Questioning – was it Alan:

11. Mrs Mason submitted that Mr Boyd asked the following inappropriate questions during the investigation meetings.
 - (a) Mr Hines was asked “is it Alan, does he use nicknames a lot in the building” p. 447[37]: This was not an inappropriate question since it followed on from

- a general question about Mr Mason and Ms Howse and banter and was asked in order to obtain clarification of an answer already given.
- (b) Mr Hines was asked whether he had heard Mr Mason make any of the alleged racist comments p. 449[53 and 55]. This was not an inappropriate question since Mr Boyd was asking Mr Hines to respond to the allegation. In any event there was no unfairness to Mr Mason since Mr Hines responded in the negative.
 - (c) Mr Hines was asked about the allegation that Ms Howse “was told they’d been saying she was having a threesome with the lads...” p. 451[73]: This was not an inappropriate question since Mr Boyd was asking Mr Hines to respond to the allegation. In any event there was no unfairness to Mr Mason since Mr Hines responded in the negative.
 - (d) Mr Hines was asked “Alan and Jay were telling him to go and put his white coat on?” p. 544[125]: Whilst this was a leading question, there was no unfairness to Mr Mason because Mr Hines responded, “they said it as a joke” and in any event this allegation was found not proven at the disciplinary hearing
 - (e) Mr Hines was asked “was it Alan” who made the “women’s work” comment p. 456[137]: This was not an inappropriate question, when considered in context it was a question clarifying Mr Hines’ response to the previous open question about whether Mr Mason had joined in with the banter. In any event this question did not make the investigation unfair since Mr Hines responded “it was one of the 2. I can’t remember”. This was consistent with his evidence at the pre-investigation meeting.
 - (f) Mr Keen was asked if Mr Mason had used the nicknames, Bonnie and Clyde and the shifters p. 491[31]: This was not an inappropriate question since Mr Boyd was asking Mr Keen to respond to the allegation. In any event it did not make the investigation unfair, Mr Keen confirmed that Mr Mason did use those nicknames and referred to them as “banter” and that they did not upset him.
 - (g) Mr Keen was asked if Mr Mason had joked about Ms Howse’s relationships and whether he could remember Mr Mason saying to him that “working with Alison is a big betrayal to Peter and helping her with tasks will get you into his bad books and he will disown you” p. 492[45]: This was not an inappropriate question since Mr Boyd was asking Mr Keen to respond to the allegation. In any event this question did not make the investigation unfair since Mr Keen responded in the negative.

Mr Mason’s statement:

12. Mr Mason’s reference to his mental health pp. 291-292[64]: During his investigation meeting, Mr Mason had stated that he only spoke to 2 people Mr Hines and Mr Chapman and that “it was a bit much for him and his mental health to speak to people every day”. Mr Mason provided no details as to his mental health to put this comment into context. Further Mr Boyd was entitled to consider that Mr Mason’s mental health was not a relevant factor when considering whether Mr Mason had made the alleged comments or behaved in the manner alleged, in circumstances where Mr Mason was denying the alleged conduct rather than suggesting that the conduct was connected to his mental health.

13. Evidence of Terry White bullying Abbie p. 293[72]: It was reasonable for Mr Boyd not to take this into account since Mr Mason did not provide details as to what had occurred. In any event this was not sufficient evidence of inconsistent treatment for the reasons set out in the main judgment.
14. Mr Mason stating that he thought he got on well with Ms Howse and referring to Ms Howse stating that she had wanted him to meet her mum who had a similar sense of humour (p. 294[78]): This was confirmed by Mr Franklin. It was not inconsistent with Ms Howse's allegations, since it was plausible that this was an attempt by Ms Howse to fit in and diffuse the situation.
15. Mr Mason stating that felt that he was not wanted there p. 303[131]: This may well have been how Mr Mason felt but there was no evidence adduced at the investigation that the respondent were seeking to dismiss him. In any event there was no evidence that Mr Boyd, who was independent of the respondent, wished to dismiss him.

Ms Howse's statement

16. Ms Howse stated that when she had raised her concerns with Mr Franklin he had told her that Mr Mason and Mr Chapman had "always been like that" towards their supervisors (p. 413[5]): Whilst this may undermine the evidence that Ms Howse was singled out, it does not make this behaviour acceptable. During the investigation interview Ms Howse made it clear that she was not prepared to put up with this behaviour. She also made it clear that she considered it to be more directed at her.
17. Ms Howse did not have another breakdown mid-year that was addressed at a meeting as she alleged (p. 430 [122]): Mrs Mason appeared to be relying on this as evidence that Ms Howse was not a truthful witness. Whilst we noted that Ms Howse did not have a "breakdown", there was evidence that Ms Howse had previously raised matters with Mr White.

Ms Howse not saying hello

18. Ms Howse and Mr Keen stated that Mr Mason ignored / did not say "hello" to Mr Franklin: p. 423[70] and p. 423[20-24]: Mrs Mason relied on this as evidence undermining the finding that Mr Mason ignored Ms Howse. However Ms Howse stated that "occasionally" Mr Mason ignored Mr Franklin and Mr Keen stated "sometimes" Mr Mason ignored Mr Franklin. Therefore this statement was not inconsistent with the finding that Mr Mason ignored Ms Howse more than he ignored other managers.

Ms Howse stated that Mr Mason greeted John 20 times an hour (p. 424[81]) whereas Mr Rushton stated that Mr Mason greeted Mr Keen "3 times" (p. 475[53-60]).

19. This was addressed in the main Judgment.

Terry White – statement

20. Mr Boyd asking "... is it in relation to her gender?" and Mr White responding "I think there's a large portion of that but I also think they treat virtually anybody like that" (p. 435[34 and 35]): Whilst this could undermine a finding that the treatment was sex discrimination / harassment in that it suggested that Mr Mason behaved that way to everybody, there was also contrary evidence that the behaviour was more targeted at Ms Howse for the reasons set out in the main judgment.
21. Mr Boyd asking Mr White if he had heard the accused making racial comments (p. 438[56]): This was not an inappropriate question since Mr Boyd was asking Mr White to respond to an allegation. In any event there was no unfairness to Mr Mason since Mr White responded in the negative, and Mr Boyd did not find that these comments were made.

Mr Ruston statement

22. Mr Rushton stating "I don't think they're aware": p. 477[79 & 80]: This was in response to a question as to whether Mr Mason was aware how upset Ms Howse was, but it does not undermine his evidence that he had asked Mr Mason to stop and that it was obvious that Ms Howse was upset.

Ms Matthews dislike for all three suspended

23. Ms Matthews referring to Mr Mason's brother as having "...a crab-like way of coming at you sideways and trying to give you a bullets to fire": p. 464[34]: Whilst this was evidence of a dislike of Mr Mason's brother it was not evidence of a dislike of Mr Mason.
24. Ms Matthews stating "There's history between Nicky and Jason Chapman, unfortunately": p. 461[13]: This was a comment in response to a question as to whether any other females had any issues with the three suspended. This was not evidence against Mr Mason and does not suggest any dislike towards him.
25. Ms Matthews stating "I don't have a problem with Peter or John or Daryl or Sam or Osas. Those 3, you never know when they'll pop in your face. You feel like you're working around a landmine": p. 462: This was potentially evidence that Ms Matthews found Mr Mason difficult to work with, rather than a dislike of him. However even if she did dislike him, it does not automatically follow that this evidence was untruthful. In any event Mr Boyd did not rely on Ms Matthews' evidence and views in his findings against Mr Mason.