EMPLOYMENT TRIBUNALS

Claimant: Mr K Mellalieu

Respondents: GLP Legal Management Limited (1)
GLP Solicitors (a partnership) (2)
GLP (Prestwich) LLP (3)
Mr J Pfeffer (4)
Mr G Leigh (5)

Heard at: Manchester **On:** 20-24, 27-31 July & 3-5 August 2026

Before: Employment Judge Phil Allen

Representation
Claimant: In person
Respondents: Mr M Williams, counsel

JUDGMENT

The judgment of the Tribunal is that:

1. The claimant was not an employee of the second or third respondents within the meaning of section 230 of the Employment Rights Act 1996. His claims for unfair dismissal and breach of contract against the second and third respondents are dismissed.

2. The claimant was an employee of the second and third respondents (as well as the first respondent) within the meaning of section 83 of the Equality Act 2010.

3. The complaint of unfair dismissal against the first respondent was not well-founded. The claimant was not unfairly dismissed and that complaint is dismissed.

4. The complaint of breach of contract against the first respondent was not well-founded. The claim for breach of contract is dismissed.

5. The complaints of direct age discrimination 6.2.1 (comment in a discussion on 23 December 2021) and 6.2.4 (not consulting the claimant about a new case management system in October 2021) were not entered within the time required by section 123 of the Equality Act 2010, were not part of a continuing series of events with events which were found and were brought

in time, and it was not just and equitable to extend time. I did not have jurisdiction to consider those complaints.

6. For the other discrimination and/or victimisation complaints not brought within the primary time limit, whilst they were not part of a continuing series of events with matters which had been found and brought in time, it was just and equitable to extend time. I did have jurisdiction to consider those complaints.

7. The complaints of direct age discrimination (against all of the respondents) were not well-founded and are dismissed.

8. The complaint of harassment related to age against the first, second and fifth respondents was not well-founded and is dismissed.

9. The claimant did do protected acts when he submitted his grievances on 27 June and 4 July 2023.

10. The complaints of victimisation against the first, second and third respondents were not well-founded and are dismissed.

REASONS

Introduction

1. The claimant was employed by the first respondent (and latterly also potentially by the second and third respondents), with continuity from 10 July 2000 until 18 September 2023. He fulfilled various financial and regulatory roles for the group of entities operating as GLP solicitors, including being COFA for the firms and MLRO. He was dismissed. He claimed direct age discrimination, harassment related to age, unfair dismissal, victimisation and breach of contract. The fourth respondent is a solicitor and the chair of the group of entities which operate as GLP Solicitors. The fifth respondent is a solicitor and senior partner. The respondents denied discrimination and victimisation and contended that the dismissal was fair by reason of conduct.

Claims and Issues

2. There were three preliminary hearings (case management) in this case. After the second preliminary hearing (case management) on 11 December 2024, an agreed list of issues had been appended to the case management order. At the start of this hearing, we discussed the list of issues. I was informed that an updated version of that list of issues had been agreed by the parties and was included in the bundle of documents (284). Both parties agreed they were the issues which I needed to determine. A copy of that list of issues is appended to this Judgment.

3. At the start of the hearing, we also discussed remedy issues. I decided, and informed the parties, that I would determine liability issues first and would leave remedy issues to be determined at the end of the hearing, if the claimant succeeded in any of his claims. However, when determining the liability issues, I proposed that I would determine the issues regarding Polkey and contributory fault (issues 4.1.4 and 4.1.9) at the same time as the liability issues, unless it transpired that there was a good reason not to do so. The parties did not disagree with that approach.

Procedure

4. The claimant represented himself at the hearing. Mr Williams, counsel, represented the respondents.

5. The hearing was conducted in-person with the parties and all witnesses attending in-person at Manchester Employment Tribunal.

6. I was provided with a bundle of documents which ultimately had 891 numbered pages (and some unnumbered pages). Where a number is referred to in brackets in this Judgment, that is a reference to the page number in the bundle. I read only the documents in the bundle to which I was referred, including in witness statements, in the claimant's reading list, or as directed by the parties. I would observe that the order in which documents were included in the bundle was not at all helpful in navigating the bundle and it would have assisted if the documents (and the transcripts, in particular) had been included in chronological order (as they should have been). Three additional documents were added to the bundle at the start of the second week, two being a letter and an email which had been omitted and the respondent wished to add, and one being a document prepared by the claimant over the weekend (with neither side objecting to the inclusion of the other side's additional document). A further document was added by agreement during the seventh day. Two additional letters were provided on the eighth day (as explained below). Some documents were added by agreement on the ninth day. On the tenth day it was established that the claimant had with him a copy of his contract of employment with the first respondent which had not been disclosed or included in the bundle (the respondents said they did not have a copy), and a copy was provided. I read those documents.

7. I was provided with witness statements from all the witnesses called to give evidence. I read all the witness statements and the documents referred to in those statements. During the discussion on the first morning of the hearing, the claimant said that the final bundle was different to the bundle which he had used when preparing his witness statement. I asked him to provide me with a list of the pages in the bundle which he wished me to read by the end of the first day (by email). The claimant provided a list by referring to the page references in his witness statement (which were usually in footnotes) and providing the correct page numbers for those references. In fact, only a few of the numbers provided in the list differed from the numbers included in the claimant's witness statement. I read all the pages referred to.

8. Shortly before the hearing, the claimant had applied for the hearing to be postponed. That application was considered in advance of the hearing by Employment Judge Ross, and she refused the application (that decision was set out in a letter from the Tribunal of 17 July).

9. The parties attended on the first morning of the hearing. The claimant wished to make an application to postpone the hearing. I explained that, as Employment Judge Ross had made a decision the week before, I could not and would not consider the same application unless there had been a material change in circumstances. The claimant did not proceed with an application to postpone as a result. The parties had written to the Tribunal over the weekend in advance of the hearing, but as I explained to the parties on the first morning of the hearing, that correspondence was not read in advance of the hearing starting.

10. The claimant made an application to delay the start of evidence being heard in the hearing so that he had more time to prepare. Both parties agreed that at least the first day would be required for me to read the papers in any event. The claimant asked that the evidence should start being heard on Friday morning (the fifth day of the hearing). I discussed with the parties the time that would be required for the case to be heard and it was identified that the fifteen days for which it had been listed would allow time for the evidence to start on the Friday morning and for the case to be heard in the time allocated. I heard what the claimant had to say about why he should be allowed the time sought. I also heard what the respondents' representative had to say, albeit in practice the respondents' position was that it was a decision for me. I decided that the claimant should be given the time sought and therefore his evidence would begin to be heard on Friday morning with the parties not needing to attend the Tribunal after the end of the discussion on the first day (Monday) until the start of the fifth day (Friday). The delay allowed me a significant amount of time to read the statements and documents in advance of the evidence being heard. It gave the claimant the time to prepare which he had requested.

11. The claimant's reason for requiring more time arose because of the late preparation of the case and, in particular, because the final version of the bundle had only been provided to him the week before the hearing. Whilst discussing those issues, I identified that the witness statements of the parties had not been sent to each other by the date ordered and therefore, as had been set out in the case management order made following the third preliminary hearing (case management) on 2 September 2025 (at order 4.3), permission was required for any witness statements to be relied upon. The respondents applied for permission to be allowed to rely upon the statements of the seven witnesses they wished to call. In the 2 September case management order, Employment Judge Anderson had recorded that his orders must be complied with because there had been a history of non-compliance by the respondents and the non-compliance had occurred more than once (292). Witness statements had been due to be provided to the other parties on 19 December 2025 (which was itself a revised date after previous non-compliance). The respondents had only provided their witness statements to the claimant on 15 May 2026, and the claimant had received the statements on 23 May when he returned from holiday in Greece. The claimant had provided his own statement when he returned from holiday, having (understandably) not wanted to provide his statement until the respondents were ready to provide theirs. There was very little genuine explanation for that delay, albeit there was some reference to the respondents' solicitor having been unwell. The respondents' position was that the claimant had had the witness statements for fifty-six days by the start of the hearing (the claimant contended that included the days before he had returned from holiday) and the final bundle sent the week before only differed materially in the addition of a couple of documents. They said a fair hearing was still possible. I emphasised to the respondents' counsel that the conduct of the case on the respondents' behalf had been inappropriate and unacceptable. However, where I had granted the claimant his application for the evidence to start being heard on Friday, I also granted the respondents' application to rely upon the statements they had provided very late. I emphasised that my focus was on endeavouring to ensure that the case could be fully and fairly heard on the merits and the evidence. I considered that it was in accordance with the overriding objective to make that decision.

12. The claimant also made two applications for specific disclosure on the first morning of the hearing. Both applications made appeared to, in the claimant's view,

relate to the reasons why Ms Rowley resigned from her employment, which I was told was something addressed in the respondents' witness statements. The claimant sought disclosure of some documents from 2021, 2022 and 2023 (including on 6-9 January 2023) relating to the purchase of a camera. The respondents opposed the application. I asked the claimant to identify for which issue in the agreed list of issues (284), the disclosure was relevant. He said he could not do so. As a result, I refused his application because it had not been identified that the documents were relevant and that disclosure was necessary for the determination of the issues. The claimant also sought disclosure of bank statements recording the movement of money between accounts relating to the changes to profit and loss accounts. He sought those for January 2021, 2022, and 2023. From the list of issues, he said that they were relevant to his contention that the respondents had failed to deal properly with the grievance process. The respondents contended that they were not relevant. I refused the application as I could not see why the disclosure sought was relevant to the issues to be determined. The claimant was certainly able to ask questions about, or contend that, additional documents should have been obtained as part of the grievance process, but disclosure of any such documents was not required for determining that issue, and it had not been shown that the documents were relevant and that disclosure was necessary for the determination of the issues.

13. I was provided with two lists of the people involved in the case, one prepared by each of the parties. I was not provided with a chronology.

14. From the morning of the fifth day (Friday) I heard evidence from the claimant, who was cross examined by the respondents' representative, and I asked him questions. His evidence was heard on the fifth and sixth days and at the start of the seventh day.

15. I heard evidence from each of the witnesses called by the respondents. They were each cross-examined by the claimant, and, where I considered that I needed to, I asked questions. Their evidence was heard from mid-morning on the seventh day (Tuesday) until the end of the tenth day (Friday). The witnesses called by the respondents were:

15.1. Paul Wainwright, a solicitor and a partner in the second respondent, who conducted the grievance hearing and the investigation into the disciplinary issues;

15.2. Ben Tyer, a solicitor who was a salaried partner and the person who conducted the appeal hearing in the claimant's appeal against the grievance outcome (he left GLP solicitors in August 2024);

15.3. Steven Astley, a solicitor and salaried partner in the second respondent, who is now managing partner of the second respondent and the person who conducted the disciplinary hearing;

15.4. Graham Leigh, a solicitor and senior partner, and the fifth respondent;

15.5. Anthony Middleton, a solicitor and salaried partner and the commercial director;

15.6. Terence Kelly, a solicitor and partner who conducted the appeal hearing in the claimant's appeal following his dismissal; and

15.7. Jonathan Pfeffer, a solicitor and chair of GLP solicitors, and the fourth respondent

16. The claimant found cross-examination of the witnesses somewhat challenging. He frequently reverted to making lengthy statements and not asking questions. On occasion I needed to remind him of the need to do so (particularly during the first few witnesses). On occasion, he also asked witnesses to accept the accuracy of things that they knew nothing about, such as for example his own conversations with others when the witness had not been present. He was allowed considerable leeway when asking questions and the respondents' counsel did not intervene on many occasions when he could have appropriately done so. The claimant did complete his cross-examination, with the claimant asking the questions of the witnesses which he wished to (and I occasionally asked questions of some of the witnesses to ensure that the claimant's case (as relevant to the list of issues) had been put).

17. The names of the first, second and third respondents were amended by agreement at the end of the tenth day, to remove the trading as wording which had been included (as it was technically incorrect for the first respondent and not required for the second and third respondents).

18. After the evidence was heard, each of the parties was given the opportunity to make submissions. During the second week, we agreed that submissions would not be heard any earlier than Monday of the third week, as the claimant said that he would need some time to prepare for submissions. Submissions were heard on the morning of day eleven (Monday of the third week). Submissions were made orally.

19. I adjourned to consider my decision. On the afternoon of the thirteenth day (Wednesday of the third week), I informed the parties of my decision and the summary reasons for it.

20. The claimant requested written reasons of my decision. I discussed with him whether he was requesting full written reasons or whether he was seeking only written summary reasons (summary reasons having been given orally). He confirmed that he was requesting full written reasons. As a result, the Judgment and the full reasons for it are contained in this document.

Facts

21. The claimant's evidence was that he was born on 7 March 1955. That meant that he was 71 years old as at the date of the hearing and, as his list of key people identified, he was aged 68 years old on 18 September 2023 (the date of his dismissal).

22. The fourth respondent is 82 years old. He is eleven years older than the claimant. He is a qualified solicitor. He set up in sole practice in 1970. He opened other legal practices. In summary, the practices were known as a group but were each run autonomously by their partners or members. From 1988, the fourth respondent's role was as chair of the group and he operated a management function from (at the time) the Manchester office, which administered accounts functions, maintained books, presented VAT returns, and handled compliance matters. He is an equity partner in the second and third respondents. He is a director and shareholder in the first respondent. In cross-examination, the claimant said that his relationship with the fourth respondent (prior to the latter period of his

employment) had always been a very pleasant and cordial relationship. The fourth respondent said in evidence that he referred to the claimant as a valued colleague.

23. The fifth respondent is 69 years old. He is approximately two years younger than the claimant. He is a qualified solicitor. He is senior partner and an equity partner. He is a director of the first respondent.

24. The claimant was first employed on 10 July 2000. It was the claimant's evidence that he joined the central business hub of a disparate group of firms and offices, as its accounts manager. The fourth respondent described him as being interviewed for the position of head of accounts. At the time, the claimant was engaged by the fourth respondent operating as a sole trader.

25. I was provided with a contract of employment for the claimant with the fourth respondent. It was dated 27 October 2000. The job title was accounts manager. The hours of work were 37.5 hours per week Monday to Friday with one hour allowed for lunch (the hours were 8.30 am to 5 pm). After a certain period of service, the employer was required to give six months' notice to terminate the contract. There was a provision which said that the contract may be terminated without notice in the event of any gross default or gross misconduct. The contract did not include an express power to suspend.

26. In 2004 the first respondent was incorporated. There appeared to be no dispute that the claimant's employment transferred from the fourth respondent to the first respondent. It was the claimant's evidence that (at the time) the first respondent serviced nine head offices and four branch offices. It was the fourth respondent's evidence that the claimant and the fourth respondent were each appointed directors of the first respondent and the claimant was appointed the company secretary. Over time, the claimant became exclusively responsible for day-to-day management of the first respondent.

27. The fifth respondent's evidence was that the claimant had complete autonomy in the day to day running of the first respondent and was trusted by him and the other partners/directors of the group in that respect. It was Mr Wainwright's evidence, that the claimant ran the first respondent with little or no interference from anyone else, and that he worked in relative isolation with very little oversight of what he did.

28. From 2013 the claimant took on the role of COFA for the firms within the group. The claimant undertook training in advance of doing so. There was no dispute that the SRA required a COFA to be employed by the relevant firm. As a result, after he took up the COFA roles, the claimant was paid a part of his salary by each of the firms for which he was a COFA.

29. I was provided with a number of P60s for the claimant for the tax year ending in April 2014. Those showed the claimant having been paid a salary by a variety of the entities in the group (301). I was provided with the claimant's payslips from June 2023 (308), which showed that he received pay for that month from the first, second and third respondents.

30. The claimant provided a table which showed how his salary had been paid from 2013/14 until 2023/24 (310). In 2013/14 the claimant was paid salary by seven different entities, and the table showed that 18% of his total salary was paid by the first respondent and 14% by each of the other entities. Each time a firm ceased to operate (or merged), they ceased to contribute to the claimant's salary and the

percentages paid by the other entities increased. By 2023/24, 65% of the claimant's salary was paid by the first respondent and 17% paid by each of the second and third respondents. In general terms, the percentage paid by each entity increased as the number of entities contributing reduced (save in the final year when the percentage contributions from the second and third respondents reduced). The first respondent always contributed the highest percentage.

31. It was Mr Wainwright's evidence, that it was the claimant that implemented that he be added to the payrolls of the respective firms to facilitate his ability to undertake the COFA role for each separate legal practice. The claimant was not issued an employment contract by a firm. It was the claimant's evidence that a document was signed by each firm appointing him to be a COFA when he was first appointed. I was not provided with any of those documents.

32. It was the fifth respondent's evidence, that it was the claimant who suggested that he took on the roles of COFA for the individual firms and to facilitate this the claimant added himself to the payrolls of the relevant firms allocating a specific sum to each office from his salary. The fifth respondent said this was done, although the claimant was not technically an employee. It was the fifth respondent's evidence that the claimant was unilaterally responsible for deciding that he should take those roles and for setting up the salary arrangement. The fifth respondent and Mr Wainwright described them as appointments of convenience.

33. There appeared to be no dispute that the amount which each firm paid in salary to the claimant was deducted from the amount it would otherwise have paid to the first respondent for the services provided.

34. In the transcript of the disciplinary hearing on 12 September 2023 (736), the claimant was recorded as recounting the arrangements made for him to become a COFA of the various firms in 2013. He said of the arrangements:

> "*I've only had a tangential employment relationship with the various GLP partnerships due to being appointed by each practice in 2013 to the role of COFA as approved by the SRA*"

35. The claimant was not subject to any appraisal process by any of the firms (the fifth respondent's evidence was that any other employee was). The claimant was not subject to any appraisal as part of his employment by the first respondent. I also did not hear any evidence that the claimant's time working for any of the firms was monitored or recorded.

36. The first respondent was primarily an organisation which provided services only to the group of firms (albeit I heard evidence that some services were provided to other entities for some periods).

37. In 2008 an employee of one of the firms was given a final written warning and not dismissed, after sending a racially offensive message (or messages). I was shown a note (612) which recorded the fourth and fifth respondents as having attended the meeting at which it was decided that she should be given a warning, and they were involved in the decision. The fourth respondent emphasised that she had shown contrition and apologised.

38. HMRC introduced Making Tax Digital from April 2019. Electronic VAT returns were required. The claimant could not enter electronic VAT returns due to technical issues (for a period) and did not do so.

39. The claimant gave evidence about the work which he did to ensure that the group moved out of Queen Street, by the date required for the sale of the premises in April 2020. The claimant personally spent a considerable amount of time ensuring that occurred. In his witness statement, the claimant told me that he worked from home for only four days throughout what he described as the entire lockdown programme and he spent every working day plus a combination of weekends and bank holidays in March and April 2020 working to ensure that the office was cleared. He said that he worked every day from 29 March to 30 April 2020. In his witness statement he went on to say:

> "*I was never stopped by the Police for breaking the national lockdown regulations, perhaps partly because of the times I was travelling"*

40. That evidence clearly showed the claimant's commitment to his work and what he perceived to be the needs of the respondents. However, I did not consider that it reflected well on the claimant that he continued to travel to and from work and attend work, during a period of national lockdown, in order to ensure that his office was packed up so that a commercial property transaction could complete on time. The claimant himself said that he could have been stopped by the Police for breaking the national lockdown regulations. The claimant's non-adherence to those legal requirements, was something which I took into account when assessing the claimant and his attitude towards compliance, when considering the extent to which evidence which he gave under oath was reliable.

41. The claimant's work location moved to Bury. The claimant put it to the fourth respondent that their relationship had deteriorated from the time of the office move. The fourth respondent agreed with that and explained that the claimant had told him that he would not move to Bury as it required him to work in the same office as the fifth respondent. That was consistent with the claimant's own evidence that he did not have a high opinion of the fifth respondent, dating back to something which had occurred some years before the move. It was the fourth respondent's evidence that that he was not in position to say why the relationship he had with the claimant changed, but it had been a very convivial and collegiate relationship in the twenty years from 2000 to 2020 (he said he would have described the claimant as a friend), and thereafter the relationship became fractious.

42. In May 2021 an accountant was appointed as assistant management accountant (Ms Rowley). The claimant did not think she should have been appointed as she did not have the experience which had been stipulated in the job specification. It was clear from the claimant's evidence that he did not perceive her appointment to have been a success, and he was highly critical of her (indeed, it appeared that the claimant had a degree of antipathy towards her). The fifth respondent's evidence was that Ms Rowley was critical of the claimant. The fourth respondent's evidence was that the claimant became extremely adversarial and even hostile towards her. In determining this case, I did not need to decide whether she should have been appointed and/or how she performed in her role, as that was not relevant to the issues I needed to determine.

43. On 9 September 2021 the first respondent received a letter from HMRC informing it that it had missed a VAT payment (378) with a schedule that detailed the VAT due and a surcharge. As with all the letters to which I will refer, the claimant received the letter but did not raise it with, or mention it to, anyone else

44. In October 2021, the group entered into a contract for a new case management system (Proclaim). The claimant thought that he should have been involved in the process undertaken and the decision about which system should be used. He was critical of the decision and the annual cost of Proclaim when considered alongside the number of fee earners who would use it (and the cost of some other options).

45. It was Mr Astley's evidence, that he was asked to explore and oversee the implementation of a new case management system, in part because he had been involved in digital transformation projects in previous roles. Mr Astley was not asked to involve the claimant, but it was his evidence that he did involve the claimant in certain meetings including one with representatives of Proclaim after it had been shortlisted as a potential replacement system. The commercial aspects were handled by Mr Astley and Mr Middleton, and Mr Astley's evidence was that he did not consider it necessary to involve the claimant in those discussions and he did not consider the claimant's involvement was required in the technical and implementation aspects of the project. It was Mr Middleton's evidence, that the claimant believed the claimant was involved in a several meetings with the developer and attended a number of demonstration sessions prior to implementation (and he confirmed that he thought at least one was before they procured the product). It was the fifth respondent's evidence, that historically the claimant would have been involved in the process for equivalent contracts, however the picture had changed with Mr Middleton's appointment as commercial director and, as a result, Mr Middleton was involved in the process, together with Mr Astley.

46. It was clear from the evidence heard that there was a difference between the claimant and Mr Middleton about the focus when obtaining the new system. Mr Middleton was primarily interested in its effectiveness as a case management system. The claimant was focussed upon its capabilities when it came to accounts.

47. In his grievance appeal document of 17 September 2023 to Mr Wainwright, the claimant said this about the Proclaim contract (433):

> "*I had no issue with organisation's consideration of strategically improving the efficiency and profitability of the various GLP firms. I simply couldn't understand why it had to be done in secret and without a proper understanding of the cost involved by all concerned and without prior consultation with the Partners of the outlying firms involved, including you*
>
> *…I have absolutely no doubt in my mind that GSL ignored including my expertise on the basis of my age, believing that I would not be around long enough to implement the systems"*

48. In a document the claimant wrote in the course of proceedings, he said the following in relation to the new system (following a passage in which he was highly critical of the cost involved) (206):

> "*The arrangements were kept secret from all the Managing Partners of the outlying GLP Solicitors firms, until I told them in October 2021 of what had occurred"*

49. When the claimant was asked about why he had not raised a complaint about him not being consulted about the new system earlier than he did, he said that he did not want to leave over what he described as a relatively minor matter.

When he was challenged about why he asserted that the reason was age, he said that was because he had been ignored, for whatever reason he was ignored. He asked why otherwise would he have been ignored?

50. On 15 November 2021 the first respondent received a letter from HMRC which informed it that HMRC had not received payment of an overdue VAT amount, and no call had been made to arrange a payment plan (375). The schedule detailed the same VAT amount and surcharge as had been recorded and scheduled to the September 2021 letter.

51. A conversation took place on 23 December 2021 between the claimant, the fourth respondent and the fifth respondent. It was the claimant's evidence that the fourth respondent asked the claimant during the conversation how old he was, and when it was he intended to retire.

52. In the bundle of documents was a handwritten note dated 23 December 2021 (462). It was the claimant's evidence that he had written it at the time in the meeting (and had added an element at the end of the note after a later conversation). That was not a full note of the meeting, it recorded only a very limited element of what had been said. In the relevant part it said:

> "*Hang on, let's pause for a minute – let me just write this down and record what's been said – "How old are you when are you intending to retire?""*

53. It was the fourth respondent's evidence in his witness statement, that he had no specific recollection of the meeting. He did however say that he recalled a number of meetings in which the retirement plans of the fourth and fifth respondents and the claimant were discussed, as the claimant was always keen to put in place succession planning for the organisation. When cross-examined about what occurred, the fourth respondent had a greater recollection about what had occurred than was recorded in his witness statement, albeit he did not recall exactly what had been said. He recounted that it had been his tradition each year to meet with the claimant, speak about the year and to give him a gift. He described it as a chinwag, and he was clear it was not genuinely a meeting (a meeting being something which would be recorded in his diary with a date and time). He described the conversation as having been general banter. He said he had no recollection of the claimant having made a note in the meeting.

54. The fifth respondent had a clearer recollection of the conversation, which he provided in his witness statement. He said that he recalled a conversation about working into old age and the fourth respondent made the comment that he would probably be working until he was carried out in a box. The fifth respondent commented on his own situation and that he was in his sixties and planned to continue working too. The fifth respondent said that the fourth respondent asked the claimant what his plans were for the future (or words to that effect). It was the fifth respondent's evidence that he perceived it to be a normal conversation. He also referred to the claimant constantly asking the fourth and fifth respondents about their own retirement plans and the prudence of some form of succession policy.

55. In cross-examination of the fifth respondent, the claimant asked him whether the comment which the fifth respondent recalled that the fourth respondent had said (carried out in a box) was a humorous line which he had used over the years, and the fifth respondent confirmed that was exactly what he had

said. The fifth respondent described the conversation as being three senior people in age just before Christmas kicking life around and nothing more than that.

56. In his answers to cross examination, the claimant was adamant that the meeting on 23 December did not occur as described by the fifth respondent and he said that the only mention of age by anyone in that meeting had been when the fourth respondent referred to the claimant's age. He asserted that what was said was the reason why the fourth respondent did not talk to him following the meeting. He also referred in evidence to two other matters discussed in the same meeting.

57. Following the discussion, on the same day, the fifth respondent visited the claimant in his office to give him two bottles as Christmas gifts (it appeared these were the gifts which it had been intended would be given to the claimant during the discussion). It was common ground that the claimant initially declined the gifts. The fifth respondent's evidence was that he said something like you must have them and left the gifts with the claimant. When asked if he recalled the claimant saying that the meeting had not been in good faith, the fifth respondent confirmed that he could remember him saying something like that yes. However, he said that he had no recollection of the claimant saying what that was all about.

58. When the fourth respondent was questioned about the rejection of his gifts, he accepted that it surprised him and was not something that had occurred before. He described having carefully chosen a good bottle of brandy which he had given to the claimant. He said that the rejection was emblematic of the abyss into which their relationship had fallen.

59. It was clear that the relationship between the claimant and the fourth respondent was not good towards the end of the claimant's employment. The claimant contended that the fourth respondent never spoke to him following the meeting in December 2021. The fourth respondent denied that he didn't speak to the claimant, albeit the evidence was that the two rarely came into contact with each other during the working day, because the fourth respondent had his own entrance and the claimant would usually have arrived in the car park before the fourth respondent did so. The fourth respondent also dated the most significant deterioration in the relationship as having been in November 2022 not December 2021.

60. On 19 January 2022 the first respondent received a letter from HMRC informing it that HMRC had written about a missed VAT payment and confirming that there had been no contact to prepare a plan and no payment (372). The amount stated to be due was higher than the previous letters, with a greater amount of VAT due and higher surcharge.

61. On 4 April 2022 the first respondent received a letter from HMRC repeating that they had not received payment of the overdue VAT amount and there had been no call to arrange payment (366). However, the amount stated to be due as a debt in that letter was significantly higher, being over £30,000. The schedule showed two VAT assessment amounts due and two surcharges (with the surcharges cumulatively amounting to over £5,000). As with the previous notifications, the claimant did not raise the amounts overdue or the surcharges with anyone else. It was the claimant's evidence that he did take steps to rectify the issues and on 6 May 2022 he sent physical copy VAT returns to HMRC. Around the same time, the claimant addressed his inability to access Making Tax Digital with a change to the Sage system and by using a different gateway.

62. On 19 July 2022 the first respondent received a letter from HMRC which said that they had not received an overdue payment of VAT (355). The debt was lower than the figure in the April 2022 letter. The schedule of what was due detailed three surcharges, with a cumulative value of over £2,000.

63. On 12 August 2022 the first respondent received a letter from a debt collector chasing a sum which was said to be due to HMRC (337). The claimant had seen the document because he had written on it. The claimant's evidence was that when he was contacted by debt collectors, he asked why the sum was due and they were unable to tell him.

64. In his evidence, the fourth respondent said that a management meeting in November 2022 was the moment when his relationship with the claimant had crossed the Rubicon and it had ended the cordial relationship between them. There appeared to be no dispute that such a meeting had taken place. At that meeting, the claimant accused the fourth respondent of recording the conversation when he had his phone in his hand. The fourth respondent clearly felt very strongly about what the claimant said in that meeting. He said that the claimant showed a complete lack of integrity and thereafter he divested himself of any day-to-day relationship with the claimant, leaving that to his partners.

65. The claimant clearly worked long hours when working for the first respondent. That was his evidence. Tables provide for 2022 and 2023 (314) showed that he relatively frequently departed for work before 7 am (and often much earlier, with departure as early as 4.11 am on one occasion) and he frequently arrived home after 7 pm.

66. The claimant provided a document which recorded the times which he had worked on Sundays and bank holidays in the period from 29 January to 2 July 2023. It recorded him as having frequently been in the office before 8 am on those days (and on occasion much earlier) and being in the office between nine and fourteen hours. Over thirteen days he worked one hundred and thirty-six and a half hours. At around that time, the claimant was seeking to review the large number of documents held in boxes, so that they could be destroyed or moved, prior to the claimant's office moving floors. It was the claimant's evidence in the Tribunal that many of the boxes had remained untouched following the move to Bury in 2020 and it was clearly the claimant's belief that only he was able to review and consider the documents in the many boxes which required review.

67. On 17 March 2023 a meeting was convened to inform the claimant of the restructuring of the COFA roles. The meeting was attended by the claimant, the fifth respondent and Mr Wainwright (who described himself as being really just an observer). The claimant was informed by the fifth respondent that he would no longer fulfil the COFA role for each of the practices. Mr Wainwright in part explained the decision by reference to concerns over the long hours which the claimant was working. The fifth respondent's evidence was that the arrangement with the claimant and the payrolls was not an ideal situation and, given the increasing concerns about the number of hours the claimant was working and his performance, it seemed a convenient time to reorganise the COFA roles so that each COFA was an actual solicitor/employee of the relevant firm. In the bundle was a handwritten note from 17 March 2023 (472) which the claimant confirmed were his own notes of what had been said in the meeting and he said he had written them immediately after the meeting. Mr Wainwright sent an email to the fifth respondent in the early afternoon of 17 March recording what had been said in the

meeting and in a subsequent conversation with the claimant. That was only provided to me during the second week of the hearing but was added to the bundle. In that email, the claimant was recorded as saying he was devastated and there was a clear agenda to get rid of him, something the fifth respondent was recorded as having denied and said they were trying to help. In the subsequent conversation with Mr Wainwright, the claimant was recorded in the email as having said he was very upset and this was constructive dismissal, before going to speak to the fifth respondent and saying he was in no fit state to continue and was going home. In answers to questions asked in cross-examination, Mr Wainwright emphasised how devastated he knew the claimant had been by what had been said in the meeting.

68. On 22 March 2023 the claimant tested positive for Covid. Despite having done so, he attended the Bury office at 6.36 am. The fifth respondent said in evidence that he was appalled that the claimant had come into the office with Covid, and he explained that there were a number of vulnerable people in the building. The claimant was informed by the fifth respondent by email that he should not work in the building (531). The fifth respondent said that he was sorry the claimant had Covid and he wished him a speedy recovery before saying:

> "*Our policy is that if someone contracts Covid and is able to work, they must do so from home.*
>
> *Under no circumstances must someone with Covid be in the office"*

69. In his further and better particulars document, in a section referred to in his witness statement, the claimant said that he arrived at the office at 6.36 am on 23 March and at 7.30 he received a terse telephone call from the fifth respondent. The claimant was critical of that call. The claimant left the office at 7.48 am. The claimant had written the respondents' Covid policy which said that anyone who was Covid positive should not work in the office (albeit I was not provided with a copy).

70. It was the claimant's evidence that he was unable to work effectively from home. His files remained in the office. In his witness statement, he asserted that the decision made by the fifth respondent was an opportune ruse to ensure that the claimant would be unable to complete the first respondent's financial accounts on time.

71. At around the same time, Ms Rowley also tested positive for Covid. She did attend the office on two dates to complete the payroll run. It was the fifth respondent's evidence that he was aware that, in order for payroll to be processed on time, an exception needed to be made for Ms Rowley, and the cashiers were requested to remain at home for their own safety. The claimant asserted that another member of staff could have run the payroll.

72. Included in the bundle were some WhatsApp messages exchanged between Ms Rowley and another employee, within the GLP central office WhatsApp group (533). The claimant had been the person who disclosed the messages and he said it was a group that he had set up. On 22 March, Ms Rowley said she had tested positive for Covid; however, she felt better and was intending to come to work the following day as "*I need to send the payroll fps which I can only do from work*". She went on to ask how people wanted her to do this? A colleague said she would work from home on the following day.

73. It was the claimant's evidence (in an answer give during cross-examination) that he first took legal advice in May or June 2023, albeit he could not recall exactly when he had done so. He ceased to engage the solicitor shortly before he entered his Tribunal claim.

74. On 6 June 2023 a meeting was arranged which was attended by the claimant, the fourth respondent, and Mr Wainwright. Mr Wainwright had arranged the meeting and intended it to be an attempt to clear the air following the significant deterioration in the relationship which the claimant had with the fourth respondent. It was also Mr Wainwright's evidence that the meeting was arranged in response to increasing concerns about the claimant's performance and wellbeing.

75. It was not a successful meeting. Mr Wainwright referred to the parties engaging in a hostile argument and he said it degenerated into a slanging match.

76. It was the claimant's evidence that, during that meeting, the fourth respondent said to him "*you're 70, where do you think you are going to get another job?*" The claimant also contended that, in the meeting, the fourth respondent questioned the claimant's physical and mental health.

77. Included in the bundle was a document which the claimant had prepared in the course of the proceedings to provide further particulars, which was not part of the pleadings but parts of which were explicitly referred to by the claimant in his witness statement. That document (in a section explicitly referred to in his witness statement) provided an account of the 6 June meeting (109). That recorded that, towards the end of the meeting, the fourth respondent had spoken directly to the claimant in a raised and angered tone and uttered what was described as a threatening and age-discriminatory sentence "*You're 70 – where do you think you are going to get another job?*" The claimant said he was stunned.

78. It appeared to be common ground that the length of the meeting was limited because the fourth respondent's wife had recently been involved in a car accident, and he wished to visit her in hospital. It also appeared to be common ground that Mr Wainwright brought the meeting to an end.

79. There was a dispute between the claimant and the fourth respondent about which of them referred to long Covid in the meeting, although it was clear that somebody had done so.

80. In his witness statement, the fourth respondent provided an account of the meeting, highlighting that it was his perception that the claimant was under severe strain and referring to the claimant's long working hours. The fourth respondent said that he stipulated that the claimant's working day was to be limited to eight hours and he must take a break for lunch. It was the fourth respondent's evidence that this was prompted solely by a sense of responsibility for the claimant's wellbeing and exclusively for his own good. The fourth respondent categorically refuted any allegation of ageism. The fourth respondent, in his witness statement, did not evidence exactly what was said.

81. The fourth respondent was cross-examined at some length about the meeting and what had occurred. He said that he recalled that meeting with some clarity. It was his evidence that the claimant looked very unwell and appeared very stressed (whilst emphasising that he was not a doctor). He said that he had been told by Mr Wainwright that the claimant had said he was considering resignation and a pastoral meeting was advisable, if not essential, to clear the air. He said that

he told the claimant that he felt that his hours of work were far too long. He told the claimant to work fewer hours (something which he emphasised he had never told any other employee). He said that he did so purely out of a sense of concern for his well-being. He said he had no recollection of using the words which the claimant specifically alleged (as quoted above). He said the meeting had descended into a slanging match.

82. Mr Wainwright's evidence was that the fourth respondent had stated that he wanted the claimant to work less hours and no more than eight hours a day, in response to the claimant referring to having on occasion arrived at the office at 4.30 am and having worked weekends. Mr Wainwright said, in his witness statement, that, without any doubt, there was no reference to the claimant's age or retirement. In his evidence during the Tribunal hearing, Mr Wainwright agreed that there certainly had been questions asked about the claimant's health, but he did not recall anything regarding mental health, and he said there was certainly nothing said with regard to age.

83. Following that meeting, the claimant delivered two letters to Mr Wainwright, to which Mr Wainwright referred during his evidence at the Tribunal hearing. They had been omitted from the bundle on the basis that they were written on a without prejudice basis (both letters were headed without prejudice) but they were provided to me and included in the bundle on the morning of the eighth day because the claimant wanted them to be provided and the respondents had decided that they could be (that is, I took it that the parties waived without prejudice). The first letter was prepared and delivered on 6 June (512). In the first letter, the claimant made no reference whatsoever to any comments about his age at that meeting (although he did refer back to a question about age at Christmas 2021). He was critical of the meeting and referred to repeated attempts to describe his mental state. He said, within the letter, with reference to the meeting of that day:

> "*Having mentioned that I was still recovering from Covid, it was then alleged that I have "Long Covid". The consequence of this ill-informed observation is that I have been discriminated against 'on the hoof' as I have been ordered to undertake work amounting to no more than 8 hours in each day from today until I leave the firm … For the record, I do not have and have never had suffered 'Long Covid'. A sputum test confirmed that I had a bacterial infection*"

84. Mr Wainwright, when asked about that meeting, emphasised that the claimant's first letter written on the same day did not refer to any comments about age from the fourth respondent.

85. The claimant referred to the second letter on a number of occasions during the Tribunal hearing, and he repeatedly said it was prepared by him on 6 June, but it was dated and delivered on 7 June (516). The claimant began the second letter by saying "*I have considered matters overnight and reflected again on what was a disgraceful meeting held yesterday*". The discrepancy between what the claimant repeatedly asserted during the Tribunal hearing (that he had written the letter on the 6th) and what was said in the letter (that he had considered matters overnight and therefore written it on the 7th), was a factor I considered relevant in assessing the reliability of the claimant's evidence generally. In the second line of the letter, the claimant said that the fourth respondent's words had been "*where would I be likely to get a job at 70?*". The claimant went on to criticise the conduct of the

meeting and to address other matters such as the amount of time and effort which he had put into clearing the Queen Street building in 2020.

86. On 7 June 2023, a letter was received by the fifth respondent from the Law Society which chased non-payment of monies for a subscription service. The fifth respondent spoke initially to Mr Wainwright about it. The claimant was then asked to pop down and join them and was asked about it. The claimant complained that he had needed to walk down three flights of stairs and past other employees. In cross-examination it was confirmed that the stairs were not open to other employees and it was other employees who were present in reception who would have observed him going to the meeting. The claimant explained that the invoice had not been paid because the books to which it related had never been received and he said that he had dealt with the situation the previous day. It was the fifth respondent's evidence that he thanked the claimant, and the claimant left the meeting.

87. On 29 May the first respondent received two letters from HMRC. It was the claimant's evidence that they first appeared in his in-tray in opened envelopes on 15 June. One letter informed the first respondent that there was a VAT amount due of £1,456.94 which required payment or it would be passed to a debt collection agency (344). The schedule showed that the amount due was a VAT surcharge. The other letter referred to a debt of £5,078.10 which needed to be paid in full, or it would be passed to a debt collection agency (339). The schedule for that letter showed two surcharges due from September and December 2021, totalling over £5,000. It was the claimant's evidence that Ms Rowley paid the first surcharge when he had told her not to (albeit it was not clear when that had occurred).

88. On 19 June 2023 the claimant sent a letter to the CQS accreditation officer at the Law Society, enclosing the Prestwich practice's signed application for 2023/24 (802). The application had been delayed and was being submitted later than it should have been. In a paragraph, towards the end of the letter, the claimant said the following:

> "*the author of this letter found Covid for the first time in mid-March, to be followed by a bacterial lung infection in the aftermath and a brutal six weeks or so of bronchial difficulties. Consequently, the fact that this application has been delayed is the product if the various problems arising and is regretted*"

89. During cross-examination, the claimant was taken to that paragraph as evidencing that he had health issues in or around that time. The claimant denied that he had any genuine health issues (save for the few days he had been absent with Covid earlier in the year and having had some form of infection). The claimant's evidence was that he was doing what he could to get the letter through and he was embellishing. He said that frankly he was being untruthful in the report. He later said that he admitted that he had embellished what had been said. I found that the claimant's willingness to be untruthful and to embellish the truth in a letter sent to the Law Society, in order to obtain what he wanted, significantly undermined the credibility and reliability of the evidence which I heard from the claimant.

90. The claimant submitted a grievance on 27 June 2023 (793). It was not in dispute that the grievance constituted a protected act. I will not repeat what was said in that letter. The claimant stated that he had been discriminated against by reason of age. In the letter, the claimant set out the events about which he was

raising his grievance. In his description of the 6 June meeting, the claimant said that was "*talked to, almost shouted at in a most aggressive, bullying, threatening manner*".

91. Mr Wainwright was asked by the fifth respondent whether investigating the grievance was something which he was prepared to do? He went on to do so. The claimant was critical that Mr Wainwright conducted the grievance, describing him as conflicted. Mr Wainwright did not think that he was. The fifth respondent explained that he had asked Mr Wainwright to undertake the investigation because he was the only person who had employment experience and he considered him to be the perfect person to appoint. The fifth respondent also confirmed that the decision had been made by himself in conjunction with the other partners.

92. On 28 June, the fifth respondent received a letter from the legal ombudsman about a complaint, which he forwarded on to Mr Wainwright. Amongst other things, the letter informed the group that its complaints procedure had not been updated (521). During his cross-examination, the claimant confirmed that the subject matter of the letter certainly fell within his purview. The letter was discussed in a meeting on 29 June. The claimant complained that he was accused in the meeting of failing in his duty when dealing with the complaint. The respondents' case was that he was just asked about the letter. Ultimately, the claimant addressed the matter with the legal ombudsman, as he pointed out that the complaint under consideration had been one raised before the required changes to complaints procedures and therefore the legal ombudsman's comment was incorrect.

93. The claimant also complained that at the 29 June meeting he was informed that Denise Butler would be conducting an audit to check the claimant's work. Ms Butler had previously been employed by the group and in June 2023 was working for her own company providing services to law firms. It was Mr Wainwright's evidence that he thought it prudent to have a trusted business associate review the claimant's matters to ensure that they were all in order, in the light of the claimant being overworked, there being concerns about his health and wellbeing, and following Ms Rowley's recent resignation.

94. A formal meeting note was included in the bundle, recording what had been discussed in the 29 June meeting between the claimant, Mr Wainwright and Ms Peel (517). That recorded that Mr Wainwright had said there had been some concerns about the work which the claimant had undertaken and some flags with regards to compliance and accounting. It was stated that Ms Butler's company, Peacock Risk Management, had been asked to undertake an investigation and audit "*to ensure that everything is compliant*". The note went on to record the letter from the legal ombudsman and what had been said. Mr Wainwright, in his evidence, denied that the decision to initiate Ms Butler's audit was prompted by the claimant's grievance, he said that it was prompted by the letter from the legal ombudsman as a letter of that seriousness prompted his concern.

95. In the bundle, was an email from the claimant which appeared to have been sent to the legal ombudsman on 30 June (523). In it, the claimant described as "*baffling*" the allegation that information provided to clients was out of date, as the complaint being addressed was one which had started five or six months before the rules had been updated.

96. On 4 July 2023, the claimant submitted a second grievance (799). It was not in dispute that its content was a protected act. He said that he had now found

himself in the position of having to raise a further grievance due to the victimisation which he said his first grievance had given rise to. He then detailed his complaints about: the meeting on 29 June; the appointment of Peacock Risk Management; and his exclusion from the Bury premises through Covid.

97. A meeting to investigate the claimant's grievances took place on 6 July. It was conducted by Mr Wainwright. The claimant was accompanied by a colleague. Ms Peel, the practice manager from Bury, also attended. It was recorded and a transcript was provided (637). The claimant was critical of the meeting being arranged on the day upon which he was due to leave the office on holiday, he thought that the meeting could have taken place after his return. The claimant and Mr Wainwright gave slightly conflicting evidence about the conversations on 6 July prior to the meeting, it being Mr Wainwright's evidence that he had not known that the claimant was about to go on holiday until that day and on at least two occasions he delayed the meeting at the claimant's request. Mr Wainwright said he thought that it was in the claimant's interests for the grievance meeting to take place before he went on leave, so he could explain anything which he wished to add to his detailed grievance.

98. I will not endeavour to reproduce all that was said by the claimant in that meeting. The transcript clearly showed that the claimant was given an opportunity to say what he wished to and he spoke at some length during the meeting. The claimant referred to having worked twelve hours a day from seven to seven on most days and he said that he had been doing twelve hour days for ten years or more. The claimant said that he did not trust the fifth respondent. When the claimant was asked what outcome he was seeking from his grievance, he said that clearly reinstatement was not one of them (657). When Mr Wainwright clarified that the claimant had not been dismissed, the claimant said (659):

> "*But there's utterly no way that I can work in this environment, no way"*

99. Late on Thursday 6 July the claimant left the office for his holiday. Upon leaving the office, the claimant left a number of papers either on his desk or in filing cabinets (which he said he was intending to address on his return). Some of those papers were identified and referred to in the subsequent disciplinary investigation.

100. During the claimant's absence on annual leave (Mr Wainwright thought it was on the Monday or Tuesday, which would have been 10 or 11 July), Ms Rowley logged on to the HMRC VAT system. She saw a number of messages informing her that VAT returns were overdue. She raised the matter with Mr Astley. It was Mr Astley's evidence that Ms Rowley was visibly distressed. Mr Astley asked Mr Wainwright to join them to discuss the position. It was Mr Wainwright's evidence that she was very upset. The fifth respondent was informed by telephone. Mr Wainwright undertook an investigation.

101. Ms Rowley left employment shortly after the issues had been raised. During the hearing I was provided with an email which appeared to record that the termination of her employment was on 12 July. There was a dispute between the parties about the extent to which the claimant was the reason for her departure. I did not need to determine the dispute about the extent to which the claimant was the reason for her resignation, as it was not relevant to the issues which I needed to determine.

102. Mr Wainwright asked the firm's accountants (PM&M) to advise further and to prepare a report regarding the VAT returns. It was his evidence, that he spoke to them by telephone and he spoke to a VAT expert. PM&M provided a report (321). That listed eight VAT returns from quarter end 30 June 2019 to quarter end 31 March 2021 which had not been filed with HMRC. For the quarter ended March 2022, the report recorded that because the VAT liability had been due to have been paid on 7 May 2022 but had not been paid until 9 May, this had incurred a surcharge for late payment of £1,456.94. It was Mr Wainwright's evidence that the initial findings showed that there were serious discrepancies on the VAT position, resulting in potential financial liabilities. He made the decision to suspend the claimant on full pay.

103. On 17 July the claimant was suspended. An email was sent by Mr Wainwright at 4.29 pm (319). The claimant received it on his return from holiday, before he returned to the office. That explained the reason for the suspension and a copy of the PM&M report was provided. What was said included:

> "*As you are aware, prior to you taking annual leave Lindsay Rowley had emailed you specifically requesting log in details for HMRC in order that she could complete necessary work on the company accounts. It became immediately apparent to Lindsay that there were a number of serious discrepancies in the accounts with multiple numbers of missing returns and/or discrepancies between monies paid and amounts actually due …*
>
> *As a result the Company has referred the matter to PM and M Accountants who subsequently instructed their VAT specialist team to undertake investigation. Please see attached an initial report from PM and M which details a number of discrepancies in the VAT position of the Company including potential financial liabilities. It appears inexplicable that you have failed to submit multiple VAT returns since 2019 and/or notified the Company directors of the VAT position. The Company is now of course required to undertake further detailed investigations relating to the accounting position which is likely to be time consuming and which will involve significant financial expenditure. Due to the very serious nature of the financial irregularities, the Company has no choice but to immediately suspend you from your duties*"

104. It was also Mr Wainwright's evidence, that it transpired as a matter of fact that the relevant VAT returns had not been submitted by the claimant and the accountants were later instructed to complete and submit the returns late.

105. It was the fifth respondent's evidence, that the decision that Mr Wainwright should undertake the investigation into the disciplinary issues was made by the same people as had decided that he should conduct the grievance investigation, being the fifth respondent in conjunction with the other partners.

106. On 1 August, Mr Wainwright sent the claimant an email regarding the investigation (324). He provided a number of documents to the claimant (325) which included letters from HMRC and correspondence from debt collectors regarding outstanding debts. What Mr Wainwright said included the following:

> "*The online service stated that the Company had failed to provide VAT returns for 9 periods since 2019. The Company instructed PM & M accountants to undertake enquiries with HMRC and they have confirmed*

that no returns have been submitted. It would seem that payments have been made in conjunction with the reporting on SAGE but they cannot be reconciled by HMRC without the returns. Further the submission of late returns will result in surcharges.

This cause for concern has been exacerbated by a review of papers held in your room. I am sure you will be the first to acknowledge that the voluminous nature of papers on your desks is organised chaos at best. A search by myself has discovered the attached documents placed randomly amongst other seemingly unrelated papers. These documents, as set out in the attached index and section A and section B, are correspondence from HMRC and appointed debt collectors for outstanding payments and returns. The correspondence also details penalty surcharges incurred as a result of late submissions"

107. In cross examination, the claimant accepted that the matters identified were serious and warranted investigation. He agreed that if he had been presented with the same information, he would have investigated but said that he would have ensured that it was a fair investigation.

108. As part of the grievance investigation, Mr Wainwright spoke to the fifth respondent on 3 August and Mr Middleton on 4 August. Notes were included in the bundle (535). Within his note, the fifth respondent recorded the following about the meeting on 23 December 2021:

"*So far as I can recall, JPP was talking about the fact that he was getting on in age, but as far as he was concerned, he would be "carried out in a box" and he had no intention of leaving the practice and the conversation went on as to what our own positions are and I said well I am 60 odd and I enjoy coming to work and have no intentions of going anywhere. JPP asked KGM what his plans for the future are or something along those lines. It certainly was not done in anything other than our personal views on working"*

109. Regarding 16 March 2023 meeting, the fifth respondent was recorded as having said that it had not been an attempt to reduce the claimant's workload because of his age:

"*At this juncture, we were genuinely concerned that KGM was consistently working 12 hour days, was not in good health and it was an attempt to ease his workl*oad"

110. With regard to the March instruction for the claimant not to work in the Bury office, the fifth respondent said that they employed a number of vulnerable individuals with serious and low immunity issues and he simply applied the rules to the claimant, as it would have been impossible for him to work in isolation. Of Ms Rowley's attendance he said:

"*I now understand to undertake a payroll task which would have meant that all staff within the organisation would not have been paid she was allowed into the building ensuring all cashiers worked from home that day. That has been the one exception during the pandemic"*

111. The claimant was not provided with the notes obtained during the grievance investigation, including the fourth respondent's account. They were not provided prior to, or at the time of, the grievance outcome. They were not provided during

the grievance appeal process. Mr Wainwright did refer to what he had been told in his grievance outcome letter.

112. A disciplinary investigation meeting was held with the claimant on 4 August, conducted by Mr Wainwright and attended by Ms Peel. It was conducted at the accountants' offices as a neutral venue. It was recorded and the transcript was provided (688) (I was told that the meeting was ninety-seven minutes long). I was also provided with the pages which recorded the amendments which the claimant believed should be made to the transcript (768). I will not record all that was said. The claimant endeavoured to explain in the meeting the position on the VAT returns. I found the explanation which he provided in the meeting hard to follow. The claimant said it had taken him a long time to get onto making tax digital. He stated that he had not been on the portal for a very long time. He said that he found it inconceivable that he had not submitted a VAT return for two years. He referred to paper returns and said that the files for each quarter were in boxes which he said had disappeared on the day before he went on holiday. He said that he was aware of the amount which was outstanding because the return had been entered a day late. He referred to things being complicated, a mess, and it being a very complex and difficult job. He said that if he had missed a return, then he had missed a return. At one point, the claimant said that it was probably a failure of his to understand the system. He said that when he had spoken to HMRC some weeks previously, they had said that the penalty imposed was perfectly appealable. He said he hadn't been on the system for ages, well not for the last quarter. He said the letters had not been ignored, because there had been follow up telephone calls. In terms of informing anyone about the issues raised, he referred to himself as legal management, he said the fourth respondent had not spoken to him since December 2021 and the fifth respondent had not spoken to him and, frankly, he did not want to speak to the fifth respondent.

113. On 20 August, the fourth respondent provided Mr Wainwright with a statement as part of the grievance investigation (543). Regarding the 23 December 2021, the fourth respondent stated that he had no recollection of that meeting. He described the 6 June 2023 as having been a pastoral meeting in a final attempt to clear the air. He said he had no recollection of making the alleged ageist remarks.

114. Mr Astley was asked to undertake a disciplinary hearing by Mr Wainwright. Mr Astley sent the claimant an email on 16 August which invited the claimant to attend a disciplinary meeting on 23 August (402). The claimant was told that "*your employer considers your actions to potentially constitute gross misconduct which if proven could lead to summary dismissal*". Documents were provided. On 22 August the claimant asked for more time to prepare. The hearing was re-arranged for 12 September.

115. On 7 September the claimant raised a further grievance (544) in a letter to Mr Wainwright. He questioned whether it was appropriate for Mr Wainwright to make findings in the grievance. He criticised the presence of dogs in the office. He complained about the office move.

116. The claimant was provided with an outcome to his first two grievances in a letter of 9 September from Mr Wainwright (548). The grievances were not upheld. The outcome letter was relatively lengthy. It referred to interviews with, and statements taken from, the fourth and fifth respondents and Mr Middleton. I will not reproduce most of what was said. Mr Middleton apologised for the fact that the response had taken longer than they would all have preferred but said that delay

had been caused by the holiday period. He confirmed the right of appeal. In relation to 6 June 2023 meeting, the letter said (amongst other things):

> "*Unfortunately, the meeting did degenerate into a heated debate and to avoid further unpleasantness I called the meeting to an end … I have spoken to Jonathan about the specific age related comments and he does not specifically recall them. Neither do I*"

117. With regard to the meeting on 29 June 2023, Mr Wainwright referred to the fact that a legal ombudsman complaint was something which was of a very serious nature, but went on to say, "*It transpired that the Legal Ombudsman had been mistaken and they apologised for their conduct*".

118. In his witness statement for the Tribunal hearing, the claimant described Mr Wainwright as having been a good colleague through many years of turmoil. He also said that he was somebody in whom the claimant had previously confided and with whom he had felt that he was in a safe space.

119. The claimant was not given access to his documents, discs or drives in his office which he said would have enabled him to have addressed the disciplinary allegations made. The claimant was critical that he was not given that access.

120. A disciplinary hearing was held on 12 September 2023. It was conducted by Mr Astley. The claimant attended, as did Ms Peel. It was recorded and a transcript was provided (718). I will not record all that was discussed in the disciplinary hearing. In answer to a question asked by Mr Astley, the claimant confirmed that he had paid three surcharges from company funds totalling approximately £2,000 (although at the Tribunal hearing he said he had not done so and he was not sure why he had said that in the meeting). The claimant recognised that there may be mistakes which he had made, but he said that they did not justify his dismissal. He later said he regarded it as a technical issue, and he felt that the total amount of the surcharges meant that dismissal was out of all proportion to the work undertaken by the claimant over twenty-three years and the responsibilities of the varied roles he had held. He said that he felt that the decision was a foregone conclusion.

121. In the Tribunal hearing, the claimant placed considerable emphasis on the way in which the relevant documents were presented to him in the disciplinary hearing. The claimant had taken the copy of the documents with him which had been sent to him in advance of the meeting, and he referred to those documents. Mr Astley had page numbered the documents and provided the claimant with a file containing those documents with page numbers, at the start of the hearing. The claimant did not refer to that file, preferring to use his own copy documents. However, the claimant described the meeting as having been chaos, because when Mr Astley referred to the documents in the first half of the meeting, he did so quickly and using the page numbers. As the claimant was removing his copy documents from plastic envelopes and as they did not have the page numbers Mr Astley used, he found it difficult to follow. A particular document which he had taken with him to the meeting became lost while he was removing documents from plastic sleeves. However, during cross-examination, the claimant also said that he was not suggesting that the outcome of the meeting would have been any different. He said nothing would have changed. Mr Astley's evidence was that he explained each of the documents to the claimant as he referred to them, he did not recall the claimant as having struggled with the documents in the way the claimant

described, and he believed that the claimant had been given the time required to look at the documents.

122. In the second half of the meeting, the claimant was given the opportunity to say what he wished to, and the transcript recorded that the claimant spoke without interruption from 2.23 on the second transcript until 39.09, apparently being over thirty minutes (730). The respondents' representative said that he was give carte blanche and an opportunity to explain the documents and what happened.

123. At the end of the meeting, as recorded in the third part of the transcript (741), the claimant gave Mr Astley copies of the VAT returns which he had physically submitted to HMRC on 6 May 2022.

124. The claimant emailed Mr Astley on the afternoon of 12 September providing a copy of the document which he had been unable to locate during the meeting (419). In the email the claimant referred to the document as having been prepared for his lawyer. The document (420) was colour coded and included comments from the claimant including:

> *"I cannot conceive that the manual versions were not submitted, especially those in 2019. However, following the loading of SAGE data onto MTD, I believe that a full set was sent to HMRC in early May 2022"*

125. In his witness statement for this hearing, the claimant contended that the allegations laid against him were based on haphazard selective documents, some duplicated or replaced, largely taken out of context, simply incorrect or, in certain cases, trivial when compared to the business turnover. He said that there was no appreciation or understanding of the method by which he had accounted for VAT during the period through which he had been unable to properly utilise SAGE, and that was ignored. He said that, given he had generated everything himself throughout his twenty-three-year tenure without being called to demonstrate what had happened, he was unable to defend the allegations.

126. An email providing a brief outcome to the claimant's third grievance was sent by Mr Wainwright on 15 September (556).

127. The claimant appealed against the outcome of his grievances in a letter of 17 September (557). Within it the claimant addressed a wide range of issues.

128. On 18 September 2023 the claimant was dismissed. The decision was set out in a letter from Mr Astley (sent by email) (424). In that letter, Mr Astley set out the three allegations in full. I will not reproduce the full allegations here, but they were in summary: failed to file VAT returns from 1 April 2019 to December 2020; filed VAT returns late thereby incurring surcharges; and failure to communicate the problems. Each of the things alleged was found and, for the latter two, Mr Astley recorded that no reasonable explanation had been given for what had been found. Amongst other things, the letter went on and addressed what Mr Astley believed had been the claimant's references to late filing or late payments to HMRC as being a mistake, trivial or amounting to a technicality, and he went on to say:

> "*I cannot accept that the course of conduct that I have found to have occurred, over the period which I have found it to have occurred, can reasonably be said to be a 'mistake', 'trivial' or just a 'technicality'. The sums involved are substantial and the events I have found to have occurred go to the very heart of the responsibilities and duties that I consider have been*

breached. I consider the actions and behaviours demonstrate a disregard for the fundamental responsibilities and obligations towards the organisation you served over a sustained period of time. Such breaches, constitute acts of gross misconduct"

129. The letter stated that what had been established had been found to amount to gross misconduct and the sanction found was dismissal, as the allegations were stated to have been serious in nature. The right to appeal was confirmed.

130. In his statement of evidence for this hearing, Mr Astley said that the decision to dismiss the claimant had been his and his alone. He denied that any outcome was suggested to him, or that the fourth or fifth respondents had influenced his decision. He repeated that, when answering the questions asked of him. He said that he did not get any advice from anyone. When asked if he had been guided by the fourth or fifth respondents, he replied absolutely not, no. He also stated in his witness statement that he would have taken the decision to dismiss a younger employee in the same situation. In answer to questions put in cross-examination, Mr Astley confirmed that he had not sought to establish what other sanctions had been imposed by the group in previous disciplinary processes.

131. It was Mr Astley's evidence that it was a matter of record with HMRC that the relevant missing or late VAT returns had not been filed or were late. When I asked him why he did not allow the claimant access to the office to review his records and the system, he referred to risk but also explained that he felt it would not change the facts because they were a matter of fact as recorded in the PM & M report. He also explained, regarding the third finding, that he had made dozens of mistakes, and members of his team will make mistakes, but he would always emphasise that they should own up as that is important and there maybe someone better placed to address the issue. In the claimant's case, he had not informed anybody that he had filed VAT returns late or incurred surcharges.

132. I asked Mr Astley why it was that he, as a partner of the second respondent and without any standing in the first respondent, considered that he was able to dismiss the claimant. He said that the instruction to conduct the process had come from the fifth respondent via Mr Wainwright. He considered that he was a proxy to determine that process, because there were no other employees of the first respondent company somebody else needed to be given the responsibility, and he was asked because he had no involvement in the relevant grievance process and was not involved in any of the grievances. The fifth respondent, in answering the equivalent question, drew a comparison with a situation where he and the fourth respondent asked an external consultant or HR company to do the same.

133. It was the claimant's evidence at this hearing, that Mr Astley was somebody who had no personal animus with him. He explained that because Mr Astley had only been with the group since 2020, he had no idea of the background or of the contribution which the claimant had made. The claimant described Mr Astley as being an excellent solicitor. The claimant considered it to be a brilliant and an excellent letter and he said he could not find fault with the letter, although he disagreed with the conclusions.

134. The claimant appealed against his dismissal on 25 September (875). He did so in a letter to Mr Kelly. He questioned the standing of Mr Wainwright, Mr Astley and Mr Kelly as they had no standing or interest in the first respondent. In his appeal letter, the claimant listed thirteen points. Within the letter, the claimant

acknowledged that VAT had been filed late on occasion, and he acknowledged that surcharges had been paid out of company funds. On the third allegation, he said that he believed that any fair and impartial view of the proceedings would come to the conclusion that his co-directors had rendered any such relationship null and void. He said the business wanted rid of him because he was seen as too old, and also too expensive. He said that the signatories to the outcome of the decision to dismiss were hiding in plain sight, being the fourth and fifth respondents. He concluded the appeal letter by saying that the decision had been wholly disproportionate to the alleged offences committed and the pre-determined outcome had no relationship to the matters investigated.

135. The grievance appeal hearing was held on 10 October. It was conducted by Mr Tyer. Mr Tyer was somebody whom the claimant described as being a solicitor unconnected with his trials and tribulations of the previous few months and the hostile atmosphere in which he had worked. The claimant attended, as did Ms Peel. It was recorded and a transcript was provided (662 and 810). I will not reproduce what was said. The claimant alleged that although the name on the grievance outcome had been Mr Wainwright's "*the fingers on the laptop were clearly those hiding in plain sight*" being the fourth and fifth respondents.

136. Following the grievance appeal hearing and prior to his decision, Mr Tyer spoke to the fifth respondent, Mr Wainwright, Mr Middleton and Ms Peel. He did not speak to the fourth respondent. It was his evidence that notes would have been taken, but none were disclosed or included in the bundle. No notes were provided to the claimant as part of the grievance appeal process. Within the appeal outcome letter, reference was made to having investigated, but Mr Tyer did not detail exactly to whom he had spoken or when.

137. The outcome to the grievance appeal was provided in a letter from Mr Tyer dated 23 October (578). The outcome letter was relatively detailed and addressed each issue that it was believed had been raised in turn. The appeal was upheld in relation to five of the issues. Some of the original decisions were upheld. For 6 June 2023 meeting, it was said:

> "*Your appeal is upheld because the procedure was unfair. Paul Wainwright attended the meeting in question and the Grievance Outcome includes his own recollection that conflicts with yours. Therefore, an adjudication of the evidence is required so I have re-investigated.*
>
> *I interviewed Paul and, like Jonathan Pfeffer, he could not recall any age discriminatory remarks. There is therefore a conflict of evidence between your version of events and theirs.*
>
> *Consequently I have concluded that on balance the claim of age discrimination is not supported; your grievance is not upheld"*

138. For 7 June 2023 meeting, Mr Tyer reached an outcome which in part mirrored the outcome for 6 June meeting, that the adjudication had been unfair because Mr Wainwright had attended the meeting in question, it had been re-investigated, but he decided that the claimant was not treated less favourably due to his age, unlawfully harassed or victimised. For 14 June meeting, the outcome mirrored that for 6 and 7 June meetings. For 29 June meeting, Mr Tyer upheld the grievance because the procedure and the outcome had been unfair, however he

decided that the claimant had not been victimised (and so his grievance was not upheld).

139. Regarding the exclusion from the Bury office, Mr Tyer found the outcome to have been unfair. In his evidence to the Tribunal, he said that he upheld the appeal because of a mischaracterisation of the evidence. He explained that was because Mr Wainwright had found that the claimant had not been harassed, when he had not alleged harassment. The letter said he had re-investigated. He found that the firm's policy was for anyone who had tested positive with Covid to work from home and that had been enforced uniformly across the firm. For the exception made for Ms Rowley he said "*If Lindsay had not been allowed to attend, all of the GLP staff would not have been paid*" which was the one exception to the policy. He found that the claimant had not been treated less favourably because of his age.

140. In his witness statement for this hearing, Mr Tyer explained that he upheld the appeal because Mr Wainwright had been a witness and decision-maker and so he felt it had been unfair and a proper adjudication was required. It was his evidence that the decision and outcomes he arrived at were his and his alone and were not influenced by anyone else.

141. The appeal hearing for the dismissal decision was held on 27 November. It was conducted by Mr Kelly. Mr Kelly at the time was a partner. The claimant attended, as did Ms Peel. It was recorded and a transcript was provided (743). In his witness statement for this hearing, the claimant said of Mr Kelly that he had a lot of respect for him. During cross-examination, the claimant said he trusted Mr Kelly entirely. Mr Kelly's evidence was that he had always got on well with the claimant and had found him to be dependable and approachable, and he had a great deal of professional respect for him.

142. At the start of the appeal hearing, the claimant read aloud from a document which he had prepared. A copy of the document was included in the bundle and had been provided to Mr Kelly at the end of the hearing (446). In it, the claimant said the decision had been made by a kangaroo court and he said it had been managed by those hiding in the shadows. Amongst other things, with regard to the allegations themselves, the claimant said the following:

> "*During the period under review, I certainly struggled to gain access to link the SAGE accounting programme to the new HMCE 'Making Tax Digital' platform. I then substituted the earlier, manually produced VAT Returns which I do not believe were not submitted to HMRC, quite the reverse, to the electronically calculated VAT returns on the MTD new system which were submitted in May 2022….*
>
> *With regard to Allegation 1, I deny that I have failed to file VAT returns for the period quoted. Unfortunately, the opportunity to deal with that has passed …*
>
> *With regard to Allegation 2, I accept that some returns may have been filed late. That matter was explained, to my mind quite adequately and acknowledged at the Investigatory Meeting. The administrative outcome of a late VAT return is a financial penalty levied against the company, GLPLM. The documents produced by the firm clearly show that. The company paid them.*

*The sums involved are **NOT** substantial even assuming that the March 2022 Surcharge, £1,456.94 (which* IS *a 'technicality'), has not yet been appealed, the Prosecution's claim amounts in total to £2,441.52, paid from the company over the two years covered … Equally spurious, it is unclear what reputational damage to 'the company' this matter accrues…*

Many of the documents referred to me are duplicated, covering a long period of time and superseded by other, later versions"

143. I will not reproduce much of what was recorded in the notes of the appeal hearing. The claimant talked about the issues he had with the documents and how they were referred to during the disciplinary hearing before concluding (758):

"*So all I'm saying was just it was very off-putting, to put it mildly. So yes, it doesn't make a huge difference. It was a material difference, not a huge difference. But that should not have happened"*

144. The claimant referred to the fact that he had not been pulled back in the office during the suspension, and he said that a document was gone (760). As Mr Kelly emphasised when being cross-examined (when he also explained that he would have done what he could to recover any documents asked for), Mr Kelly explicitly asked the claimant whether there were any documents that he would like Mr Kelly to retrieve? The claimant said:

"*No, I've been dismissed. I've no further interest in that anymore …I have no idea what I would be looking for. It's now six months on. No idea. I mean, back in August, back in July, I was working on stuff at the time. We're now six months on. And I know my room's been ransacked*"

145. In the appeal (762), the claimant told Mr Kelly that the firm was obliged to take measures of what previous decisions had been made. He referred to the race discrimination matter which had occurred in 2008, to which I have already referred. He put his view that race discrimination was worse than £2,000 of surcharges out of company funds. When he was asked about this, Mr Kelly explained that he considered that each case needed to be decided on its own particular facts and that he had considered it as part of determining the appeal. When Mr Kelly was taken to his decision letter, he acknowledged that he had not explained that in the letter.

146. During the appeal hearing, the claimant said the following (763):

"*But I don't disagree, yes there are surcharges but they're not trivial, as I refer to it. And Steven Astley has objected to them. They're immaterial, they're trivial, and they're administrative"*

147. The appeal decision was sent to the claimant in a letter of 12 January 2024 from Mr Kelly (455). The appeal was not upheld. He concluded that the procedure followed had been fair, had been followed in a fair way, and the outcome had been appropriate. Within his conclusions, Mr Kelly said the following:

"*From the documents in the bundle referred to by Steven Astley, it appears to be a fact that the VAT returns in question were never received by HMRC and given the evidence that HMRC sent numerous reminders and involved debt collection agencies and threats of enforcement, I uphold Steven's finding that the returns were not in fact submitted …*

> *You acknowledge that returns were filed late on occasion. I do not consider these incidents to be trivial or technicalities …*
>
> *you acknowledge that you accept Steven's finding in relation to the third allegation, namely that you failed to communicate with your employer* that *there was a problem with the VAT returns, albeit with the proviso that the relationship between you had broken down*"

148. It was Mr Kelly's evidence that the decision on the appeal was not influenced by anyone else, including the fourth and fifth respondents. In answer to a question asked of him during the hearing, he said that he had not spoken to them about it at all. I had no reason to doubt Mr Kelly's evidence that the appeal decision was entirely his own.

149. The claimant entered into ACAS early conciliation from 13 December 2023 until 24 January 2024. He entered his claim at the Employment Tribunal on 23 February 2024.

150. In his witness statement itself, the claimant gave no evidence about why he had not entered his claim earlier than he did. In the further and better particulars document to which I have referred, in a part explicitly referred to in his witness statement, the claimant did give an account under a heading just and equitable which appeared to be related to this issue (85). That recounted the dates of the appeals and the date of the disciplinary appeal hearing and outcome before recounting the dates of ACAS early conciliation. The claimant did not explain any connection between the two or expressly say that was the reason for the date of claim. For the date of submission to ACAS, the claimant stated that it was within three months of his dismissal in accordance with ACAS advice and guidelines. He went on to say that he had an honest belief that he may have overlooked (what he described as) the six-month time limit applicable to age discrimination claims. In his submissions, the claimant also placed reliance upon the date when the dismissal appeal was determined and its proximity to the date of claim, before saying that then and now he fully understood the time limits which applied to both harassment and victimisation.

151. Included in the bundle were a number of transcripts taken from the recordings of the various meetings. Prior to the hearing, there had clearly been some dispute between the parties about the transcripts. I was provided in the bundle with a table from the claimant showing which of the transcripts included had incorporated the amendments he had sought to the transcripts, and which did not (873). The lists of amendments sought were also included in the bundle.

152. I heard evidence from each of the respondents' witnesses who were cross-examined by the claimant. I found there to be no reason to disbelieve any of the evidence which I heard from the respondents' witnesses (including the fourth and fifth respondents). In particular, I found Mr Astley to be an entirely genuine and credible witness and I accepted as entirely correct the evidence which he gave about his decision to dismiss, the reasons for it, and the fact that he reached an entirely independent decision without the involvement of the fourth or fifth respondents.

153. This Judgment does not seek to address every point about which I heard or about which the parties disagreed. It only includes the points and events which I considered relevant to the issues which I needed to consider in order to decide if

the claims succeeded or failed. If I have not mentioned a particular event or point, it does not mean that I have overlooked it, but rather I have either not considered it relevant to the issues I needed to determine or I have not considered it necessary to refer to in these reasons. In particular, it was notable that the claimant had been engaged for a very long time and wished to give evidence about a number of matters which were not material to the decisions which I needed to reach.

The Law

Employment status

154. The starting points in considering employment status are the definitions of employee, contract of employment and worker in section 230 of the Employment Rights Act 1996. They say:

> *"In this Act 'employee' means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment."*
>
> *"In this Act 'contract of employment' means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing."*
>
> "*In this Act "worker" …means an individual who has entered into or works under (or, where the employment has ceased, worked under) –*
>
> *(a) a contract of employment, or*
>
> *(b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual*"

155. The leading authority on determining whether someone is an employee is the Judgment of McKenna J in **Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance** [1968] 1 All ER 433, where he said as follows:

> *"A contract of service exists if these three conditions are fulfilled. (i) The servant agrees that, in consideration of a wage or other remuneration, he will provide his own work and skill in the performance of some service for his master. (ii) He agrees, expressly or impliedly, that in the performance of that service he will be subject to the other's control in a sufficient degree to make that other master. (iii) The other provisions of the contract are consistent with its being a contract of service ….*"

156. The right approach to employment status is to weigh up all the factors. None are necessarily determinative. How the parties themselves describe the relationship is a potentially significant factor but is not determinative. In interpreting the agreement between the parties, including any documents which record the relationship, the question I must ask is what was the true agreement between the parties? The terms of any written agreement can assist in determining this but sometimes in employment the terms do not reflect the reality.

157. Section 83 of the Equality Act 2010 contains a different definition of employment. In practice, employment under the Equality Act is a broader category than employment under the Employment Rights Act (it is more closely related to the worker category under that Act). Section 83(2) says:

> *""Employment" means –*
>
> *(a) Employment under a contract of employment, a contract of apprenticeship or a contract personally to do work …"*

158. If someone is engaged in a way which means that they can provide a substitute and the engagement is not specific to them, that is unlikely to be either employment or worker status (there are complex exceptions, but it is not necessary to address them in this Judgment).

159. In her case management order made following the preliminary hearing (case management) on 11 December 2024, Employment Judge Cookson suggested that the parties had regard to the case of **Patel v Specsavers Optical Group Limited** UKEAT/0286/18. That case involved an optician engaged in a store run by two companies and he sought to argue that he had dual employment. The Employment Appeal Tribunal reviewed the authorities and said that

> "*it is a well-established principle of employment law that in general terms one employee cannot simultaneously have two employers*".

160. That Judgment highlighted the practical complications that would flow from dual employment, such as how would any unfair dismissal compensation be apportioned between dual employers. I would observe that those practical complications were present in this case, if dual or multiple employment were found. I heard no argument why the determination in **Patel** should not apply to this case.

Unfair dismissal

161. An unfair dismissal claim is brought under section 94 of the Employment Rights Act 1996. The relevant respondent bears the burden of proving, on the balance of probabilities, that the dismissal was for misconduct (or some other substantial reason), otherwise the dismissal will be unfair.

162. If the relevant respondent does persuade me that it did dismiss the claimant for that reason, the dismissal is only potentially fair. I must then go on and consider the general reasonableness of the dismissal under section 98(4) Employment Rights Act 1996. That section provides that the determination of the question of whether a dismissal is fair or unfair depends upon whether in the circumstances (including the respondent's size and administrative resources) the relevant respondent acted reasonably or unreasonably in treating the misconduct (or other reason) as a sufficient reason for dismissing the claimant. That is to be determined in accordance with equity and the substantial merits of the case. The burden of proof in this regard is neutral.

163. In conduct cases, when considering the question of reasonableness, I am required to have regard to the test outlined in **British Home Stores v Burchell** [1980] ICR 303. The three elements of the test are:

163.1. Did the employer have a genuine belief that the employee was guilty of misconduct?

163.2. Did the employer have reasonable grounds for that belief?

163.3. Did the employer carry out a reasonable investigation in all the circumstances?

164. An additional question I must determine is whether the decision to dismiss was one which was within the range of reasonable responses that a reasonable employer could reach?

165. I must not substitute my own view for that of the relevant respondent. I must not slip into what is sometimes called the substitution mindset. It is not for me (when determining the fairness of the dismissal) to decide whether the claimant committed the misconduct alleged or whether the relevant respondent has proved that he did so. I also must not decide whether I would have dismissed the claimant had I conducted the disciplinary hearing and considered the evidence which was in front of the decision-maker. As I have said, the question is whether the decision to dismiss was one within the range of decisions which a reasonable employer could reach.

166. In considering the investigation undertaken, the relevant question is whether it was an investigation that fell within the range of reasonable responses that a reasonable employer might have adopted (**Sainsbury's Supermarkets Ltd v Hitt** [2003] ICR 111).

167. Where I am considering fairness, it is important that I look at the process followed as a whole, including the appeal.

168. I must also have regard to the ACAS code of practice on disciplinary and grievance procedures. I will not re-produce all that is said in that code, but in a section which addresses overlapping grievance and disciplinary cases, what it says is (with my emphasis added):

> "*Where an employee raises a grievance during a disciplinary process the disciplinary process **may** be temporarily suspended in order to deal with the grievance. Where the grievance and disciplinary cases are related it may be appropriate to deal with both issues concurrently*"

Polkey and contributory fault

169. In **Polkey v AE Dayton Services Ltd** [1987] IRLR 503 the House of Lords held that the fact that the employer can show that the claimant would have been dismissed anyway (even if a fair procedure had been adopted) does not make fair an otherwise unfair dismissal. However, evidence that the employment may or would have ended in any event (if accepted by me) may be taken into account when assessing compensation and can have a severely limiting effect on the compensatory award. If the evidence shows that the employee's employment may have ended properly in any event, such as if a proper procedure had been carried out, I should normally make a percentage assessment of the likelihood and apply that when assessing the compensation. In applying a **Polkey** reduction, I may have to speculate on uncertainties to a significant degree. the issue is what the relevant respondent would have done and not what a hypothetical reasonable employer would have done in the circumstances. The onus is on the relevant respondent to

adduce evidence to show that the end of employment would (or might) have occurred in any event. However, I must have regard to all the evidence when making that assessment.

170. Section 122(2) of the Employment Rights Act 1996 provides that the basic award shall be reduced where the conduct of the employee before dismissal was such that it would be just and equitable to do so. It is important to note that a key part of the test is determining if it is just and equitable to do so.

171. Section 123(6) of the Employment Rights Act 1996 provides that if I find that the claimant has, by any action, to any extent caused or contributed to his dismissal, I shall reduce the amount of the compensatory award by such amount as I consider just and equitable having regard to that finding.

Breach of contract

172. A breach of contract claim can only be brought in the Employment Tribunal if the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 applies. That Order only applies to claims by an employee (under the Employment Rights Act definition) and where the claim arises or is outstanding on the termination of the employee's employment. The test I must apply is different to the test which I have explained for the unfair dismissal claim. The focus in the unfair dismissal is on the relevant respondent's reasons for that dismissal, and it does not matter what I think objectively occurred, or whether, in fact, the misconduct actually happened. My decision is different when I am considering either contributory fault or breach of contract/wrongful dismissal. For those parts of the issues, the question is whether the misconduct occurred. For the breach of contract claim, it is whether it amounted to a fundamental breach of contract by the claimant. If the claimant did not breach the contract himself in a way which was repudiatory, the dismissal (without notice) by the respondent will have been in breach of contract.

Direct age discrimination

173. The direct discrimination claim relies on section 13 of the Equality Act 2010 which provides that:

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

174. Section 39(2) of the Equality Act 2010 provides that an employer must not discriminate against an employee. It sets out various ways in which discrimination can occur, and these include any other detriment and dismissal. The characteristics protected by these provisions include age.

175. Under Section 23(1) of the Equality Act 2010, when a comparison is made, there must be no material difference between the circumstances relating to each case. The requirement is that all relevant circumstances between the claimant and the comparator must be the same and not materially different, although it is not required that the situations have to be precisely the same.

176. Section 136 of the Equality Act 2010 sets out the manner in which the burden of proof operates in a discrimination case and provides as follows:

> *"(2) If there are facts from which the Court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the Court must hold that the contravention occurred.*
>
> *(3) But sub-section (2) does not apply if A shows that A did not contravene the provision".*

177. At the first stage, I must consider whether the claimant has proved facts on a balance of probabilities from which I could conclude, in the absence of an adequate explanation from the relevant respondent, that the relevant respondent committed an act of unlawful discrimination. This is sometimes known as the prima facie case. It is not enough for the claimant to show merely that he has been treated less favourably than a comparator and there was a difference of a protected characteristic between them. In general terms "*something more*" than that would be required before the relevant respondent is required to provide a non-discriminatory explanation. At this stage I do not have to reach a definitive determination that such facts would lead me to the conclusion that there was an act of unlawful discrimination, the question is whether I could do so.

178. If the first stage has resulted in the prima facie case being made, there is also a second stage. There is a reversal of the burden of proof as it shifts to the relevant respondent. I must uphold the claim unless the relevant respondent proves that it did not commit (or is not to be treated as having committed) the alleged discriminatory act. To discharge the burden of proof, there must be cogent evidence that the treatment was in no sense whatsoever on the grounds of the protected characteristic.

179. In most cases there is a need to consider the mental processes, whether conscious or unconscious, which led the alleged discriminator to do the act. Determining this can sometimes not be an easy enquiry, but I must draw appropriate inferences from the conduct of the alleged discriminator and the surrounding circumstances (with the assistance where necessary of the burden of proof provisions). The subject of the enquiry is the ground of, or the reason for, the alleged discriminator's action, not his motive.

180. I need to be mindful of the fact that direct evidence of discrimination is rare and that Tribunals frequently have to infer discrimination from all the material facts. The protected characteristic does not have to be the only reason for the conduct, provided that it is an effective cause or a significant influence for the treatment. The explanation for the less favourable treatment does not have to be a reasonable one. Unfair or unreasonable treatment by an employer does not of itself establish discriminatory treatment. It cannot be inferred from the fact that one employee has been treated unreasonably that an employee of a different age would have been treated reasonably

181. The way in which the burden of proof should be considered has been explained in many authorities (which I do not need to refer to, where neither party has referred to any of them). Whilst I have set out how the burden of proof works in the section on direct discrimination, the burden and the way that it operates also applies to the claims for harassment and victimisation.

182. Uniquely amongst the protected characteristics, when considering direct age discrimination, I must consider whether the conduct was a proportionate

means of achieving a legitimate aim. That requires: identification of the aim; determination of whether it is a legitimate aim; and a decision about whether the treatment was a proportionate means of achieving that aim. It is for the respondent to justify the practice, and it is up to the respondent to produce evidence to support its assertion that it is justified. The test is an objective one, for which I must make my own assessment. I need to balance the real needs of the organisation against the discriminatory effect of the thing being justified. I must ask myself whether the aim is legal non-discriminatory and one that represents a real, objective consideration? I must ask myself whether the means of achieving the aim is proportionate? Treatment will be proportionate if it is ‘an appropriate and necessary’ means of achieving a legitimate aim.

Harassment

183. Section 26 of the Equality Act 2010 says:

> *“A person (A) harasses another (B) if – (a) A engages in unwanted conduct related to a relevant protected characteristic, and (b) the conduct has the purpose or effect of – (i) violating B’s dignity, or (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.”*

> *“In deciding whether conduct has the purpose or effect referred to in subsection (1)(b), each of the following must be taken into account – (a) the perception of B; (b) the other circumstances of the case; (c) whether it is reasonable for the conduct to have that effect.”*

184. The EAT in **Richmond Pharmacology v Dhaliwal** [2009] IRLR 336, stated that harassment is defined in a way that focuses on three elements: (a) unwanted conduct; (b) having the purpose or effect of either: (i) violating the claimant's dignity; or (ii) creating an adverse environment for him; (c) on the prohibited grounds. Although many cases will involve considerable overlap between the three elements, it is normally a healthy discipline for Tribunals to address each factor separately and ensure that factual findings are made on each of them.

185. Conduct which is intended to have the relevant effect will be unlawful even if it does not, in fact, have that effect. A respondent can be liable for effects, even if they were not its purpose. If the conduct has had the proscribed effect, it must also be reasonable that it did so. The test in this regard has both subjective and objective elements to it. The assessment requires me to consider the effect of the conduct from the claimant's point of view; the subjective element. I must also ask, however, whether it was reasonable of the claimant to consider that conduct had that requisite effect; the objective element. I must do that taking into account all the other circumstances of the case.

186. Tribunals have been warned that whilst it is important to be sensitive to the hurt that can be caused by comments or conduct, it is important not to encourage a culture of hypersensitivity or the imposition of legal liability for every unfortunate phrase. I must consider whether it was reasonable for the conduct to have the effect on this claimant.

187. I must also decide whether the conduct related to age. There is not a requirement that the conduct must be motivated by age. It is always relevant to take into account the context of the conduct, which is likely to be an important factor.

Victimisation

188. Section 27 of the Equality Act 2010 says:

> *"(1) A person (A) victimises another person (B) if A subjects B to a detriment because – (a) B does a protected act, or (b) A believes that B has done, or may do, a protected act.*
>
> *(2) Each of the following is a protected act – (a) bringing proceedings under this Act; (b) giving evidence or information in connection with proceedings under this Act; (c) doing any other thing for the purposes of or in connection with this Act…"*

189. The first question is whether the claimant did a protected act. If the claimant has done the protected act, the next question is whether the respondent subjected the claimant to a detriment because of that protected act, in the sense that the protected act had a material or significant influence on subsequent detrimental treatment. That exercise has to be approached in accordance with the burden of proof.

190. If I conclude that the protected act played no part in the treatment of the claimant, the victimisation complaint fails even if that treatment was otherwise unreasonable, harsh or inappropriate. Unreasonable behaviour itself does not necessarily give rise to any inference that there has been discriminatory treatment.

191. The word detriment in section 27 is to be interpreted widely. The key test is to ask: is the treatment of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment? An unjustified sense of grievance would not pass this test, but the test is framed by reference to a reasonable worker, so it would be enough if a reasonable worker would or might take such a view.

Time limits/jurisdiction

192. Section 123 of the Equality Act 2010 provides that proceedings must be brought within the period of three months starting with the date of the act to which the complaint relates (and subject to the extension for ACAS Early Conciliation), or such other period as the Tribunal thinks just and equitable. Conduct extending over a period is to be treated as done at the end of the period. A failure to do something is to be treated as occurring when the person in question decided on it.

193. A key date is when the act of discrimination occurred. I also need to determine whether the discrimination alleged is a continuing act, and, if so, when the continuing act ceased. A question is whether a respondent's decision can be categorised as a one-off act of discrimination or a continuing scheme. I should look at the substance of the complaints in question as opposed to the existence of a policy or regime and determine whether they can be said to be part of one continuing act by the employer. One relevant factor is whether the same or different individuals were involved in the incidents, however this is not a conclusive factor.

194. If out of time, I need to decide whether it is just and equitable to extend time. Section 123(1)(b) of the Equality Act 2010 states that proceedings may be brought in, *"such other period as the Employment Tribunal thinks just and equitable"*

195. The most important part of the exercise of the just and equitable discretion is to balance the respective prejudice to the parties. The factors which are usually considered are contained in section 33 of the Limitation Act 1980 as explained in the case of **British Coal Corporation v Keeble** [1997] IRLR 336. Those factors are: the length of, and reasons for the delay; the extent to which the cogency of the evidence is likely to be affected by the delay; the extent to which the relevant respondent has cooperated with any request for information; the promptness with which the claimant acted once he knew of the facts giving rise to the cause of action; and the steps taken by the claimant to obtain appropriate advice once he knew of the possibility of taking action. Subsequent case law has said that those are factors which illuminate the task of reaching a decision but their relevance depends upon the facts of the particular case, and it is wrong to put a gloss on the words of the Equality Act to interpret it as containing such a list or to rigidly adhere to it as a checklist. The Court of Appeal in **Adedeji v University Hospitals Birmingham NHS Foundation Trust** [2021] EWCA Civ 23 emphasised that the best approach in considering the exercise of the discretion under section 123(1)(b) is to assess all the factors in the particular case which I consider relevant to whether it is just and equitable to extend time and that factors which are almost always relevant to consider when exercising any discretion whether to extend time are: the length of, and reasons for, the delay; and whether the delay has prejudiced the respondent (for example, by preventing or inhibiting it from investigating the claim while matters were fresh). **Robertson v Bexley Community Centre t/a Leisure Link** [2003] IRLR 434 confirmed the breadth of the discretion available but also said that the exercise of a discretion should be the exception rather than the rule and that time limits should be exercised strictly in employment cases. The onus to establish that the time limit should be extended lies with the claimant.

196. The Employment Appeal Tribunal in **Concentrix CVG Intelligent Contact Ltd v Obi** [2022] 149 set out the correct approach to considering the just and equitable extension to incidents which together were a course of conduct, but which were out of time. I must both consider whether it is just and equitable to extend time for the whole compendious course of conduct and, if I decide that it is not, I must consider whether it is alternatively just and equitable to extend time in relation to each of the allegations in their own right.

Submissions

197. In their submissions, both the claimant and the respondents' representative concentrated on the factual issues and neither side referred to very much case law. The claimant did not refer to any legal material or cases at all. The respondents' counsel referred to the leading unfair dismissal case of **Hitt** (to which I have already referred) and a first instance decision about succession planning which did not assist with the decisions which I needed to reach (**Quick v Cornwall Council** 1701914/11).

Conclusions – applying the Law to the Facts

Employment status

198. The first issue in the list was employment status. There was no dispute in this case that the claimant was an employee of the first respondent (both applying the definition in section 230 of the Employment Rights Act 1996 and the wider definition in section 83 of the Equality Act 2010). The dispute was whether the

claimant was also an employee of the second and third respondents, as he contended.

199. The claimant was paid a salary by both the second and third respondents. He was appointed as, and recorded as, the COFA for both entities. The claimant said that he was obliged to undertake the matters which they referred to him (with fell within his responsibilities as a COFA) and they were obliged to respond if he asked them to. The respondents emphasised that the claimant was employed by the first respondent which acted as a service company providing services to the second and third respondents. They contended that there was no requirement for personal service by the claimant as other individuals undertaking accounts work could provided the figures or information. They said that the amount paid was a random amount for which there was no ratio which assessed the work done for the firm.

200. I did not agree with one of the factors relied upon by the respondents. As COFA, the claimant was required to provide personal service. That was the very nature of the role taken on. When acting as a COFA, the person undertaking the services had to be the claimant. I agreed that for the financial services provided there was no personal service requirement and the claimant could not have been found to be an employee (or a worker) of the second and third respondents when providing financial support, but the primary contention was that the claimant was employed by the second and third respondents because he was engaged by each of them as a COFA, and in fulfilling that role the service was personal and had to be provided by the claimant himself.

201. The other factors put forward by the parties were things I needed to take into account when deciding whether the claimant was employed. I also considered relevant the fact that the claimant was held out to the SRA as an employee of both the second and third respondents in order to comply with their requirement that the COFA had to be an employee. The claimant remained and continued to be employed by the first respondent whenever an entity who had paid him salary ceased to exist (and the claimant's salary continued to be paid in full without reduction when those engagements ended). I found the question of control in the facts of this case to be of limited assistance, because there was no real control of the claimant by any of the entities (at least for the vast majority of his engagements) including his undisputed employer (the first respondent) and there were no appraisals or other day-to-day management undertaken, whether by his undisputed employer or by those for which it was in dispute.

202. Employment Judge Cookson had referred the parties to the case of **Patel v Specsavers Optical Group Limited** which I have addressed above. Neither party in submissions chose to address what was said in that case. As I have explained, the decision of the Employment Appeal Tribunal was that it is a well-established principle of employment law that in general terms one employee cannot simultaneously have two employers. I am bound to follow the Employment Appeal Tribunal's decision and, therefore, as a result of doing so, the claimant's contention that he was also employed by the second and third respondents at the same time as he was employed by the first respondent, must fail. I also considered what I would have found even if **Patel** was relevant and not determinative and, for the reasons set out below, I would still have found the claimant not to have been an Employment Rights Act employee of the second and third respondents in these circumstances.

203. The Employment Appeal Tribunal in **Patel** highlighted the practical complications that would flow from dual employment. Those complications were present in this case. If the claimant had been employed by seven entitles in 2013/2014, there was no real explanation about technically what had happened to the other four employments in the intervening period. The claimant's overall pay was undisturbed when he ceased to be a COFA for an entity. He was simply paid more by the first respondent and by the remaining organisations for which he was a COFA. His hours did not reduce because one of his employments had ceased (as one would have expected had he genuinely lost one of a number of multiple employments). The claimant also clearly spoke of himself as primarily being an employee of the first respondent and criticised the involvement of partners in the second and third respondents in his dismissal precisely because they were not an employee or director of the first respondent. I also took into account the fact that the claimant himself referred to his engagement by the second and third respondents as being only a tangential employment relationship in his disciplinary hearing on 12 September 2023 (736). It is a matter for the SRA to decide what exactly needed to be in place as an engagement for someone to be a COFA (and it is not my role to make that determination), but applying the test I am required to apply when applying the definition of employee under section 230 of the Employment Rights Act 1996, I found that the claimant was employed by the first respondent only and he was not employed (under the Employment Rights Act definition) by the second and third respondents (being firms to which the first respondent provided services).

204. An employee under section 83 of the Equality Act 2010 is a wider category than an employee under the Employment Rights Act 1996. Neither the claimant nor the respondents' representative focussed on that test in submissions. I reminded them of the worker test at the end of submissions. The claimant contended he was a worker and the respondents denied that he was because they said he was not required to provide personal service to the second and third respondents. I have already recorded that I did find that the claimant did have to personally provide the services required as COFA to the second and third respondents and therefore I did not find that to be a block to the claimant being employed by them.

205. Applying the broader employee test under section 83 of the Equality Act 2010, I found that the claimant was employed under a contract personally to do work by the second and third respondents. I have read **Patel** as specifically applying only to employment under the Employment Rights Act and not employment under the Equality Act and I am not therefore bound by that decision in the same way when applying the Equality Act definition. The same complications also do not follow from a finding under the Equality Act as would follow from a finding of multiple employments under the Employment Rights Act (there are many cases when multiple entities may be liable for discrimination arising from a single engagement under the Equality Act). I found that the claimant was employed by the second and third respondents under the broader Equality Act definition as a result of the COFA role which he undertook for them.

206. Issue 1.3 required me to apply the test set out in section 230 of the Employment Rights Act for a worker. However, when I came to apply that issue, I could not see why it was I needed to do so, as none of the claims pursued were ones which required worker status. As it was entirely academic, I did not determine the issue.

207. As a result of my decision on employment status, the claimant could only succeed in his claim for unfair dismissal against the first respondent. His claim for unfair dismissal against the second and/or third respondents failed, because he was not employed by them. Similarly, his claim for breach of contract could only possibly succeed against the first respondent, as the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 only provides me with jurisdiction to determine a claim against an employer as defined by the Employment Rights Act. The claims for breach of contract against the second and third respondents failed as they were not his employer. He was, however, able to succeed in his claims for direct age discrimination, harassment and/or victimisation as brought against all of the first three respondents, because he was employed by all of them applying the wider definition for employment used in the Equality Act.

Time limits/jurisdiction

208. Issue two was time limits (and therefore whether I had jurisdiction to hear the claims). Issue 2.1 recorded that any complaint about something which happened before 14 September 2023 may not have been brought in time. That meant that the dismissal and the claims arising directly from the dismissal were brought within the time required (direct discrimination issue 6.2.8 and victimisation allegations 8.2.6 and 8.2.7 were brought within time). The other discrimination and victimisation allegations were not brought within the time required (unless part of conduct extending over a period with those allegations or it was just and equitable to extend time). The unfair dismissal and wrongful dismissal/breach of contract claims were brought in time.

209. In his submissions, the respondents' representative notably focussed his arguments about jurisdiction on alleged direct age discrimination 6.2.1 and 6.2.4, being the allegations based upon things which occurred in 2021. He contended that those things were not part of a continuing series of events with the later allegations.

210. The earliest alleged event was alleged direct age discrimination 6.2.4, regarding the failure to consult with the claimant about the new case management system. That occurred (at the latest) in October 2021 and was an allegation against the first, second and fifth respondents. In practice, the decisions made about the claimant's involvement appeared to have been made by Mr Middleton and/or Mr Astley. It was effectively a one-off decision made in 2021, long before any of the other allegations (except for the allegation about an alleged comment made by the fifth respondent in 6.2.4, the fifth respondent being uninvolved in 6.2.4). I did not find that to have been part of a continuing series of events with any of the other matters alleged.

211. I then needed to consider whether it was just and equitable to extend time for that allegation. The key factors which were relevant to that decision, I found to be as follows:

211.1. The decision complained about had been made in (or by) October 2021. The complaint was entered at the Tribunal on 23 February 2024, over two years late.

211.2. The reason given by the claimant for not having entered a complaint or claim earlier, was that it was a relatively minor matter;

211.3. The claimant received legal advice from May or June 2023 onwards, but still did not enter his claim until 23 February 2024;

211.4. The claimant is an intelligent individual, fully able to access advice and guidance on Tribunal time limits in any event;

211.5. The prejudice to the claimant of not being granted the extension would be that he could not obtain a determination in his claim, albeit that factor was reduced by the limited importance the claimant clearly gave to the complaint; and

211.6. There was prejudice to the respondents as a result of the delay, as memories had faded. Whilst I heard evidence about the decision and the reasons for it, there were disputes about the claimant's actual engagement which would have been able to be more clearly evidenced and addressed if a claim had been made shortly after the decision.

212. Weighing all of the above factors in the balance and, in particular, noting the significant delay before a claim was issued, I decided that it was not just and equitable to extend time for that complaint.

213. The second earliest alleged complaint was alleged direct age discrimination 6.2.1, which occurred in a discussion on 23 December 2021. I did not find that to be part of a continuing series of events with the matters which were brought in time. What was alleged in December 2021 was a comment made by the fourth respondent. I found that the decision to dismiss was a decision made by Mr Astley which was not influenced by the fourth respondent and in which the fourth respondent was not involved. I would have found allegations 6.2.1 and 6.2.2 to have factually been part of a continuing series which would therefore have ended on 6 June 2023, however that later complaint was not found and was also entered well outside the primary time limit and the Employment Appeal Tribunal in the **Concentrix** case made clear that I can consider whether it is just and equitable to extend time for each of the out of time allegations individually. I did not find that time should be extended for that cumulative conduct collectively (for the reasons I am going to explain and, in any event, because I did not find for the claimant on allegation 6.2.2). When considering the just and equitable extension of time for allegation 6.2.1, the key factors were:

213.1. The comment complained about had been made on 23 December 2021. The complaint was entered at the Tribunal on 23 February 2024, almost two years late;

213.2. I was given no reason why the claimant did not enter a claim earlier, him having recorded in a note what was said either in the meeting or immediately afterwards;

213.3. The position on legal advice and access to information about time limits is as I have explained for 6.2.4;

213.4. There was significant prejudice to the claimant if a just and equitable extension were not granted, as he will not be able to have a determination in a complaint which he feels particularly strongly about; and

213.5. There would clearly be significant prejudice to the fourth respondent (and therefore by extension to the first and second respondents as he was the person who made the comment), because he cannot remember what occurred, as he told Mr Wainwright when he provided his earliest account on 20 August 2023 when he was first spoken to about it as part of the grievance investigation (543). I appreciated the claimant's submission that the fourth respondent in fact had seemed to have some greater recollection of the chinwag from his evidence in the Tribunal hearing than the note for the grievance investigation recorded, but nonetheless the issues to be determined arising from 23 December 2021 conversation needed careful consideration of the context in which the alleged comment was made, including what had been said before the comment was made (for which a detailed recollection of the conversation was important) and why it was made (for the justification issue).

214. The respondents' representative submitted that it would not be fair to extend time given that the fourth respondent could not recall what had been said. I agreed with that submission. Considering all the relevant factors, but in particular noting the delay before even a grievance was raised, the very significant delay to the claim being entered, and the substantial prejudice to the relevant respondents, (even when the prejudice to the claimant was taken into account) I decided that it was not just and equitable to extend time for that allegation.

215. A matter can only be found legally to have been part of a continuing series of events with a later event, if the later event is found to be unlawful discrimination, harassment or victimisation. As I have gone on to explain, I did not find for the claimant on any of the allegations. That meant that the out of time complaints could not be brought within time even if potentially part of a continuing series of events with later events (where those later events were not found).

216. All of the other things alleged occurred in 2023, with the earliest of those allegations being about being excluded from the Bury office in March 2023 (direct discrimination allegation 6.2.6). The claimant raised his grievance relatively shortly afterwards, which meant that people were interviewed when memories were relatively fresh. The allegations about the procedures followed and the suspension, were about matters which were documented. Whilst there continued to be an absence of explanation for the late presentation of the Tribunal claim about the 2023 complaints, particularly where the claimant was receiving legal advice, the delay was much shorter in entering the claim than for the 2021 allegations and the balance of prejudice significantly weighed in favour of granting the claimant the extension of time sought. Accordingly, for all of the claimant's other allegations, which were otherwise out of time, I decided that it was just and equitable to extend time so that they could be determined.

Unfair dismissal

217. Issue 3.1 asked me to decide what was the principal reason for dismissal? The first respondent said that the reason was conduct. I accepted the evidence of Mr Astley. The reason he decided to dismiss the claimant was because of conduct, as set out in his decision letter of 18 September 2023 (424). Mr Astley genuinely believed that the claimant had committed the misconduct which he found.

218. Issue 3.2.1 asked whether the first respondent had reasonable grounds for that belief? It did. It had been identified that the claimant had failed to submit VAT returns for a period as confirmed by the accountants in their report. Surcharges had been incurred. The claimant had not reported those issues to anybody else. In the investigatory meeting and the disciplinary hearing, the first respondent's chosen decision-makers (Mr Wainwright and Mr Astley) went through the material upon which the allegations were based and the claimant was then given a full opportunity in both the investigation meeting and the disciplinary hearing to explain anything which he wanted to say. I have read what he put forward. There were reasonable grounds for Mr Astley to form the belief that the claimant had committed the misconduct alleged.

219. Considering issue 3.2.2, I found that a reasonable investigation was carried out. Mr Wainwright spoke to the accountants and obtained a report from them. He obtained and collated other documents which he felt were relevant. As I have said, at both the investigatory meeting on 4 August and the disciplinary hearing on 12 September, the claimant was given a full opportunity to say what he wished to say. By the time of the appeal decision on 12 January 2024, the claimant had been given a third opportunity to have his say and Mr Kelly had offered to obtain for the claimant any documents he requested (to the extent that he would have been able to do so).

220. Issue 3.2.3 asked whether the first respondent otherwise acted in a procedurally fair manner? In practice this question raised three things about which the claimant particularly complained.

221. The claimant contended that the disciplinary process should have been delayed pending the outcome of the grievance process. The first respondent ran the two alongside each other (the grievance outcome was provided before the disciplinary outcome, but the disciplinary process, as a whole, was not put on hold). I have quoted from the ACAS code which says only that an employer may temporarily suspend the disciplinary process, it is not obliged to do so. In this case, the disciplinary issues were separate from the grievance issues. I did not find that it rendered the dismissal to be unfair, that the grievance process ran alongside, rather than the disciplinary process being out on hold until the grievance process was completed.

222. The claimant complained about the way in which the documents were referred to in the disciplinary hearing. That particularly arose from the claimant having prepared for the meeting with unpaginated documents, and Mr Astley providing a bundle with page numbers to the claimant in the disciplinary hearing. I accepted that the claimant became confused. I accepted that Mr Astley thought he had slowed down and explained the documents at an appropriate pace. I have read the disciplinary hearing transcript and particularly noted the lengthy second half of the hearing during which the claimant was able to say everything which he wished to say. I did not find the process followed to have been unfair.

223. The claimant relied upon the fact that he was not given the opportunity to attend the office and look through his boxes of documents and to access his disks or drives to prepare his response. He contended that meant he was unable to respond to the allegations. That difficulty arose from the suspension and the fact that the suspension was not lifted so that the claimant could have done so. I accepted that the first respondent could have let the claimant access his material, possibly under supervision, and it might have been fairer to the claimant had it

done so. However, the claimant did not explain to me how such access would have made any difference. The claimant did provide Mr Astley with the paper VAT returns he had submitted to HMRC on 6 May 2023. Mr Astley explained in evidence why he did not believe that any such access could have made any difference to the outcome (the VAT returns were still not submitted when they should have been, HMRC and debt-collector letters were still received, surcharges were imposed, and the issues were still not reported to anyone else). I have to look at the fairness of the process in its entirety including the appeal. In the appeal hearing, Mr Kelly explicitly offered to obtain any documents which the claimant wanted him to obtain, and the claimant declined the opportunity given. Whatever the reason why he did not do so, the claimant was still given the opportunity to identify what he needed and where it could be found, and he declined to do so. The process followed by the respondent had to be one which falls within the range of those which would be adopted by a reasonable employer, it does not have to be found to have been perfect. I found that the process was one which a reasonable employer could reasonably have adopted.

224. Issue 3.2.4 was whether the dismissal was within the range of reasonable responses? I found that it clearly was for the things which Mr Astley found had happened. As the respondents submitted, the claimant was placed in a position of responsibility in which he had fiduciary duties. He failed to enter VAT returns on time on eight or nine occasions (at least in the required format). Surcharges were incurred. He reported that to nobody at all. Dismissal was within the range of reasonable responses. I did not find there to be any merit at all in the claimant's arguments about the limited value of the surcharges. The surcharges were not of very small or nominal value, but even if that view was taken, the failure of the claimant to enter VAT returns on time in the manner required over eight or nine quarters for a company servicing law firms, was of the utmost seriousness.

225. The claimant contrasted his treatment with that of an employee of one of the firms in 2008. I agreed with the claimant that considerable leniency appeared to have been shown in 2008. However, the circumstances were utterly incomparable. The employee in 2008 had also shown contrition (for whatever reason), in contrast to the claimant. The decision-makers were entirely different. I did not agree with the claimant's assertion that Mr Astley was obliged to endeavour to identify the groups' historic responses to other misconduct in the past. There is case law about differences of treatment in truly comparable circumstances, which I would have applied had I needed to have done so. The requirement for truly comparable circumstances was nowhere near being met in this case.

226. I had to decide, applying section 98(4), whether in the circumstances (including the respondent's size and administrative resources) the first respondent acted reasonably in treating the misconduct as a sufficient reason for dismissing the claimant? I decided that it did.

227. Issue 3.3 put forward as an alternative reason for dismissal that there had been a loss of trust and confidence in the claimant. I did not find that to have been the principal reason for dismissal, as the principal reason was conduct. Inevitably, as with any misconduct based in part on an abuse of trust or failure to do what a senior employee had been trusted to do, there was a loss of trust which was part of the reason why the misconduct found was viewed as requiring dismissal. That was not, however, the principal reason for dismissal, as the principal reason was what Mr Astley found regarding conduct.

228. Had the claimant succeeded in his unfair dismissal claim, I would have needed to have considered issues 4.1.4 and 4.1.9. In circumstances where I found the dismissal to have been fair, I did not need to do so. I have quoted from what the claimant said in the grievance meeting immediately preceding his holiday (659) where he said that there was utterly no way that he could work in the environment. There clearly could have been a significant percentage reduction applied to any compensatory award had the claimant been found to have been unfairly dismissed, to have reflected the likelihood that he would not have remained in employment in any event. There also would have needed to be a significant reduction to reflect the fact that the claimant contributed to his dismissal by blameworthy conduct by not entering the VAT returns on time or in the method required, incurring surcharges, and not informing anyone about what had occurred (and it is entirely possible that any such reduction would have been one hundred percent).

Wrongful dismissal

229. For the wrongful dismissal claim, I need to decide whether the claimant fundamentally breached his contract, thereby entitling the first respondent to dismiss him without the six months' notice to which he was otherwise contractually entitled. Had the issue been a single late VAT return (or, possibly, a couple of returns), I might have considered that to have not been a fundamental breach by the claimant. The facts, as they were evidenced to me, were that the claimant had in fact failed to enter eight or nine VAT returns as required, he had incurred surcharges, and he had not informed anyone. I found that to have been a fundamental breach of contract by the claimant, taking into account his role and responsibilities, entitling the first respondent to dismiss him without notice. I understood what the claimant said about the impact that a dismissal for gross misconduct had upon his employability, but I nonetheless found that to have been an appropriate label to have been used for the misconduct found and which occurred. Ideally, I would have liked to have seen whatever documents it is the claimant might have identified had he been given access to his boxes, disks and drives in the office, but the fact that the claimant had not had the chance to do so did not alter my finding on that issue.

Direct age discrimination

230. Issue six was the claim for direct age discrimination. I considered those allegations in the order they allegedly occurred rather than in the order they were listed.

231. The first two allegations in time were the claimant allegedly not being consulted before signing up to the new case management system in October 2021 (6.2.4) and the alleged comment made by the fourth respondent on 23 December 2021 (6.2.1). I decided that I did not have jurisdiction to consider those complaints in the light of when they occurred and when the Tribunal claim was entered. I would, however, add that had I needed to have determined allegation 6.2.4, I would not have found that there was a complete failure to consult with the claimant about the new system as he appeared to allege, and, in any event, a comparator of a different age (but also in the claimant's role with the same experience) would not have been treated any differently, where the decisions about the involvement of Mr Middleton and Mr Astley were made for the reasons evidenced and because it was a case management system (with accounts functions). The decisions made about the extent of the claimant's involvement were not made because of the claimant's age.

232. Allegation 6.2.6 was that it was an act of direct age discrimination that the claimant was excluded from the Bury office between 23 and 31 March 2023 due to concerns over Covid (by the first, second and fifth respondents). The claimant was told by the fifth respondent to go home after attending the office having tested positive for Covid. The reason he was told to do so was because that was the respondents' policy. It was also, obviously, the right thing to have done. Technically, I did not find that requiring a Covid positive employee to leave the office was detrimental treatment at all (as it is what the respondents and claimant should have done to comply with the requirements in place at the time and to ensure the health and safety of others, even at a relatively late stage in the Pandemic). In any event, I found that instruction was not because of the claimant's age, it was because he had tested positive for Covid.

233. There was a difference in treatment between the claimant and Ms Rowley. Ms Rowley was allowed to attend the office on one or two occasions whilst positive with Covid. She should not have been allowed to have done so. However, the reason for her doing so was clearly set out in the WhatsApp messages which the claimant himself disclosed (533). To run the payroll (which was one of her responsibilities) she needed to attend the office. She attended so that the payroll could be run and people could be paid. I understood that the claimant asserted that another member of the team could have run the payroll, but even if correct that did not alter the fact that the reason why Ms Rowley attended the office and was allowed to do so by the fifth respondent was to ensure that staff were paid.

234. Ms Rowley was not an appropriate comparator for the claimant. A comparator in the same circumstances, so someone in the claimant's role of a different age who had tested positive for Covid, would also have been sent away from the office. The fact that Ms Rowley was not sent away had nothing to do with age. There was nothing which reversed the burden of proof and provided the something more which showed that age was the reason for the decision to exclude the claimant. The reason was not because of age (the reason why Ms Rowley was allowed in was so that staff could be paid).

235. There were certain allegations which the claimant continued to pursue even when all the evidence was available to him, which demonstrated that he saw facts only through the lens of his claim and his complaints, without having any ability to take a wider view which took into account the perspective, or needs, of others. Allegation 6.2.6 was a clear example of this. The claimant should not have travelled to work when positive with Covid. He was fully aware of why an exception had been made for Ms Rowley, but he continued to pursue his complaint that the reason for the difference in treatment was age, even though there was obviously another explanation for it. That inability to understand other perspectives, impacted upon the view which I took of the claimant's assertions that things which occurred were because of or related to age.

236. Allegations 6.2.2 and 6.2.3 both arose from the meeting on 6 June 2023 and were allegations against the first, second and fourth respondents. It was alleged in 6.2.2 that the fourth respondent said to the claimant in the meeting "*you're 70, where do you think you are going to get another job?*". In his letter of 7 June 2023 (516) the claimant recorded what was allegedly said slightly differently as "*where would I be likely to get a job at 70?*". This allegation involved a direct conflict of evidence. The claimant asserted that it was said by the fourth respondent. The fourth respondent and Mr Wainwright said that it had not been. I particularly noted that Mr Wainwright's evidence was that the comment was not

said. I needed to decide whether I preferred the claimant's evidence or that of the two witnesses called by the respondents (one being one of the named respondents). I have explained in this Judgment things which meant that I did not consider the claimant's evidence to be entirely reliable (including, in particular, what I have said about the claimant's stated willingness to be untruthful and/or to embellish the truth in his letter to the Law Society of 19 June 2023 (802)). I had no reason to doubt the truth of the evidence of Mr Wainwright or the fourth respondent. As a result, I accepted the evidence of Mr Wainwright and the fourth respondent that this was not said in the meeting on 6 June. I did not find that what was alleged at 6.2.2 occurred.

237. For allegation 6.2.2, the claimant placed particular reliance on his second without prejudice letter dated 7 June 2023 (516) as demonstrating what had been said, as it was a letter which he said he had written later on the day the alleged comment was made. As I have already recorded, the fact that the first line of that letter stated that the claimant had reflected on things overnight before writing the letter, whereas the claimant was adamant at this hearing that he had written it on 6 June, did not assist the claimant in relying upon the accuracy of what was said (as he was either wrong in his assertion or misleading in what he said in the letter). However, what I found to be particularly notable was that the claimant did not recite the alleged phrase or the allegation about that having been said in the meeting on 6 June, in the first letter to Mr Wainwright which he wrote on 6 June (512). Had that been said in the meeting, I consider it to be unlikely that the claimant would have made no reference to it in the first letter which he wrote following the meeting. As a result, I found that what the claimant did not say in his first without prejudice letter written shortly after the meeting on 6 June (512) strongly supported the conclusion that I reached based upon my determination of the reliability of the relevant witnesses.

238. For allegation 6.2.3 I was asked did the fourth respondent question the claimant's physical and mental health during the meeting on 6 June 2023? The fourth respondent did question the claimant's physical health (that was confirmed in evidence by Mr Wainwright). I did not find that he questioned the claimant's mental health. Whilst the claimant made the broad allegation that he had done, I was not provided with evidence about any specific words said (the claimant's witness statement referred only to the fourth respondent's general opining about his mental health). Mr Wainwright denied that the fourth respondent had done so. I did not find that he did.

239. I accepted that, viewed from the claimant's point of view, the fourth respondent referring to concerns about the claimant's health in the meeting was a detriment (particularly noting the pride and importance which the claimant placed on his exemplary attendance record throughout his employment).

240. I then needed to decide whether the claimant was treated less favourably than a comparator aged between thirty and fifty in the same material circumstances would have been? There was no evidence which shifted the burden of proof and demonstrated that a younger comparator would have been treated differently. The fourth respondent's evidence was that the claimant looked very unwell at the meeting. The claimant was working excessively long hours. The claimant had recently had both Covid and some form of infection. I found that the reason why the fourth respondent spoke about the claimant's health was because he perceived there to be concerns about his health. He did not do so because of the claimant's age.

241. Allegation 6.2.5 was that, at the meeting on 29 June 2023, the claimant was accused of failing in his duty when dealing with a client's complaint. The allegation was recorded as being one against the first, second and fifth respondents. I did not uphold the complaint against the fifth respondent as he did not do what was alleged (even if it occurred). The meeting on 29 June was conducted by Mr Wainwright and was attended by Ms Peel. The fifth respondent did not attend.

242. The meeting on 29 June involved the claimant being asked about a letter received from the legal ombudsman. The letter, incorrectly, said that the complaints procedure had not been updated. The claimant was asked about it. I accepted the respondents' case that the claimant was asked about the letter, and he was not accused of failing, as alleged. I accepted that, viewed from the claimant's point of view, being asked about the letter in a meeting attended by Ms Peel and noted by her, was a detriment. The claimant accepted that the subject matter certainly fell within his purview. I did not find that there was anything which shifted the burden of proof and provided the something more required to support a contention that an employee aged between 30-50 responsible for the complaints procedure would have been treated differently, after a letter had been received from the legal ombudsman which said the complaints procedure had not been updated. The reason why the claimant was spoken to was because the letter said that the complaints procedure had not been updated and it fell within his remit. It was not the claimant's age. The claimant explained the position and subsequently addressed it directly with the legal ombudsman, who I understood acknowledged an error.

243. For all of the allegations which pre-dated the grievance and suspension, I could not understand why they had been pursued against the second respondent as well as the first. The claimant provided no explanation for why it was he said that the second respondent was liable for what occurred. For the allegations arising from the processes and the decisions made, where the claimant asserted that he was employed by all of the first, second and third respondents, I could understand that he alleged that the processes followed and the decisions made were on behalf of them all. I have not needed to decide whether the second and third respondents were also liable for what occurred in the light of what I have decided. However, for allegations 6.2.1 to 6.2.6 I was not presented with any reason to find that the second respondent discriminated against the claimant (rather than, or in addition to, the first, fourth and fifth respondents).

244. Issue 6.2.7 was the claimant being suspended on 17 or 18 July 2023. That was an allegation against the first and second respondents. The claimant was suspended on his return from holiday. I accepted that being suspended was a detriment from the claimant's point of view (he was also correct that the contract contained no provision which provided for suspension). I did not find that the claimant was treated less favourably than a hypothetical comparator aged 30-50 would have been treated in materially the same circumstances as the claimant. I accepted Mr Wainwright's evidence about why it was that the claimant was suspended, based upon what had been found when Ms Rowley logged onto the HMRC VAT system, the report from PM&M, and the identified failures to submit VAT returns for the relevant period (in the correct format). The claimant accepted in cross-examination that the issues required investigation (no matter what age he was). The reason for the claimant's suspension was not his age; it was because of the things which had been identified during the claimant's leave during the initial investigation and what was said in the PM&M report.

245. Issue 6.2.8 of direct age discrimination was the claimant being dismissed, which was an allegation made against the first, second and third respondents. The claimant was dismissed, which was a detriment. I have already addressed the dismissal at some length when determining the claim for unfair dismissal. I accepted Mr Astley's evidence about why it was he made the decision to dismiss the claimant. An individual in the same material circumstances as the claimant aged 30-50 would also have been dismissed. There was nothing which shifted the burden of proof in regard to a younger comparator being treated differently or which showed that the reason for the treatment was age. The reason why the claimant was dismissed was because Mr Astley formed the view that the claimant had committed the misconduct he set out in his decision letter of 18 September 2023 and that the appropriate sanction was dismissal. That was not because of the claimant's age.

246. I did not need to consider or determine issue 6.6, in the light of what I decided on issues 6.1-6.5.

Harassment

247. The claimant's single allegation of harassment related to age arose from him being asked to attend a meeting on 7 June 2023 (issue 7.1). That was an allegation pursued against the first, second and fifth respondents. In the allegation as recorded in the list of issues, it was said that the claimant was made to walk down three flights of stairs past other employees. As I have recorded in the section on the facts above, the claimant was not required to walk down the flights of stairs past other employees, he would only have been observed going to the meeting by other employees in reception.

248. It was clear from the claimant's evidence that being asked to attend a meeting on 7 June was unwanted conduct. The claimant objected to being asked about the letter from the Law Society and, in particular, he objected to being asked about it in a face-to-face meeting rather than by email.

249. Issue 7.3 asked whether that related to age? I found that it did not. It related to the fact that the Law Society had chased non-payment and the fifth respondent and Mr Wainwright wished to ask the claimant about it. There was nothing whatsoever which suggested that it related to age in any way.

250. I did not need to go on and determine issues 7.4 and 7.5, as a result of my decision on issue 7.3. I would not have found that the purpose of asking the claimant to attend the meeting was to violate his dignity or to create an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. The purpose of asking the claimant to pop down to talk about the unpaid invoice, was to find out whether the claimant knew anything about it. I also would not have found that the request either had the requisite effect (emphasising the seriousness of the words used in the definition of harassment), or that it was reasonable for it to have done so (even if it had done). I found the claimant's objections to being asked to pop down to another office to talk about an apparently overdue invoice, to be out of all proportion to what was requested. I found that what occurred was a routine matter addressed in an appropriate way.

Victimisation

251. Issue eight set out the issues in the victimisation claim. Question 8.1 was whether the claimant did a protected act when he submitted his grievance on 27

June 2023 and/or whether he did so when he submitted his grievance on 4 July 2023. In the course of the hearing, the respondents' counsel confirmed that the respondents accepted that the claimant did protected acts as contended.

252. Issues 8.2.1 and 8.2.2 arose from the meeting which occurred on 29 June 2023, which I have already considered for the direct age discrimination allegation 6.2.5. Those were allegations pursued against the first respondent only. Allegation 8.2.2 mirrored allegation 6.2.5 (but as an act of alleged victimisation rather than direct sex discrimination). Issue 8.2.1 was that the claimant was asked to attend the meeting without warning and was informed that Ms Butler would be conducting an audit to check the claimant's work.

253. The claimant was informed by Mr Wainwright at the 29 June meeting that Peacock Risk Management (Ms Butler's company) would be conducting an audit of the claimant's work. That was clearly something which the claimant considered to be a detriment. Viewed from his point of view, I accepted that it was.

254. The reason why Mr Wainwright decided that Peacock Risk Management should conduct the audit (and therefore why the claimant was informed that they would be in the meeting on 29 June) was said at the time (as recorded in the note of the meeting (517)) to be because there had recently been some flags with regards to issues of compliance and accounting and Mr Wainwright wished to ensure everything was compliant. The catalyst for the decision being made at that time was recorded to have been the legal ombudsman's letter. It was Mr Wainwright's evidence at the Tribunal hearing, that the decision was prompted by the letter from the legal ombudsman and its seriousness.

255. Something which supported the claimant's contention that a material factor in the decision to ask Peacock Risk Management to conduct an audit was his protected act, was the timing of the meeting when considered alongside the protected act. The claimant had submitted a grievance on 27 June (793). That grievance was a protected act. The meeting, and decision regarding the audit, was made on 29 June, two days later. That timing was notable. However, what was also important was that the email about the complaint from the legal ombudsman had been received by the fifth respondent on the morning of the 28 June (521). I accepted Mr Wainwright's evidence that it was the legal ombudsman's letter which prompted the audit decision and not the grievance/protected act. I found that the protected act did not have a material or significant influence on the decision to arrange an audit.

256. For issue 8.2.2, the meeting on 29 June involved the claimant being asked about a letter received from the legal ombudsman. The letter, incorrectly, said that the complaints procedure had not been updated. The claimant was asked about it. I accepted the respondents' case that the claimant was asked about the letter, and he was not accused of failing in his duty, as alleged. I accepted that viewed from the claimant's point of view, being asked about the letter in a meeting attended by Ms Peel and noted by her, was a detriment. I did not find that the claimant being spoken to was materially influenced by his protected act. The reason why the claimant was spoken to was because the letter said that the complaints procedure had not been updated and the complaints procedure fell within his remit.

257. Issue 8.2.3 was the claimant's allegation that the respondent refused to delay the disciplinary process until after the grievance process had been completed, because he had done a protected act (or acts) in the grievance. That

was an allegation against the first and second respondents. As with some of the other victimisation allegations, there was a degree of circularity about what was alleged. The disciplinary process was not paused or delayed; it was progressed alongside the grievance process. However, there was nothing which genuinely suggested that the reason for that occurring was because the grievances contained (or were) protected acts. It appeared to be the case that the grievance and disciplinary processes were considered to arise from separate issues. Once the disciplinary issue was identified, the investigation and, subsequently, the hearing, was progressed in a relatively timely manner delayed in part by annual leave over August. I accepted that, from the claimant's point of view, not delaying the disciplinary until his grievance was concluded, was a detriment. I did not find that was because (or was materially influenced by) the fact that the claimant had done a protected act (or acts).

258. Issue 8.2.4 was the claimant's suspension on 17 or 18 July 2023. The victimisation complaint was pursued against the first and second respondents. I have already addressed the suspension in the context of a direct age discrimination complaint when determining issue 6.2.7. For the same reasons as I have already explained, I found that being suspended was the claimant being subjected to a detriment. I did not find that the reason for the suspension was because the claimant had done a protected act or protected acts. The reasons for the claimant's suspension were the matters identified by Mr Wainwright which led to the disciplinary investigation and their seriousness (as explained in the suspension email of 17 July (319)), they were not the grievance or grievances which the claimant had raised (and the suspension was not materially influenced by those protected acts).

259. Issue 8.2.5 was whether the first and second respondents failed to deal properly with the grievance process? As a victimisation claim, the question was whether the first and second grievances which the claimant raised, which were protected acts, had a material influence on a failure to deal with those grievances. In the case management order made following the last preliminary hearing (case management) on 2 September 2025, Employment Judge Anderson made the following observation on that allegation:

> "*It is difficult to follow the basis upon which it is said that a grievance is not properly dealt with because of the fact that it had been raised'*"

260. During the hearing, the claimant did not address this circularity/issue.

261. There were certain ways in which the grievance process followed was not what it could or should have been. As Mr Tyer identified in his grievance appeal decision and found, Mr Wainwright should not have been the person to adjudicate the claimant's grievances where he was an attendee at many of the meetings and where his own account of what he observed was a factor in the decision which he reached. The accounts obtained by Mr Wainwright during his investigation of the grievance from Mr Middleton and the fourth and fifth respondents, were not provided to the claimant even though they formed the basis for his decision and were considered by Mr Tyer when determining the appeal. Perhaps most significantly, Mr Tyer undertook a re-investigation of a number of the grounds of grievance at the appeal stage, but he did not provide the claimant with any materials taken or obtained, nor were they retained and provided for the purposes of this hearing. In all of those respects, the grievance process was sub-optimal. However, there was no evidence that any of those things occurred because the

claimant had done protected acts when submitting the first two grievances. In particular, the decision that Mr Wainwright should determine the grievance was made because he was the employment partner and the person considered to be the best person to do so. Whilst that may have been a flawed decision which Mr Tyer later found meant that elements of the grievance appeal should be upheld, there was no evidence that the fact that the claimant had done protected acts materially influenced that decision.

262. Issue 8.2.6 was the allegation that the first and second respondents failed to deal properly with the disciplinary process. In the case management order of 2 September 2025, Employment Judge Anderson observed that issue 8.2.6 contained what he described as the broad and nebulous phrasing of ‘not properly dealt with’ and he suggested to the claimant that he needed to have a short paragraph in his witness statement in which his evidence on this point was set out. The claimant’s witness statement included a considerable amount of evidence about the disciplinary process, but he did not (as far as I could tell) include a paragraph in the way Employment Judge Anderson suggested. I did not find that the relevant respondents failed to deal properly with the disciplinary process. As I have already explained, a reasonable investigation was undertaken which included a lengthy investigatory meeting with the claimant. The claimant was provided with the relevant material. A hearing was undertaken at which the claimant was given the opportunity to say what he wished to. A decision was made by somebody not previously involved in the matters. The claimant was given a right of appeal and an appeal hearing was conducted, followed by an appeal decision. I found that the respondents did deal properly with the disciplinary process.

263. Issue 8.2.7 was the dismissal of the claimant on 18 September 2023. That was an allegation made against the first, second and third respondents. I have already addressed the dismissal in detail in this decision when considering other allegations. Clearly being dismissed was a detriment for the claimant. I did not find that the dismissal was because the claimant had done a protected act or protected acts. Mr Astley dismissed the claimant for the reasons he explained in his decision letter (424). That decision was not materially influenced by the claimant’s protected acts (and there was nothing which genuinely suggested that it had been). I accepted Mr Astley’s evidence that the decision was one he made alone and it was not influenced by others including the fourth and fifth respondents (as the claimant contended).

Other matters

264. In his submissions, the claimant referred to a number of matters which I have not found to be relevant to the decisions which I needed to reach in the issues which it had been identified I needed to determine. A central theme in his submissions was the way in which his role and responsibilities had been eroded prior to his dismissal. I understood what the claimant contended, as it did appear to me that many of his duties did appear to have been taken away without consultation or discussion, most notably in the meeting on 17 March 2023. However, whether that should have occurred and whether the claimant might have been able to resign and claim constructive dismissal at that time, were not issues which I needed to determine. That meeting occurred long before the claimant had done his protected acts. It did not appear in the list of issues as an allegation of direct age discrimination or harassment related to age. It was not the reason for dismissal as evidenced by Mr Astley (that being the conduct he recorded in his

decision letter, being what I found to have been the principal reason why the claimant was dismissed).

Summary

265. For the reasons explained above, I did not find for the claimant in any of his complaints.

Employment Judge Phil Allen

6 August 2026

JUDGMENT SENT TO THE PARTIES ON
15 September 2026

....
FOR THE TRIBUNAL OFFICE

Notes

All judgments (apart from judgments under Rule 51) and any full written reasons for the judgments are published, in full, online at *https://www.gov.uk/employment-tribunal-decisions* shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found here:
www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/

List of issues

The Issues

The issues the Tribunal will decide are set out below.

1. **Employment status**

1.1 Was the claimant an employee of the respondent within the meaning of section 230 of the Employment Rights Act 1996?

1.2 Was the claimant an employee of the respondent within the meaning of section 83 of the Equality Act 2010?

1.3 Was the claimant a worker of the respondent within the meaning of section 230 of the Employment Rights Act 1996?

2. **Time limits**

2.1 Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 14 September 2023 may not have been brought in time.

2.2 Were the discrimination, harassment and victimisation complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

2.2.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?
2.2.2 If not, was there conduct extending over a period?
2.2.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
2.2.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
2.2.4.1 Why were the complaints not made to the Tribunal in time?
2.2.4.2 In any event, is it just and equitable in all the circumstances to extend time?

3. **Unfair dismissal**

3.1 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.

3.2 If the reason was misconduct, did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant? The Tribunal will usually decide, in particular, whether:

3.2.1 there were reasonable grounds for that belief;
3.2.2 at the time the belief was formed the respondent had carried out a reasonable investigation;
3.2.3 the respondent otherwise acted in a procedurally fair manner;
3.2.4 dismissal was within the range of reasonable responses.

3.3 In the alternative, the respondent relies upon SOSR as the reason for dismissal. The SOSR being a loss of trust and confidence in the claimant. The Tribunal will need to decide whether the respondent has established the loss of trust and confidence and whether it is in all the circumstances of the case reasonable for the respondent to dismiss.

4. **Remedy for unfair dismissal**

4.1 If there is a compensatory award, how much should it be? The Tribunal will decide:

4.1.1 What financial losses has the dismissal caused the claimant?
4.1.2 Has the claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?
4.1.3 If not, for what period of loss should the claimant be compensated?
4.1.4 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?
4.1.5 If so, should the claimant's compensation be reduced? By how much?
4.1.6 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
4.1.7 Did the respondent or the claimant unreasonably fail to comply with it?
4.1.8 If so is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?
4.1.9 If the claimant was unfairly dismissed, did he cause or contribute to dismissal by blameworthy conduct?
4.1.10 If so, would it be just and equitable to reduce the claimant's compensatory award? By what proportion?
4.1.11 Does the statutory cap of fifty-two weeks' pay or £86,444 apply?

4.2 What basic award is payable to the claimant, if any?

4.3 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?

5. **Wrongful dismissal / Notice pay**

5.1 What was the claimant's notice period?

5.2 Was the claimant paid for that notice period?

5.3 If not, did the claimant do something so serious that the respondent was entitled to dismiss without notice?

6. **Direct age discrimination (Equality Act 2010 section 13)**

6.1 The claimant's age group is 66 and older and he compares himself with people in the age group 30 – 50 years old.

6.2 Did the respondent do the following things:

6.2.1 Did Jonathan Pfeffer ask the Claimant "how old are you and when are you intending to retire," during a meeting on **23 December 2021**? (R1, R2, R4);

6.2.2 Did Jonathan Pfeffer state to the Claimant "you're 70, where do you think you are going to get another job", during a meeting on **6 June 2023**? (R1, R2, R4);

6.2.3 Did Jonathan Pfeffer question the Claimant's physical and mental health, during a meeting on **6 June 2023**? (R1, R2, R4);

6.2.4 Did the Respondent fail to consult with the Claimant before signing up to a new IT software and support provider in **October 2021**? (R1, R2, R5);

6.2.5 At the meeting on **29 June 2023**, was the Claimant accused of failing in his duty when dealing with a client's complaint? (R1, R2, R5);

6.2.6 Was the Claimant excluded from the Bury office between **23 March and 31 March 2023** due to concerns over Covid-19? (R1, R2, R5);

6.2.7 Was the Claimant suspended on **18 July 2023**? (R1, R2);

6.2.8 Was the Claimant dismissed. The Respondent says he was dismissed on **18 September 2023**? (R1, R2, R3)

6.3 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 s/he was treated worse than someone else would have been treated.

6.4 If so, was it because of age?

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

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

(a) In relation to retirement queries, the respondent's legitimate aim was the need for succession planning for a key role.

(b) For exclusion from the office because of Covid, the respondent's legitimate aim was the duty of care of al staff and specifically those with low immunity issues.

(c) For suspension and dismissal, the respondent's legitimate aim was to ensure that appropriately skilled and competent employees were engaged in compliance with HMRC and SRA regulations for the respondent companies.

6.7 The Tribunal will decide in particular:

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

6.7.2 could something less discriminatory have been done instead;

6.7.3 how should the needs of the claimant and the respondent be balanced?

7. **Harassment (Equality Act 2010 section 26)**

7.1 Was the Claimant asked to attend a meeting on **7 June 2023** without warning and asked why he had not paid for a Law Society invoice, before being made to walk down three flights of stairs past other employees? (R1, R2, R5);

7.2 If so, was that unwanted conduct?

7.3 Did it relate to age?

7.4 Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

7.5 If not, did it have that effect? The Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

8. **Victimisation (Equality Act 2010 section 27)**

8.1 Did the claimant do a protected act as follows:

8.1.1 Submit a grievance dated 27 June 2023?; and/or

8.1.2 Submit a grievance dated 4 July 2023?

8.2 Did the respondent do the following things:

8.2.1 Was the Claimant asked to attend a meeting on **29 June 2023** without warning and informed that Denise Butler would be conducting an audit to check the Claimant's work? (R1);

8.2.2 At the meeting on **29 June 2023**, was the Claimant accused of failing in his duty when dealing with a client's complaint? (R1);

8.2.3 Did the Respondent refuse to delay the disciplinary process, until after the grievance process had been completed? (R1, R2);

8.2.4 Was the Claimant suspended on **18 July 2023**? (R1, R2);

8.2.5 Did the Respondent fail to deal properly with the grievance process? (R1, R2);

8.2.6 Did the Respondent fail to deal properly with the disciplinary process? (R1, R2);

8.2.7 Dismiss the Claimant on 18 September 2023? (R1, R2, R3)

8.3 By doing so, did it subject the claimant to detriment?

8.4 If so, was it because the claimant did a protected act?

8.5 Was it because the respondent believed the claimant had done, or might do, a protected act?

9. **Remedy for discrimination or victimisation**

9.1 Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend? (C seeks recommendation of removal of finding of gross misconduct)

9.2 What financial losses has the discrimination caused the claimant?

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

9.4 If not, for what period of loss should the claimant be compensated?

9.5 What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?

9.6 Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?

9.7 Is there a chance that the claimant’s employment would have ended in any event? Should their compensation be reduced as a result?

9.8 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

9.9 Did the respondent or the claimant unreasonably fail to comply with it?

9.10 If so is it just and equitable to increase or decrease any award payable to the claimant?