



EMPLOYMENT TRIBUNALS

Claimant: Mr Rossi

Respondent: Cell Therapy Catapult Limited

Heard at: London South (by CVP) **On:** 4 September 2026

Before: Employment Judge Hart

Representation:

For the Claimant: Litigant in Person

For the Respondent: Mr Welch (Counsel)

JUDGMENT having been sent to the parties on 9 September 2026 and written reasons having been requested in accordance with Rule 60(3) of the Employment Tribunal Procedure Rules 2024, the following reasons are provided:

FULL REASONS

INTRODUCTION

1. The Claimant was employed by the Respondent as a bioscientist between 19 July 2021 and 4 July 2023. The Claimant was placed on a performance improvement plan (PIP) and dismissed. He says that placement on the PIP was because he had made a protected disclosure and his dismissal was because he had exercised his right to be accompanied. He also says he was wrongfully dismissed.
2. The Claimant's complaints of automatic unfair dismissal (right to be accompanied) and being subject to detriments on the grounds that he made a protected disclosure did not succeed and were dismissed. The Claimant's complaint of wrongful dismissal (notice pay) succeeded.

THE HEARING

3. The hearing was by CVP. Mr Rossi represented himself and the Respondent was represented by Mr Welch (Counsel).
4. For the hearing I was provided with the following documents:

- 4.1 A joint agreed hearing bundle of 1247 pages, the references to page numbers in this judgment are to the pages in this bundle.
 - 4.2 Claimant's Extra Bundle of 79 pages (C)
 - 4.3 First additional disclosure from the Respondent, originally 6 pages but reduced to 5 due to page 1 being inadmissible (AD1)
 - 4.4 Second additional disclosure from the Respondent of 1 page (metadata) (AD2)
 - 4.5 Witness statements.
 - 4.6 A chronology and cast list provided by the Respondent (not agreed by the Claimant)
5. The Claimant gave evidence on his own behalf and relied on the statement of Ms Storti as hearsay.
 6. The Respondent called: Dr Zucchelli (Senior Scientist), Ms Kerby (Managing Director) and Mr Johnson (Chief Strategy and Impact Officer).
 7. On completion of the evidence the Respondent provided written submissions (12 pages) and the Claimant relied on his written observations at pages 41-43 of his witness statement. The written submissions were supplemented by oral submissions. Oral Judgment was given with summary reasons on day 5 of the hearing. The Claimant requested full written reasons on 22 September 2026.

Application to amend

8. At the start of the hearing Mr Rossi submitted that two of his disclosures (5 December 2022 and 4 January 2023) had not been included in the list of issues agreed at the Preliminary Hearing on 7 January 2026: **pgs 77-80**.
9. These disclosures had not been pleaded but were referred to in his further and better particulars dated 24 April 2024: **pgs 50-57**. According to the Record of the Preliminary Hearing these two disclosures were discussed at that hearing and it is recorded that the Claimant "*clarified that no protected disclosures were made on 5th December 2022, or 4th January 2023*" (para 17). Therefore these disclosures were not wrongly omitted from the list of issues. Since they had not been pleaded, in order to be considered would require an application to amend.
10. Mr Rossi applied to amend his claim to add the two additional disclosures. The application was opposed by the Respondent. I considered that the paramount consideration was the balance of hardship and injustice to each party: **Vaughan v Modality Partnership** [2021] ICR 535. In reaching my decision I took into account the following factors:
 - 10.1 The Claimant had specified what disclosures he was relying on at the Preliminary Hearing, and whilst a list of issues is not a pleading, a party would ordinarily be expected to confine their case to issues agreed at a Preliminary Hearing.
 - 10.2 The two disclosures were substantial amendments because they introduced two new factual complaints, albeit linked to issues to be determined by the Tribunal.

- 10.3 The two disclosures were substantially out of time, since the last detriment the Claimant relied on occurred on 4 July 2023, however time limits are not determinative when considering an application to amend.
- 10.4 The application was being made on the first day of the final hearing. If granted the Respondent would need to be provided with time to take instructions and adjust witness evidence, cross-examination and submissions. Permitting the amendment put at risk the hearing not being completed in the allocated time slot, with a consequential impact in terms of time and costs not just on the Respondent but other users of the tribunal service. This was a significant consideration due to the pressure on tribunal resources and the delay that would arise if the hearing had to be postponed.
- 10.5 The two disclosures did not add anything to the Claimant's case. The emails relied upon merely sought information from the Respondent (see paragraphs 33 and 37 below) rather than informing the Respondent of any wrongdoing. Accordingly, even read with the other disclosures, there was little chance of the Claimant successfully establishing that they were protected disclosures.

Taking the above into account I considered that the balance of hardship and injustice fell in favour of the Respondent, since refusing the amendment would not cause any real prejudice to the Claimant but did cause real prejudice to the Respondent. The application was refused.

- 11. On day 2 following conclusion of his evidence Mr Rossi applied to amend his claim to add automatic unfair dismissal for making a protected disclosure. The application was opposed by the Respondent. The application was refused because the balance of hardship and injustice fell in favour of the Respondent (for the same reasons as above). This was a new cause of action and there was limited prejudice to the Claimant since his primary case remained that the reason or principal reason for his dismissal was because he had exercised the statutory right to be accompanied.

Admissibility of pages 1 and 2 of the First Additional Disclosure

- 12. The Respondent applied to add six further pages to the hearing file (**AD1**). The Claimant was given time to consider his position, since they had only been disclosed to him on the morning of the hearing. Having done so he objected to pages 1 and 2 being admitted in their redacted form. The Respondent claimed that the redactions were covered by legal privilege and legal advice privilege and that it was permissible to redact such advice without waiving privilege: **Brennan v Sunderland City Council** [2009] ICR 479. In order to resolve the issue I had sight of the unredacted version of pages 1 and 2.
- 13. I found that the redactions were covered by litigation privilege but not legal privilege (since the documents were emails from HR to the decision-maker). I accepted that the redaction on page 2 was minor and held that this document was admissible.

14. I considered that the redactions on page 1 to be more substantial. When considering this issue the overriding principle was fairness: that a party should not waive privilege in a selective way, which would be misleading or give rise to unfairness: **Watson v Hilary Meredith Solicitors Ltd** (UKEAT/0092/20/BA). Whilst I considered this to be a borderline case, the Respondent was not just relying on the date of the email but also the advice provided in paragraph 1 (that the Claimant was entitled to be accompanied at his appeal meeting) and point 3 (that the Claimant will accrue 2 years continuous service on 18 July 2023). I considered that to rely on this whilst redacting the other advice given was cherry picking and unfair to the Claimant. I therefore decided that page 1 was not admissible in the format provided. In the alternative, admitting page 1 in its redacted form was contrary to the overriding objective to deal with cases fairly and in a proportionate way (Rule 3). The Respondent should have disclosed these documents before the first day of the hearing. The Claimant was a litigant in person and the late disclosure gave him little opportunity to consider his position and take advice and it was not fair on him to admit it in its redacted form.

CLAIMS / ISSUES

15. Having determined the application to amend, the parties agreed the claims and issues as set out in the Draft List of Issues (**pgs 77-80**), with the following amendment to issue 1 to correctly reflect the law:

*“Did C reasonably request to be accompanied at a grievance meeting under s.10(4) of the Employment Relations Act 1999 (“**ERA 1999**”) on the following dates set out in issue 2.”*

The amended version is set out at Appendix A.

FINDINGS OF FACTS

16. I have only made findings of fact in relation to those matters relevant and necessary to the issues to be determined. Where there were facts in dispute I have made findings on the balance of probabilities. I confirm that I have taken into account all the documentation and evidence referred to in evidence or submissions. If something is not specifically mentioned that does not mean that I have not considered it as part of my deliberation.

About the Claimant

17. The Claimant is a scientist.

About the Respondent

18. The Respondent is a company that develops cell and gene therapies for use in the health sector.

Policies and procedures

19. The Respondent had a performance improvement policy (PIP), a disciplinary and termination policy, a grievance policy and a whistleblowing policy. The only provision that I was referred to during the hearing was the definition of “gross misconduct” in the Disciplinary and Termination Policy which stated as follows:
pg 100
- “Matters that we consider amount to gross misconduct include (but are not limited to):*
.....
• gross insubordination....”
20. The Respondent had an HR database called Kallibus, that employees could access to obtain their personnel records and feedback on their performance.

Chronology of events

21. On 19 July 2021 Mr Rossi commenced employment as a Scientist – Industrialisation (Molecular Biologist) working in the Technology and Process Innovation (TPI) team: **pgs 150–151, pg 154**. His line manager at the time was Ms Farukshina (Senior Scientist).
22. On 8 September 2022 Mr Rossi requested a change of line manager: **pg 264**.
23. On 23 September 2022, in a mid-year appraisal, Ms Farukshina gave Mr Rossi a rating of “2” (“meeting expectations”) on a scale of 1-3: **pgs 1090-1115**. In the commentary she stated: *“I rate Francesco's performance at 2 with a significant development need for the next period”*.
24. On 29 September 2022 this rating was changed to 1 (“Below Expectations”) following the calibration process: **pgs 1090–1115**. Ms Farukshina recorded that the change in rating was *“based on feedback and discussions about Francesco's [Mr Rossi] difficulties to manage multiple projects at the moment as well as the communication challenges”*. She also recorded that development was required to improve Mr Rossi's communication skills and training on report writing skills. It is recorded that a development plan was to be put in place, but I was provided with no evidence that this occurred.
25. On 8 October 2022 Mr Rossi declined a team's invite to a meeting with a person whose name was redacted (but I presume was Ms Farukshina) to discuss the post-calibration feedback. Mr Rossi responded that *“I would prefer to talk about feedbacks received during calibration meeting with my new line manager”*. The response to his “refusal” to attend this meeting was *“Okay. This week I will contact HR to change the line manager on the systems”*: **pg 269**.
26. Around this time Dr Zucchelli became Mr Rossi's line manager.
27. On 19 October 2022 Mr Rossi emailed Ms Seidel (HR Training) to raise a concern about a potential breach of GDPR: **pgs 588-590 (issue 6.1.1)**. He was

due to attend a Lumina Spark course and had heard that participants were asked to complete a questionnaire which generated their personality profile (Splash). The splash was then shown to all the participants who were asked to guess the owner. Mr Rossi complained about being required to complete the questionnaire to create his profile stating:

"I do not think sensitive data can be stored without consensus and proper information regarding data treatment, that should be asked in advance and clearly explained each time. I do not thin[k] acquiring and storing data in this way is a legitimate need from the company (if we accept data to be treated in this way, regarding something so intimate, we are implicitly accepting to be asked about anything".

He asked for his splash profile not to be circulated during the course and for it to be removed from the Lumina database. He also asked for his *"colleagues to be informed about data treatment before the course and before acquiring the data"*.

28. Ms Seidel responded the same day denying that what Lumina had done was a breach of the GDPR, stating that employees were asked to confirm their consent when initially signing up to create a Lumina account: **pgs 586-588**. She further stated that: *"You have the option to not participate in the workshop so please do let us know what your preference is"*.
29. On 21 October 2022 Ms Seidel forwarded Mr Rossi's concerns about the Lumina course to Ms Kerby (TPI Managing Director) and Mr Deegan (HR Business Partner): **pg 287**.
30. On 22 November 2022 Mr Rossi attended a 1:1 meeting with Dr Zucchelli. The notes of that meeting record that there was a discussion about Mr Rossi attending a writing / language course for non-native English speakers and that Dr Zucchelli agreed to investigate what course the Respondent could sponsor: **pg 354**.
31. On 25 November 2022 Dr Sweeney (Senior Scientist), invited Mr Rossi to attend a meeting on 28 November 2022: **pgs 372-374**. The invite stated, "tentative: assay dev prioritisation". Mr Rossi responded the same day stating that he was not sure he could join the meeting and asking what the meeting was about. Dr Sweeney responded *"Please ensure you attend. This is about what you should be prioritising to commit to project you have been resourced on"* and copied his e-mail to Dr Zucchelli. Mr Rossi responded stating *"Sorry, I can not join. Still busy with last things to do"* and provided an explanation. Dr Zucchelli then emailed Mr Rossi at 4:53pm stating the purpose of the meeting and said, *"Please, let me know if you have a clash with other meetings, or lab work on Monday morning [the date of the meeting]?"* Mr Rossi responded at 4:59pm stating *"still have to finish things for NHSBT"*. He explained in evidence that the short response was because it was the end of the working day and he was under pressure. Dr Zucchelli responded on 28 November 2022 (Monday) at 8:38am *"that's fine, no worries about the ELN for NHSBT, I can talk to Ms Barreira if necessary. The AAV assay dev counts as most of your resourcing"*.

and takes priority anyway". Mr Rossi responded stating *"Things always keep accumulating. I need to end them before starting new stuff. I did not even had time to finish Sap last week. Also another ELN is still to be finalized"*. Dr Zucchelli did not respond to this email.

32. On 1 December 2022, Dr Zucchelli met with Ms Kerby (Managing Director and Heads of TPI) and eight senior colleagues to discuss and collate concerns raised about Mr Rossi's performance and conduct: **pgs 392–394**. The concerns raised were recorded by Dr Zucchelli in an email the next day. They were *"about both the delivery and performance on projects (not meeting project deadlines), and attitude (refusing to attend specific meetings, lack of awareness, does not think things can be done differently on his side, personality stops him to make progress on different levels)"*. It was noted that the issues had been going on for several months. Dr Zucchelli also recorded the decision to move to a *"more formal process involving HR"*. Mr Rossi disputed that this meeting had taken place. I find that it did since it was supported by the email sent the following day which I consider to be a genuine contemporaneous document.
33. On 5 December 2022 Mr Rossi sent a follow up email to Ms Seidel regarding the Lumina course asking for more information about the purpose of the splash profile and asked whether participants *"are requested or invited to guess the splash of other people?"*: **pg 583**.
34. On 7 December 2022 Dr Zucchelli emailed attendees of the 1 December 2022 meeting requesting written feedback regarding their concerns about Mr Rossi: **pg 392**. She stated: *"Julie [Kerby], Rhys [Macown] and I are trying to arrange a meeting with HR (Alan) next week, to start the discussion and get advices on how to proceed in the current situation"*. In a follow up email Ms Kerby supported this request. The following week written feedback was provided by Mr Sweeney, Ms Piras, Ms Barreira and Ms Bagnati: **pgs 401–403**.
35. On 16 December 2022 Ms Zucchelli met Mr Deegan and Dr Macown (Head of Department reporting to Ms Kerby and Dr Zucchelli's line manager) to discuss ongoing performance concerns regarding Mr Rossi: **pgs 1232–1234**. Mr Deegan's handwritten notes records:
- *"Personality / Behaviours*
 - *Feedback from others*
 - *Kallidas*
 - *Excel*
 - *Delays in performing tasks*
 - *Busy on other projects*
 - *Leads not aware what working on*
 - *Time Mgt / Prioritising*
 - *Previously reduced number of projects*
 - *Focus on wrong things*
 - *Attitude*
 - *Refuses to attend meetings*
 - *Declines help / support*

- *Doesn't respect authority*

*Some good feedback on quality of experiments, still delays + refusals
Deterioration over time”.*

36. On 20 December 2022 Ms Zucchelli had a follow up meeting with Dr Macown, Ms Kerby and Mr Deegan regarding the proposed PIP timetable and objectives: **pg 1235**. Mr Deegan’s handwritten notes record:

“Review examples provided

Send examples of PIP objective (AD) [Mr Deegan]

Ely/Rhys [Ms Zucchelli and Ms Macown] provide mtg dates

2 x catchup 2/c 9 Jan 23

Ely provide PIP 1st meeting

1 x wk 16 Jan 23”.

Mr Rossi disputed that the meetings on the 16 and 20 December 2022 took place and challenged the authenticity of the notes taken. He stated that the notes were not uploaded onto Kallidus; they were handwritten and had only been disclosed to him shortly before this hearing. I have heard from Dr Zucchelli who attended these meeting and confirmed their content. I considered her to be a credible witness who has no reason to fabricate evidence against Mr Rossi. Further the contents of the notes reflects other contemporaneous documentation: the first reflects the concerns that Dr Zucchelli recorded in her 2 December 2022 email and the written feedback subsequently received. The first meeting follows on from the decision on the 1 December 2022 to move to a more formal process and was referred to in the follow up email of 7 December 2022. The second meeting clearly follows on from the first meeting. I accept that Mr Rossi was unaware of these discussions at the time.

37. On 4 January 2023 Mr Rossi sent a further email to Ms Seidel asking for a “*point to point explanation of all the activities of the Lumina Spark session in Catapult*”? **pgs 581–582**.
38. On 11 January 2023 Ms Seidel responded stating that a point-by-point explanation would defeat the purpose of the training and that she was “*now keen on having a conversation to identify your core concerns and address them. Please let me know when it is convenient for you*”: **pg 581**. Mr Rossi did not respond to this offer.
39. On 12 January 2023 Dr Zucchelli informed Mr Rossi that he should expect an invitation to an informal meeting regarding his performance (**issue 7.1**). Mr Rossi’s evidence was that Dr Zucchelli appeared to be unclear as to what the meeting was about. I find that Dr Zucchelli did come across as evasive, since she had been told by HR not to go into detail about what was to be discussed at the PIP meeting and Mr Rossi was asking questions about the meeting that she did not feel she should answer. Following this conversation Dr Zucchelli emailed Mr Deegan stating, “*I have spoken to Francesco so he is expecting to receive the e-mail*”: **pg 444**.

40. HR then emailed Mr Rossi and sent a Teams invite to attend a meeting (**issue 7.2**): **pg 443**. The e-mail stated: *"As discussed with your line manager today a formal invitation letter will shortly be uploaded to your Cascade profile with further details"*. It was not disputed that the teams invite did not specify the purpose of the meeting. The formal invitation letter dated 12 January 2023 was headed "Stage 1 Performance Review Meeting" and invited Mr Rossi to attend an *"informal performance meeting on the stage one of the company's performance improvement policy.... The purpose of this meeting is to discuss concerns regarding your performance"*. Mr Rossi was informed of the date and time of the meeting, who would attend and the possible outcomes. He was also provided with a copy of the PIP policy: **pg 445. (issue 7.3)**.
41. On 13 January 2023 Mr Rossi responded to Ms Seidel's email about Lumina Spark: **pg 1236 (issue 6.1.2)** stating:

*"Honestly not knowing the structure of the training makes it more a prestige game than a training, and it is a lack of transparency from my point of view. Anyway, showing the profile to other people in the room, with or without telling it in advance and asking them to guess the profile, for me is more than enough to withdraw from the course.
I ask to be immediately removed from the Lumina database and to be removed from the training (Lumina build).*
42. On 16 January 2023 Ms Seidel forwarded Mr Rossi's correspondence concerning Lumina Spark to Dr Zucchelli for information: **pg 1236**.
43. On 18 January 2023 Ms Seidel informed Mr Rossi that Lumina Learning had removed his data from their systems: **pg 580**
44. On 19 January 2023 Mr Rossi attended the Stage 1 PIP meeting with Dr Zucchelli and Mr Deegan: **pgs 457–532 (issue 7.4)**. During the meeting Dr Zucchelli stated with reference to Mr Rossi's refusal to attend the meeting with Dr Sweeney: *"In this example, my concern is the lack of willingness to find an alternative date to work for both of you, instead of proposing another day you simply declined the invitation"*. Mr Rossi is told that he should have sent an email such as *"I can't attend, but alternatively I can attend on...."*. He responded positively stating *"that is what I will do"* (although he also says that others do not do so): **pg 461**. Later in the same meeting Dr Zucchelli said: *"....if you don't communicate these to people, they may become frustrated. Trying to explain better and communicate, and also trying to understand the expectations of others from you. If others want you to attend in person, but you reply via an email, it doesn't meet their needs. And that goes back again to communication"*: **pg 462**. During a discussion about respecting hierarchies, a specific example was referred to where Mr Rossi had approached a project manager when he had received no response from their team leader and failed to copy in the team leader when making that approach. Again during the discussion Dr Zucchelli referred to this as *"about communicating better and engaging better with others"*: **pg 463**. Mr Rossi responded *"this happened once. We discussed it at the time, and I don't do this now"*.

45. On 17 February 2023 Mr Rossi was provided with a document entitled “Summary of Perform Concerns”: **pgs 543-546 (issue 7.5)**. This identified performance concerns under the following headings:

*“1) Prioritising work unilaterally instead of in agreement with project leads
2) Not demonstrating required adaptability and agility to change priorities and manage tasks in dynamic and matrixed environment
3) Failure to make reasonable efforts to follow the instructions of senior project team members
4) Not respecting the hierarchy of the organisation
5) Not engaging constructively with senior stakeholders to discuss and find solutions to issues
6) Not providing clear and timely communication of progress including expected delays and deviations from allocated resource
7) Planning in too much detail with the result of work being delayed
8) Written work taking longer than acceptable to produce and not being written to the required standard
9) Not taking accountability for, accepting and acting on feedback received.”*

Under each heading examples were provided. A single example could fall under several headings. Of particular relevance, under the first heading the example provided was spending “*spent significant time investigating Bio-rad kit without endorsement from project lead and at expense of completing other work*”. Under the fifth heading, one of the examples provided was “*approach to opting out of Lumina Build Workshop (declines face to face conversation)*”.

The PIP objectives at the end of the document included that Mr Rossi should “*Comply with requests and instructions from senior team members as much as possible*” and “*Where not possible, clearly communicate why and what changes could allow you to comply (i.e. change of time/date, delay or reassignment of other activities, help with other activities)*”.

46. On 20 February 2023 the Respondent cancelled a meeting with Mr Rossi to discuss his development next steps: **pg 547**.
47. On 24 February 2023 Mr Rossi submitted a formal grievance concerning the conduct of the Stage 1 PIP process: **pgs 593–594**. The PIP was suspended.

Mr Rossi complained that:

- 47.1 The stage 1 PIP meeting on 19 January 2023 was not instigated by his line manager, contrary to the PIP Policy and that there had been a lack of transparency about the purpose of the meeting.
- 47.2 The minutes of the meeting on 19 January 2023 were not produced within a specific time frame and did not accurately reflect the meeting.
48. A grievance meeting was initially arranged for 23 March 2023. On 22 March 2023 Mr Rossi asked to be accompanied by Mr Fletcher, his trade union representative, and asked for the meeting to be postponed because Mr Fletcher was not available: **pgs 618–619 (issue 2)**. Ms Joannou (HR Advisor)

responded the same day stating: *"It's not a problem to reschedule the meeting"*. The meeting was rearranged for the 4 April 2023: **pgs 613-614**.

49. On 28 March 2023 Dr Zucchelli conducted the end-of-year appraisal review 2022/2023: **pgs 625–658**. Mr Rossi was again scored 1 ("Below Expectations"). It was noted that he had "solid technical skills and expertise" and that his science was completed to a "good standard". It referred to the PIP process.
50. On 4 April 2023 Mr Rossi attended the grievance investigation meeting with Mr Kelly (grievance investigator) and Ms Joannou. He was accompanied by Mr Fletcher: **pgs 685–757**.
51. On 5-6 April 2023 Mr Kelly conducted grievance investigation interviews with Mr Deegan and Ms Zucchelli: **pgs 759–766, 773-780**.
52. On 15 May 2023 Mr Kelly completed his grievance investigation report. Mr Rossi's grievance was partially upheld in that it held that Dr Zucchelli should have been clearer about possible formal PIP stages; the complaint about the minutes was not upheld: **pgs 801-807**. The factual findings included:

"(2) FR [Mr Rossi] is not aware of the impact that their behaviour has and seems very regimented with little flexibility when asked to do things that fall outside of what they expect to do. The 'catapult team spirit' where we all help each other out doesn't appear to be there"...

(3) The two-way communication could have been better, messaging isn't always clear and then probably not understood.

(4) Relationships with senior colleagues in TPI and FR has broken down and needs to be addressed".

It recommended that:

"FR [Mr Rossi] would benefit from undergoing a PDP [professional development plan] to address their lack of awareness, how their actions affect others and how then they might be perceived by others. An introduction to emotional intelligence might be useful. If after 6 months (or mid-year appraisal) there is no improvement, I would then recommend starting another PIP following the process very carefully!"

53. On 7 June 2023 Mr Rossi requested extra resources due to workload pressures: **pg 814**
54. On 9 June 2023 Ms Kerby emailed Ms Gaston-Penny stating: **pg 832**

"Please can you let me know when the grievance that Francesco raised will be resolved. At the moment we have the process to address his underperformance on hold and, as we have not resolved any of the concerns raised by colleagues, he is significantly under resourced – team members refuse to work with him and projects are not willing to take him on as his work is of insufficient quality and they wont risk precious samples. Given our resourcing constraints I really need to progress the performance process to resolve this issue".

55. The same day Mr Rossi was provided with the grievance outcome letter: **pgs 829–831**.
56. On 16 June 2023 Mr Rossi lodged an appeal against the grievance outcome: **pgs 833–840**.
57. On 20 June 2023 Mr Rossi emailed Ms Gaston-Penny requesting that he be accompanied at the grievance meeting: **pg 841 (issue 2)**.
58. On 23 June 2023 Ms Gaston-Penny invited Mr Rossi to a grievance appeal meeting on 29 June 2023: **pg 842**. He was informed of his right to be accompanied. Ms Gaston-Penny contacted Mr Johnson (Chief Strategy and Impact Officer) and asked him to conduct the grievance appeal and then look at Mr Rossi's overall performance and conduct "with a view to dismissal". He was informed that "time was of the essence" because Mr Rossi was approaching two years' continuous service.
59. On 26 June 2023 Mr Rossi requested that the meeting be rescheduled because his trade union representative was unavailable and asked for the meeting to be arranged on a date from 7 July 2023: **pgs 848 (issue 2)**.
60. On 28–29 June 2023 Ms Kerby sent Ms Gaston-Penny a detailed account of Mr Rossi's performance and conduct concerns: **pgs 856–857**. The concerns that she raised included:
 - 60.1 Overrunning on timelines and project costs, with reference to a "recent" example where Mr Rossi time sheeted nine days on a project that should have taken 3-4 days. This was in June 2023.
 - 60.2 "on a number occasions" refusing to meet with project leads and senior managers.
 - 60.3 Obtaining a test kit and performing preliminary experiments without approval.
 - 60.4 Taking up significant time in meetings and being disruptive to the team atmosphere.

She stated that project leads were refusing to work with Mr Rossi and *that "the cost to our business and reputational risk is too high to continue"*.

61. On 29 June 2023 Ms Gaston-Penny confirmed the appeal meeting was to be rescheduled stating: **pg 855**,

"Regrettably we are unable to accommodate your request due to statutory requirements that a rescheduled meeting is held within five days of the original meeting. Therefore, we will be holding your Appeal Meeting at the revised time of Tuesday 4th July 2022..."

Mr Rossi was informed that, if he did not attend, the meeting would take place in his absence. Mr Rossi responded objecting to the new date (because it was

one his union representative could not attend) and pointing out that the statutory requirement was five working days not five days: **pg 858 (issue 2)**.

62. On 28 June 2023 HR provided Mr Johnson with two separate folders for his consideration: one for the grievance and one for the disciplinary. The evidence for the disciplinary meeting about Mr Rossi's performance comprised the grievance, PIP, Ms Kerby's emails of 9 June and 28/29 June 2023, the appraisal history and change of line manager. In evidence Mr Johnson admitted that he accepted the information provided at face value since he did not have time to investigate the allegations.
63. On 30 June 2023 Ms Gaston-Penny responded to Mr Rossi's email and informed him that the rescheduled meeting would be going ahead as planned, and stated: **pg 871**

"We have agreed that you may have in attendance with you a trade union representative from your trade union. It is however not our responsibility to organise this for you. If you are unable to arrange this, you are also entitled as an alternative to be accompanied by a work colleague instead."

Ms Gaston-Penny also emailed Mr Johnson and informed him that she had confirmed that the rescheduled grievance appeal meeting would go ahead as planned: **pg AD1 2**

64. On 3 July 2023 Mr Johnson prepared a note setting out what he was going to say to Mr Rossi about his performance and conduct which concluded with the following: **pg 868**.

"We have determined that based on the above points, collectively this amounts to gross misconduct of such a serious and fundamental nature that it breaches our contractual relationship. You are being dismissed with immediate effect, without notice or pay in lieu of notice, and you will now be directly escorted from the building".

65. The same day Mr Rossi wrote a lengthy email to Mr Johnson setting out his reasons as to why the grievance appeal meeting should be postponed to enable his union representative to accompany him: **pg 847 (issue 2)**. Mr Johnson forwarded this to Ms Gaston-Penny for information stating:

"I do not believe there is anything here that materially changes the situation for tomorrow. However I suggested we have a quick catch up tomorrow to quickly discuss".

66. On 4 July 2023 Mr Rossi did not attend the grievance appeal meeting and Mr Johnson proceeded to hold it in his absence: **pgs 878-879**. Following the conclusion of that meeting Mr Rossi was asked to attend a further meeting with Mr Johnson and Ms Gaston-Penny: **pgs 879-881**. On attending, Mr Rossi was informed that it was a disciplinary meeting, that his conduct amounted to gross misconduct and that he was being dismissed with immediate effect, without notice or payment in lieu of notice. Mr Rossi was escorted from the building:

pgs 880-881, 884-885 (issues 3 and 21). The reasons for the dismissal, as set out in the dismissal outcome letter, were identified as:

- 66.1 *“[O]n-going insubordination, where you have continually and deliberately ignored reasonable requests from senior members of staff, including disrupting team meetings, to the point where Project Leads refuse to have you working on their teams.*
- 66.2 *Instigating “alternative methods of investigation, including performing preliminary experiments that were out of project scope whilst charging these against projects without approval, causing increased costs to projects and the potential to damage the Company’s reputation”.*
- 66.3 *“[D]eliberate disregard of Company policy and procedures, including using an obstructive approach and lack of engagement in relation to the Performance Improvement Plan” and*
- 66.4 *“[R]epeatedly and with intent, also postponed or delayed procedural meetings when it would be reasonable to expect that your level of workload and other commitments would have enabled you to make those meetings a priority”.*
- 67. During the meeting Mr Johnson said to Mr Rossi the following (or words to that effect):

“You have shown deliberate disregard of Company policy and procedures, including using an obstructive approach and lack of engagement in relation to the performance improvement plan which was instigated with a genuine intent to support you to achieve the appropriate levels of performance expected by the company for an employee of your role level” (issue 7.6).
- 68. On 11 July 2023 Mr Rossi was informed that his grievance appeal had been rejected: **pgs 903-905**. Mr Rossi submitted an appeal against dismissal: **pgs 906-915**.
- 69. On 31 July 2023 Mr Rossi attended a dismissal appeal meeting held before Mr Brady (Chief Financial Officer) and Ms Doody (HR Consultant). He was accompanied by Mr Fletcher: **pgs 931-934**.
- 70. On 9 August 2023 Mr Rossi was informed that his dismissal was upheld: **pgs 947-948**.
- 71. Early conciliation started on 20 September 2023 and ended on 1 November 2023. The claim form was presented on 30 November 2023.

THE LAW

Automatic unfair dismissal: Right to be accompanied

72. Section 10(1) and 10(2A) of the Employment Relations Act 1999 (ERA 1999), provides that an employer must permit a worker to be accompanied where a worker is required or invited by his employer to attend a disciplinary or grievance hearing and reasonably requests to be accompanied at that hearing. Under Section 10(4) and (5), if the worker's companion is not available at the time proposed for the hearing by the employer, and the worker proposes an alternative time, the employer must postpone the hearing. This is only if the alternative time is reasonable and falls before the end of the period of five working days beginning with the first working day after the day proposed by the employer.
73. Section 12(3) provides that a worker is unfairly dismissed "*if the reason (or, if more than one, the principal reason) for the dismissal*" is that he "*exercised or sought to exercise*" the right to be accompanied under sections 10(2A) and 10(4).

Protected disclosure

74. Section 43 of the Employment Rights Act 1996 (ERA 1996), provides that a protected disclosure must satisfy two conditions:
- (1) it must be a disclosure under s. 43B(1); and
 - (2) it must be made to a specified person/ body which includes the worker's employer (s. 43C(1)(a))
75. The definition of a protected disclosure under s. 43B (1), requires consideration of five elements:
- (1) there must be a disclosure of "*information*";
 - (2) the worker must subjectively believe that the disclosure is in the public interest;
 - (3) that belief must be objectively reasonable;
 - (4) the worker must subjectively believe that the disclosure "*tends to show*" one or more of the specified wrongdoings; and
 - (5) that belief must be objectively reasonable.
76. The specified wrongdoings under s. 43B(1) are that:
- (a) a criminal offence had been, was being or was likely to be committed;
 - (b) a person had failed, was failing or was likely to fail to comply with any legal obligation;
 - (c) a miscarriage of justice had occurred, was occurring or was likely to occur;
 - (d) the health or safety of any individual had been, was being or was likely to be endangered;
 - (e) the environment had been, was being or was likely to be damaged;
 - (f) information tending to show any of these things had been, was being or was likely to be deliberately concealed."

77. A disclosure of information must have sufficient factual content and specificity such as is capable of tending to show a specified wrongdoing and should be assessed in the light of the context in which it is made: **Kilraine v London Borough of Wandsworth** [2018] ICR 1850 (CA). Two or more communications can be read together; it is a question of fact for the tribunal whether to do so in any particular case: **Norbrook Laboratories (GB) Ltd v Shaw** [2014] ICR 540 (EAT). The factual accuracy of the disclosure is relevant to determining whether a claimant had a reasonable belief that the disclosure tended to show a relevant wrongdoing: **Darnton v University of Surrey** [2003] ICR 615.
78. Whether a disclosure has been made in the public interest will depend on the circumstances of the case: **Chesterton Global Ltd v Nurmohamed** [2018] ICR 731 (CA). The essential point is that the disclosure has to serve a wider interest than the private or personal interest of the whistleblower.

Detriment

79. Under section 47B of the ERA 1996 a worker has the right not to be subject to any detriment by “any act, or any deliberate failure to act” by an employer done on the grounds that he had made a protected disclosure.
80. Detriment means some form of disadvantage, to be assessed from the viewpoint of a reasonable worker in all the circumstances: **Shamoon v Chief Constable of the Royal Ulster Constabulary** [2003] ICR 337 (HL). An unjustified sense of grievance cannot amount to a detriment.
81. Section 47B is infringed if the protected disclosure materially (i.e. more than trivially) influences the employer’s treatment of the worker: **Fecitt and Ors v NHS Manchester (Public Concern at Work intervening)** [2012] ICR 372 (CA). This requires an analysis of the mental processes (conscious or unconscious) of the relevant individuals responsible for the acts or failures to act: **Chatterjee v Newcastle Upon Tyne Hospitals NHS Trust** (UKEAT/0047/19/BA).
82. The burden of proof is on the employee to show that they made a protected disclosure and suffered a detriment. The employer then has the burden of proving the reason for the treatment: section 48(2) of the ERA 1996.

Wrongful dismissal

83. Where an employer terminates the contract the employee is entitled to notice. In Mr Rossi’s case the amount of notice is expressly stated in the contract of employment. An employer is only entitled to terminate a contract without notice if there has been a repudiatory breach of the contract by the employee. In order for a breach to be repudiatory it need not be intentional but must be sufficiently serious to undermine or be seriously inconsistent or incompatible with the employer’s business (often referred to as undermining the relationship of trust and confidence). A series of acts may cumulatively amount to a repudiatory breach even where no individual act would necessarily do so: **Mbubaegbu v Homerton University Hospital NHS Foundation Trust** (UKEAT/0218/17).

84. The tribunal must assess the evidence objectively and reach its own decision as to what occurred and the seriousness of the employee's conduct. It is not enough for an employer to prove (as for unfair dismissal) that it had a reasonable belief that the employee was guilty of gross misconduct.
85. Persistent and deliberate refusal to comply with reasonable management instructions may amount to gross misconduct and / or undermine the relationship of trust and confidence justifying summary dismissal: **Petrofac Offshore Management Ltd v Wilson** (UKEATS/003/11/B1).

DISCUSSION AND CONCLUSION

AUTOMATIC UNFAIR DISMISSAL (ASSERTING A STATUTORY RIGHT)

Did Mr Rossi request to be accompanied at a grievance meeting on 22 March, 16 June, 20 June, 26 June, 29 June, 3 July and / or 4 July 2023 (issues 1 and 2)?

86. In relation to the requests made, I found as follows:
- 86.1 22 March 2023 request: In evidence Mr Rossi accepted that his request to be accompanied at the grievance meeting was granted. He withdrew this complaint.
- 86.2 16 June 2023 request: Mr Rossi did not request to be accompanied at the grievance appeal meeting in his grievance appeal.
- 86.3 20 June 2023 request: I accept that Mr Rossi requested that he be accompanied at the grievance appeal meeting.
- 86.4 26 June 2023, 29 June 2023 and 3 July 2023 requests: Mr Rossi did not request to be accompanied but rather requested that the meeting be postponed because his union representative was unavailable. Mr Rossi is correct that the letter should have said "working days" not calendar days, however the statutory provision is that a meeting should take place within that time period, whereas the date he was asking for fell outside that time period.
- 86.5 4 July 2023 request: There was no evidence that Mr Rossi requested to be accompanied at the grievance appeal meeting or that he made a request for the meeting to be postponed. He did not attend the meeting and I was not referred to any request made on that day.

If so, was this the sole or principal reason for dismissal?

87. Mr Rossi raises a number of procedural concerns about the manner in which he was dismissed. He was given no advance warning, there was no investigation, he was not given permission to respond to the allegations and he was dismissed on the spot. These would have been strong arguments for an unfair dismissal claim, however he does not have the requisite two years' service so he cannot bring that claim.

88. Instead, Mr Rossi's case is that the reason he was dismissed was because he requested to be accompanied at the grievance appeal meeting. Alternatively that it was for a reason connected with that request, namely his repeated requests for postponement to enable his union representative to accompany him and / or that Mr Johnson summarily dismissed him as a reaction to him not attending the grievance appeal meeting. Mr Rossi's case relies on the premise that the decision to dismiss was made on the 4 July 2023, i.e. after he made his various requests. Mr Johnson says that he made the decision to dismiss on 30 July 2023, in fact I find that the decision to dismiss Mr Rossi was made on 23 July 2023. This is when HR asked Mr Johnson to conduct not just the grievance appeal meeting but also the dismissal meeting. The decision may have been confirmed on 30 July 2023, following Mr Johnson's review of the files, but that was always the direction of travel.
89. Contrary to Mr Rossi's case I have found that there was only one actual request to be accompanied (on 20 June 2023). Even if the later requests for postponement could be construed as a request to be accompanied, these postdated the decision made on 23 June 2023 to dismiss Mr Rossi.
90. In any event, I consider that Mr Johnson in evidence was candid as to the reason the dismissal took place when it did: namely that there were ongoing performance concerns and that Mr Rossi needed to be summarily dismissed in order to avoid him gaining the right to claim unfair dismissal. I do not accept that what the Respondent did was fair but I do not consider that the reason was anything to do with either Mr Rossi's request to be accompanied at the grievance appeal meeting on 20 June 2023 or his subsequent requests for postponement on 26 June 2023, 29 June 2023 and 3 July 2023. In reaching this conclusion I took into account that:
- 90.1 The Respondent had permitted Mr Rossi to be accompanied at the grievance meeting on in March 2023.
- 90.2 The Respondent had informed Mr Rossi of his right to be accompanied in the initial invite on 23 June and again on 29 June 2023. Suggesting that they had no objection to him being accompanied.
- 90.3 Dismissal was already on the cards by 23 June 2023. Whilst I accept that was after the first request on 20 June 2023 there is nothing in Ms Gaston-Penny's response to that request to suggest that she was concerned about it. I consider that the reason why the Respondent decided to move to dismissal at that point was Mr Rossi's decision to appeal the grievance on 16 June 2023. This meant that the PIP would once again have to be put on hold.
- 90.4 The reason why the Respondent was not as accommodating about rearranging the grievance appeal meeting to a date of Mr Rossi's convenience (as it had been prepared to do for the grievance meeting) was because by this date "time was of the essence" and they were keen to dismiss Mr Rossi before he gained the right to claim unfair dismissal.

- 90.5 There was considerable evidence to support the Respondent's concerns about Mr Rossi's performance. Whilst for reasons set out below I do not consider that the level of Mr Rossi's performance was sufficiently poor to constitute gross misconduct, I accept that the concerns raised were genuine. Further that under pressure of time Mr Johnson was prepared to accept the evidence provided by Ms Gaston-Penny at face value and to categorise it as gross misconduct in order to justify dismissal without notice. He had been told by Ms Gaston-Penny that if Mr Rossi was to be dismissed he needed to be dismissed by mid-July (which is when he would have gained 2 years' service). Given the performance concerns before Mr Johnson, he was faced with a situation of entering into a potentially lengthy PIP or disciplinary process or using the short window available to summarily dismiss Mr Rossi before he gained any unfair dismissal rights. I find that this was the reason that Mr Rossi was dismissed, and that it had nothing to do with him requesting that he be accompanied at the grievance appeal meeting.

PROTECTED DISCLOSURES

91. The only statutory wrongdoing that I have considered is that of a breach of a legal obligation. This is because Mr Rossi adduced no evidence that he had made a disclosure of any criminal wrongdoing, miscarriage of justice, health and safety, damage to the environment or deliberate concealment.

On 19 October 2022 did Mr Rossi disclose to HR that he considered there to be a breach of GDPR by having to provide his personal data while taking part in a mandatory course called Lumina Spark which would then be shared with others (issue 6.1.1)

92. I find that Mr Rossi's email of 19 October 2022 contained sufficient factual content to be a disclosure of information. He referred to the Lumina training course which included the obtaining and circulation of participants' personal information in the form of a splash profile. He specifically stated that he did not think it was legitimate to acquire and store data in this way.
93. I consider that Mr Rossi did believe that the disclosure tended to show a person had failed, was failing or was likely to fail to comply with a legal obligation, since he referred to the legitimacy of acquiring and storing personal data, and at a later date sought advice from Liberty. The fact that he did not refer to GDPR does not in my view mean that he did not believe that it was a data protection breach. Further I consider his belief was reasonable. His correspondence with Liberty confirmed that Lumina may have been acting unlawfully if the data was obtained without proper consent. It is not necessary for me to determine whether or not Lumina were actually acting unlawfully, it is sufficient that Mr Rossi believed that they were and that the consent that they had obtained prior to the course was insufficient to cover the distribution of a personal information during the course.

94. I also consider that Mr Rossi believed the disclosure of information was made in the public interest. In his email he not only asked for his data to be removed and withdrew his consent, but also requested that his colleagues be informed about how their personal data was treated before the course commenced. His disclosure affected more than just himself, and there is a public interest in how companies use personal data. I consider that his belief was reasonable in that it concerned the collection of sensitive personal data to develop an individual's psychological profile, which was then distributed to the other participants in the training course to guess who it was. It was potentially exposing and humiliating.

On 13 January 2023 did Mr Rossi disclose to Ms Seidel that he considered there had been a breach of GDPR by having to provide his personal data while taking part in a mandatory course called Lumina Spark which would then be shared with others.(issue 6.1.2)

95. I did not consider that this email was a disclosure of information (even read together with the previous disclosure). Mr Rossi merely requested that his profile be removed from the Lumina database and from the training.
96. I do not consider that Mr Rossi reasonably believed that this email tended to show one or more of the statutory wrongdoings nor that it was in the public interest. By this point Mr Rossi had been informed that his participation in the course was optional and that he could withdraw from the course and indeed that is what he did.

Protected disclosure

97. I consider that the qualifying disclosures were protected disclosures because they were made to Mr Rossi's employer.

DETRIMENTS

Was Mr Rossi subjected to one or more of the following detriments because he had made a protected disclosure?

On 12 January 2023 did Dr Zucchelli verbally tell Mr Rossi that he would be invited to an informal meeting regarding performance (issue 7.1)

98. This was not disputed and I accept that this was a detriment since Mr Rossi was being informed that he was to be invited to a meeting about his performance. I have found that Dr Zucchelli was evasive as to the reason for the meeting since she was acting on advice from HR not to enter into discussion about what would be discussed at the PIP meeting. Mr Rossi interpreted this evasion as being because he had made a protected disclosure.
99. Mr Rossi has wrongly relied on proximity of time of this conversation with his second disclosure. I have not found that this disclosure was a protected disclosure. However even if I had, this disclosure post-dated the detriment since it was made on the 13 January 2022, therefore it could not have caused this detriment. To the extent that Mr Rossi appears to rely on Ms Seidel's email of

11 January 2023, in response to his request for information on 5 January 2023, this not an issue in this case.

100. In relation to the protected disclosure made on 19 October 2022, there is no evidence that the reason Dr Zucchelli informed Mr Rossi about the invite to an informal meeting regarding performance issues had anything to do with this disclosure. Whereas there is evidence of concerns about Mr Rossi's performance, in particular:

100.1 On 29 September 2022 Mr Rossi's performance had been rated "below expectations" during the calibration process for his mid-year appraisal, i.e. before he had made any protected disclosure.

100.2 There was significant evidence that the concerns about Mr Rossi's performance were genuine, as is evidenced by the contents of that appraisal (which refer to difficulties in managing multiple projects as well as communication challenges) and summary of the discussion on the 1 December 2022 (the delivery and performance on projects and attitude).

100.3 There was significant evidence that a decision had been taken to move to a formal process prior to the second disclosure on the 12 January 2023. In particular see Dr Zucchelli's record of the 1 December 2022 meeting which included moving to a formal process, the notes of the meeting on 16 December 2022 to discuss that performance with more senior managers and Mr Deegan (HR) and the notes of the 20 December 2022 meeting to discuss the process to be taken which explicitly referred to the PIP timetable and objectives.

101. I therefore consider that there was overwhelming evidence that the reason why Dr Zucchelli verbally told Mr Rossi that he would be invited to an informal meeting regarding his performance was because he was about to be invited to such a meeting. Further that this meeting had been arranged because of genuine concerns about his performance and was not materially influenced by the protected disclosure made on 19 October 2022.

On 12 January 2023 did HR invite Mr Rossi by e-mail and Teams to attend a meeting without being told the purpose of the meeting (**issue 7.2**).

102. This was not disputed, and again I accept that this was a detriment for the same reasons as above. I agree that Mr Rossi was not informed of the purpose of the meeting in the email or Teams invite, but the email specifically referred to the discussion with his line manager earlier that day. I consider that the email and Teams invite were sent in order to follow up on that discussion and was not materially influenced by the protected disclosure made on 19 October 2022 (or the disclosure made on 13 January 2023) for the same reasons as above.

On 13 January 2023 did HR invite Mr Rossi to a meeting to discuss performance (**issue 7.3**)

103. This allegation is not proven on the facts since I have found that the letter dated 12 January 2023 was sent on that date. Mr Rossi may have received it on the 13 January 2023 but it was not the date that it was drafted or sent. Had it been I would have accepted that it was a detriment for the same reasons as above.
104. Even if I had found that the letter was drafted and sent on the 13 January 2023, it is clear from the surrounding facts that the letter related to events that had occurred on the 12 January 2023 (the discussion with his line manager, email and Teams invite) and merely confirmed what Mr Rossi had been told. In other words, even if I had found that the disclosure made on the 13 January 2023 was a protected disclosure, there is no evidence whatsoever that the invite letter was materially influenced by that disclosure. The mere fact that two things happen at the same time does not mean that they are connected.
105. Further for the sake of completeness there is no evidence that it was materially influenced by the protected disclosure made on 19 October 2022, for the same reasons as above.

On 19 January 2023 did the Respondent instigate a Performance Improvement Plan (PIP) (issue 7.4)

106. This was not disputed, and again I accept that this was a detriment for the same reasons as above.
107. I do not consider that the instigation of the PIP was materially influenced by the protected disclosure made on 19 October 2022 for the same reasons as above.
108. Had I found that the second disclosure, made on 13 January 2023, was a protected disclosure, there is no evidence that the decision to institute a PIP was materially influenced by that disclosure. It is clear that this decision was made on 1 December 2022 when Dr Zucchelli decided to commence a formal process, and the decision on the 20 December 2022 to start work on putting in place a PIP. Therefore the decision pre-dated the second disclosure and could not have been influenced by it.

On 17 February 2023 was Mr Rossi being blamed in the Stage 1 Performance Improvement Plan for opting out of Lumina Build Workshop (issue 7.5)

109. I do not find this allegation proven on the facts. There is no evidence that Mr Rossi was being criticised for his decision to opt out of the workshop. Indeed Mr Rossi had asked to opt out of the Lumina Build Workshop in his email of 19 October 2022 and was informed the same day that he could. On 11 January 2023 Ms Seidel had offered to have a conversation in response to Mr Rossi's request for further information on 5 January 2023. It was his failure to accept this offer to discuss his concerns that was raised at the PIP and it was provided as only one of four examples under the heading "*not engaging constructively with senior stakeholders to discuss and find solutions to issues*".

On 4 July 2023, during the meeting with Mr Johnson, was Mr Rossi told the following: "*You have shown deliberate disregard of Company policy and procedures, including*

using an obstructive approach and lack of engagement in relation to the performance improvement plan which was instigated with a genuine intent to support you to achieve the appropriate levels of performance expected by the company for an employee of your role level” (issue 7.6)

110. Mr Johnson does not dispute that something along these lines was said and that it was a detriment.
111. I do not consider that this detriment was anything to do with the protected disclosure made on 19 October 2022 (or had it been found proven the disclosure made on 13 January 2023). I accept Mr Johnson’s evidence that he was unaware of the disclosure, why should he be, it related to matter that did not concern him and had arisen many months prior to 4 July 2023. Even if he had been aware of the protected disclosure, I do not consider that the comments made on 4 July 2023 was materially influenced by the protected disclosure made on 19 October 2022. For the reasons stated below at the time that this comment was made Mr Johnson was under the impression that Mr Rossi had refused to sign the PIP notes and was not engaging with the PIP process. Whilst I have found that Mr Johnson’s conclusion that Mr Rossi was deliberately disregarding company policy and procedure was wrong, there is no evidence that this error was materially influenced by any protected disclosure that Mr Rossi had made.

WRONGFUL DISMISSAL / NOTICE PAY

112. Mr Rossi was summarily dismissed, that means he was not paid his 3 months’ notice as provided for in his contract.
113. The real issue for me to determine was whether Mr Rossi’s conduct, viewed objectively, based on the evidence before me, singularly or cumulatively was sufficiently serious (by the time of dismissal) to amount to a repudiatory breach of contract (**issue 21**). The Respondent puts its case on the basis of “refusal to comply with reasonable management instructions” or “gross insubordination”.
114. The Respondent submitted that Ms Kerby and Mr Johnson are senior personnel and their opinion as to the impact on the Respondent’s business is relevant and should be given due respect. I am cautious about doing so for the following reasons:
- 114.1 Mr Johnson had to characterise Mr Rossi’s conduct as gross misconduct in order to justify summary dismissal (to avoid him gaining unfair dismissal rights). This pressure potentially could influence how he viewed the performance concerns and I take that into account when assessing the reliability of Mr Johnson’s opinion. I also take into account that Mr Johnson was not a direct witness of fact and did not have the time to conduct any investigation, indeed he had already decided to summarily dismiss Mr Rossi before the disciplinary meeting. Further that I have heard different evidence to that which was before him at the time.

- 114.2 Ms Kerby was also not a direct witness of fact. Further, the reason why Ms Kerby wrote the email of 9 June 2023 was to enquire about the grievance process taking too long and to push for the PIP process to be continued; it was not at that point to suggest that Mr Rossi be dismissed. I accept that the email of 28-29 June 2023 did appear to suggest he be dismissed; but on the evidence before me there was no particular event triggering the change in position (other than the fact that the PIP had again been put on pause because Mr Rossi had appealed the grievance). I accept her evidence that by this point two of Mr Rossi's colleagues were threatening to leave, but consider that was not because of any particular further instance of under-performance or any deterioration in his performance but because from their point of view the Respondent did not appear to be addressing their concerns about Mr Rossi's ongoing poor performance.
115. In terms of the evidence before me regarding Mr Rossi's performance:
- 115.1 There were some positive features: it was accepted that Mr Rossi had "solid technical skills and expertise" and that his science was completed to a "good standard".
- 115.2 There was also objective evidence of poor or under performance and that the concerns raised by Dr Zucchelli and senior colleagues, including delivery, communication, being a team player, were genuine. Mr Rossi had been scored "1" (below expectations) in two appraisals (the mid-year appraisal in September 2022 and end of year appraisal in March 2023) and he had been placed on a PIP in January 2023. I also accept Dr Zucchelli's evidence that the poor performance was continuing and that she found Mr Rossi's behaviour in one to ones increasingly confrontational. Ms Kerby in evidence confirmed that this is what she was hearing from her direct reports, who were Heads of Department.
116. I consider that the evidence of poor performance provided at this hearing justified Mr Rossi being placed on a PIP in January 2023 and the PIP process continuing once the grievance had been determined. The real issue is whether any of those performance concerns singularly or cumulatively amount to a repudiatory breach of contract. My conclusions on the evidence before me was as follows:
- 116.1 Mr Rossi declining the Teams invite to attend the 8 October 2022 with his then line manager to discuss post-calibration feedback: I accept that Mr Rossi declined this invite, however I do not interpret this as an example of gross insubordination. In his email response Mr Rossi explained that he would rather have this discussion with his new line manager. I note that at this point Mr Rossi had requested a new line manager and this had been agreed. Having explained this, the response he received was "Okay". In other words he was not ordered to attend a meeting on 8 October 2022, therefore there was no refusal.

- 116.2 Mr Rossi failing to attend the meeting with Mr Sweeney on 28 November 2022: I accept that Mr Rossi did refuse to attend a meeting arranged by Mr Sweeney, his senior, and that this was also a failure to make reasonable efforts to follow instructions / failure to respect the hierarchy (which is how this incident was defined in the PIP). However, I do not consider this to be a clear example of a deliberate refusal. In terms of assessing the seriousness of Mr Rossi's actions, it seemed to me that there was a potential reason for his declining to attend the meeting (workload pressures). Further Dr Zucchelli was not as clear as she could have been in her responses to Mr Rossi's objections. In her email of 25 November 2022 (a Friday at 4:53pm), she asked him to let her know if he had a clash with other meetings or work. Mr Rossi interpreted this as giving him permission not to go if he was busy (in evidence he stated, "*she said if busy then not go*") and responded, "*still have to finish things for NHSBT*". On Monday morning (the day of the meeting) Dr Zucchelli responded offering to resolve that reason so he could attend, but she never in fact unambiguously stated that he was required to attend. In my view "gross subordination" requires something more than a refusal to attend a meeting in such circumstances.
- 116.3 On 11 January 2023 Mr Rossi declined Ms Seidel's offer to discuss his reasons for opting out of Lumina workshop. In the PIP this was given as an example of Mr Rossi not engaging constructively with senior stakeholders. However, Ms Seidel had merely offered to have a conversation to understand Mr Rossi's concerns, she had not required him to have that conversation. Whilst I consider his failure to respond as not in the spirit of cooperation, it is not something that could be construed as a "gross insubordination".
- 116.4 On 20 February 2023 Mr Rossi declined to attend another meeting to discuss his development next steps: The Respondent relied on this as another example of a refusal to comply with reasonable management instructions, however it was clear from the email that the meeting was cancelled by the Respondent.
- 116.5 PIP concerns 1 (prioritising work unilaterally) and 2 (prioritising and managing tasks): These concerns were not addressed in evidence or submissions.
- 116.6 PIP concern 3 (not following instructions) and 5 (not engaging constructively): The Respondent submitted that the examples provided of Mr Rossi's refusal to attend meetings was seen by the Respondent as "deliberate". Mr Rossi submitted that these issues were viewed as communication problems at the time of the PIP. His view is supported by the PIP objectives which focused not just on a failure to comply with requests from senior personnel but also to clearly communicate his reasons for not complying and offer alternatives. This was also the issue raised by Dr Zucchelli in the PIP meeting. I therefore consider that these were more concerns about Mr Rossi's communication skills

rather than gross insubordination which undermined the relationship of trust and confidence.

- 116.7 PIP concern 4 (not respecting hierarchies): Only one example of not respecting hierarchies was discussed at the PIP meeting and again it was presented as a communication issue rather than insubordination. Further Mr Rossi acknowledged that there had been a discussion at the time and that he had not repeated the conduct. Given the context, I do not consider that this is an example of gross insubordination.
- 116.8 PIP concerns 6 (communication), 7 (planning) and 8 (written work): These were concerns about time management, not providing clear and timely communication of progress, too much planning with work delayed and written work taking too long and the standard of the work provided. I accepted that this was an ongoing concern since Ms Kerby in evidence referred to conversations that she had had with Ms Barreira about the time Mr Rossi took on experiments and the quality of his write ups. This is what she was referring to in her 9 June 2023 email. Mr Rossi in evidence accepted that his report writing could be more concise stating that he had not been trained for it. I noted that the mid-year appraisal had referred to the need for Mr Rossi to be trained in report writing and that on 22 November 2022 Dr Zucchelli had agreed to investigating Mr Rossi attending a writing / language course for non-native English speakers. I heard no evidence that this was done.
- 116.9 That Mr Rossi was conducting unauthorised work: This was in relation to the testing of the Biorad ddPCR kit. Mr Rossi's account in his witness statement was not challenged in cross-examination. Mr Rossi's evidence was that the testing of this kit had been authorised by Ms Bagnati, and Ms Kerby accepted in evidence she was senior to Mr Rossi. I accept that she may not have been the appropriate person to authorise the work Mr Rossi did but, as Ms Kerby conceded in evidence, there was no evidence that Mr Rossi had been informed by Ms Bagnati that he should get permission from the project lead manager first. This is highly relevant because this was referred to by both Ms Kerby and Mr Johnson, yet it appears that the position was more complex. I also took into account that this was a matter pre-dating the drafting of the PIP and that it had not been classified as undertaking unauthorised work at that time but only as an issue of prioritisation under concern 1. This suggested that it may not have been as serious as Ms Kerby and Mr Johnson subsequently believed. Taking all the circumstances into account I do not consider that this was an example of gross insubordination.
- 116.10 That Mr Rossi's conduct impacted on timelines and project costs: This was an ongoing concern (see PIP concerns 6, 7 and 8). The example referred to by Ms Kerby in her email occurred in June 2023 and post-dated the PIP. Ms Kerby was personally aware of the budget overspent because the project went red and was flagged by the finance team in a meeting. Ms Kerby's evidence was that Ms Barreira had reported that

she had budgeted for a project for 4-5 days (which she considered generous since another scientist had taken 2 days to perform the same task) and that Mr Rossi had taken 9 days. Mr Rossi's case was that in June he had requested extra resources. Ms Kerby was not able to comment on whether this was an appropriate request or not. Her evidence was that this was a familiar project format suggesting that it should have been completed in the timescale, however she had only spoken to Ms Barreira and not Mr Rossi. This was the only example explored in evidence. I was not been referred to any documents and have not heard any evidence from Ms Barreira. I accept Ms Kerby's evidence that a project of this nature would normally take five days, however she was not able to comment on this particular project. I note that there were concerns raised in the PIP about the time Mr Rossi took to complete projects, but because the PIP was halted no action plan was put in place to address those concerns. Based on the limited evidence before me I considered that there may well have been mitigating circumstances for the project overrun and in any event the Respondent was aware of the need to provide additional support to Mr Rossi in relation to time management and report writing. I do not consider it an example of gross insubordination.

116.11 That Mr Rossi disregarded company policy and procedure including an obstructive approach to, and lack of engagement with the PIP: Mr Johnson was under the impression that Mr Rossi had refused to sign the PIP notes. In fact Mr Rossi did sign the notes on the 19 May 2023. I accept that there was a delay in Mr Rossi agreeing the notes and that this was only done after the grievance report was produced (therefore the information before Mr Johnson was that Mr Rossi had refused to sign the notes). I was not referred to any other company policies that Mr Rossi had failed to engage with. I took into account that Mr Rossi had attended the PIP meeting and that the PIP was suspended not because Mr Rossi refused to cooperate but because he had submitted a grievance. Therefore I do not consider that the delay in signing the notes was an example of gross insubordination.

116.12 That Mr Rossi had postponed or delay procedural meetings: No evidence was provided under this heading.

117. As stated previously I considered that there were significant performance concerns justifying a PIP. Had Mr Rossi failed to comply with that process then it may well have resulted in his eventual dismissal. However, even cumulatively, I do not consider that the performance concerns by the date of dismissal had reached the high bar of a repudiatory breach of contract (gross misconduct). In particular:

117.1 I have found that some of the concerns that Ms Kerby and Mr Johnson had about Mr Rossi's performance was either not supported on the facts and / or not clear evidence of a "deliberate" refusal to comply with reasonable management instructions.

117.2 I agree with Mr Kelly's assessment in the grievance outcome that there was a lack of awareness on Mr Rossi's side of his impact on others and that his relationship with his senior colleagues needed to be addressed. I note that Mr Kelly considered that this could be addressed by a PDP and only recommended that the PIP be restarted if there was no improvement after 6 months. Whilst this is only an opinion, it suggested that Mr Rossi's conduct was not such as to undermine the relationship of trust and confidence. Had Mr Rossi accepted this outcome then it is unlikely that he would have been dismissed on 4 July 2023. It was his appeal against that decision, which meant a further delay, that led to the decision to dismiss him in order to avoid him gaining employment rights.

118. I therefore found that Mr Rossi had been wrongfully dismissed.

CONCLUSION

119. I concluded that:

119.1 The complaint of automatic unfair dismissal (right to be accompanied) did not succeed and was dismissed.

119.2 The complaint of being subject to detriments on the grounds that Mr Rossi made a protected disclosure did not succeed and was dismissed.

119.3 The complaint for wrongful dismissal (notice pay) succeeded and the matter was to be listed for a remedy hearing if necessary.

This judgment has been approved by:
Employment Judge **Hart**
Date: 30 September 2026

Sent to the parties on:
Date: 3 October 2026

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APPENDIX A: AMENDED LIST OF ISSUES (Liability only)

Automatic unfair dismissal (asserting a statutory right)

1. Did the Claimant reasonably request to be accompanied at a grievance meeting under s.10(4) of the Employment Relations Act 1999 (“**ERA 1999**”) on the following dates set out in issue 2”.
2. The Claimant relies upon the following assertion:
 - 2.1 On 22nd March 2023, 16th June 2023, 20th June 2023, 26th June 2023, 29th June 2023, 3rd July 2023 and 4th July 2023, he asserted his statutory right to be accompanied to a grievance meeting.
3. If so, was this the sole or principal reason for dismissal?

...

Protected disclosure

6. Did the Claimant make one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996? The Tribunal will decide:
 - 6.1 What did the Claimant say or write? When? To whom? The Claimant says made the disclosures on these occasions:
 - 6.1.1 On 19th October 2022 he disclosed to HR that he considered there to be a breach of GDPR by having to provide his personal data while taking part in a mandatory course called Lumina Spark which would then be shared with others.
 - 6.1.2 On 13th January 2023 he disclosed to Jane Seidel that he considered there had been a breach of GDPR by having to provide his personal data while taking part in a mandatory course called Lumina Spark which would then be shared with others.
 - 6.2. Did they disclose information?
 - 6.3. Did they believe the disclosure of information was made in the public interest?
 - 6.4. Was that belief reasonable?
 - 6.5. Did they believe it tended to show that:
 - 6.5.1. a criminal offence had been, was being or was likely to be committed;
 - 6.5.2 a person had failed, was failing or was likely to fail to comply with any legal obligation;
 - 6.5.3 a miscarriage of justice had occurred, was occurring or was likely to occur;
 - 6.5.4. the health or safety of any individual had been, was being or was likely to be endangered;
 - 6.5.5. the environment had been, was being or was likely to be damaged;
 - 6.5.6. information tending to show any of these things had been, was being or was likely to be deliberately concealed.
 - 6.6. The Claimant says he believed the above disclosures tended to show the following:
 - 6.6.1. The disclosure made to HR on 19th October 2022 (see paragraph 6.1.1 above) tended to show that a person had failed, was failing or was likely to fail to comply with any legal obligation;

- 6.6.2. The disclosure made to Jane Seidel on 13th January 2023 (see paragraph 6.1.3 above) was information tending to show that any of the things at paragraphs 6.5.1 to 6.5.6 above had been, was being or was likely to be deliberately concealed.
- 6.6.3. Did the Claimant disclose information which he reasonably believed tended to show that there had been a relevant failure falling within paragraphs (a) to (f) of section 43B(1) of the Employment Rights Act 1996 and was in the public interest to make the disclosure. If so, was this the sole or principal reason for dismissal?
- 6.7. Was that belief reasonable?
- 6.8. If the Claimant made a qualifying disclosure, it was a protected disclosure because it was made to the Claimant's employer.
- 7. Was the Claimant subjected to the following alleged behaviour:
 - 7.1. Eleanor Zucchelli verbally telling him on 12th January 2023 that he would be invited to an informal meeting regarding performance;
 - 7.2. HR on 12th January 2023 inviting him by e-mail and Teams to attend a meeting without being told the purpose of the meeting;
 - 7.3. HR inviting him on 13th January 2023 to a meeting to discuss performance;
 - 7.4. Instigation of a Performance Improvement Plan on 19th January 2023;
 - 7.5. On 17th February 2023 being blamed in the Stage 1 Performance Improvement Plan for opting out of Lumina Build Workshop; and
 - 7.6. During the meeting with Nicholas Johnson on 4th July 2023 being told the following:
"You have shown deliberate disregard of Company policy and procedures, including using an obstructive approach and lack of engagement in relation to the performance improvement plan which was instigated with a genuine intent to support you to achieve the appropriate levels of performance expected by the company for an employee of your role level."
- 8. If so, was such behaviour a detriment?
- 9. If so, was that detriment suffered by the Claimant on the grounds that he made a qualifying disclosure? The Claimant relies on the same disclosure as set out in paragraphs 6.1 and 6.2 above.

...

Wrongful dismissal / Notice pay

- 19. What was the Claimant's notice period?
- 20. Was the Claimant paid for that notice period?
- 21. If not, was the Claimant guilty of gross misconduct? / did the Claimant do something so serious that the Respondent was entitled to dismiss without notice?