EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8002450/2025

Held in Edinburgh on 27, 28, 29, 30 July 2026

Employment Judge McCluskey

S McLaughlin — **Claimant**
In person

Bakkavor Foods Limited — **Respondent**
Represented by:
A Glass
Solicitor

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Tribunal is that:

1. The complaint of automatically unfair dismissal for making protected disclosures is not well founded and is dismissed.

2. The complaint of automatically unfair dismissal for bringing health and safety concerns to the attention of the respondent in accordance with section 100 Employment Rights Act 1996 is not well founded and is dismissed.

3. The complaint of automatically unfair dismissal for asserting breach of a statutory right in accordance with section 104 Employment Rights Act 1996 is not well founded and is dismissed.

4. The complaints of being subjected to detriments for making protected disclosures are not well founded and are dismissed.

REASONS

Introduction & Issues

1. The claimant makes the following complaints: automatically unfair dismissal for making protected disclosures; automatically unfair dismissal for bringing health and safety concerns to the attention of the respondent in accordance with section 100 Employment Rights Act 1996 (ERA); automatically unfair dismissal for asserting breach of a statutory right in accordance with section 104 ERA; and being subjected to detriments for making protected disclosures.

2. A list of the issues to be determined by the Tribunal was agreed by parties at the outset of the final hearing, after discussion with the parties. The agreed list of issues is set out in the Appendix to this judgment. Parties were directed to the list throughout the final hearing.

3. There was a joint file of productions extending to 255 pages. The claimant also produced his own file of productions which was not paginated. There was overlap between the two files. Where the documents referred to were in both files, parties referred to the paginated joint file of productions. The claimant referred to some documents in his own file of documents. The Tribunal explained to parties at the outset of the hearing that it would only consider documents to which it was taken during oral evidence.

4. The claimant gave evidence on his own behalf. Christopher Whittham – Manufacturing Production Manager; Scott Slaney – Section Leader; Graham Paterson – Factory Manager for Material Supplies; and Monika Wielgosz – Time and Attendance Associate gave evidence for the respondent.

Findings in fact

5. The claimant commenced employment with the respondent on 11 May 2025 as a Team Lead. The claimant reported to Lorna Barnes, Section Lead. Scott Slaney was another Section Lead. Ms Barnes and Mr Slaney reported to Mr Whittham - Manufacturing Production Manager.

6. The respondent is a food business. One of the respondent's standard food preparation processes uses vinegar. As a result, there is vinegar vapour. The respondent knows that some employees may be reactive to vinegar vapour in the respondent's workplace. It is not uncommon. The claimant also knew this when his employment started as he had previously worked in the respondent's business.

7. If a staff member reports a possible reaction to vinegar vapour, there is a standard procedure which the respondent follows. The staff member is referred to Occupational Health (OH). Depending on the outcome of the OH referral, the staff member has a fitting for a face mask.

8. On or around 22 May 2025 the claimant told Mr Slaney that he had been working near the vinegar vapour and was feeling short of breath. The claimant's line manager Ms Barnes was not in the workplace that day. Mr Slaney told him a referral would be made to OH. Mr Slaney told Ms Barnes, who was the claimant's line manager, on her return to work and she referred the claimant to OH.

9. The claimant knew that some employees may be reactive to vinegar vapour, that this was not uncommon in the respondent's workplace and that the respondent had a standard procedure for a referral to OH, when he told Mr Slaney on around 22 May 2025 about his possible reaction to vinegar and likewise when he told Mr Whittam on 10 June 2025.

10. The respondent has a health and safety committee. The respondent appoints health and safety representatives. There were health and safety representatives in the department where the claimant worked. Twice a month there is a health and safety committee meeting with the health and safety representatives and the salaried health and safety staff.

11. There are team meetings each day in the department where the claimant works. Health and safety is the standing first item for discussion at each meeting. The claimant attended these meetings.

12. The respondent has two online systems which can be used by staff to immediately report any health and safety concerns. One is tablet based / computerised with easy access close to workstations. It is well known to staff including the claimant that these are available.

13. The respondent's workplace had accessible health and safety representatives, committees and reporting mechanisms. The claimant could have raised any health and safety concerns he may have had through those means. He did not do so.

10 June 2025

14. On 10 June 2025 the claimant and Mr Whittham met. The meeting was a scheduled probation review meeting arranged by the respondent. The claimant had been in post on his probationary period for around 1 month.

15. Fiona Simpson from HR attended as notetaker. She took handwritten summary notes of the meeting.

16. By the time of the meeting the claimant had 5 days of absence since his employment started the previous month.

17. The claimant recorded the reason for his absences on 18 and 19 May 2025 as diarrhoea. These dates came immediately after a weekend when the claimant was not working.

18. The claimant recorded the reason for absences on 25 and 26 May 2025 as cold / flu. These dates came immediately after a weekend when the claimant was not working.

19. The claimant recorded the reason for his absence on 3 June 2025 as coughing.

20. Mr Whittham discussed the claimant's absences with him. Mr Whittham considered that the claimant's attendance was unreliable. He did not know whether the claimant would be at work from one week to the next.

21. The claimant told Mr Whittham he had been working on Table 1 near to Basketwash where vinegar vapour is used on 20 –22 May 2025; he had been feeling short of breath for about 15 minutes before the end of one of those shifts and couldn't get any air; he had since been to his GP who thought that his shortness of breath was probably a combination of his reaction to vinegar vapour and his hay fever; he wasn't sure if Scott [Slaney] had cancelled the OH appointment; his coughing was away now.

22. The claimant did not say that he had had a near asphyxiation episode on 22 May 2025, as asserted in the list of issues.

23. The claimant did not say that no PPE was provided during a symptomatic period, as asserted in the list of issues.

24. The claimant did not say that he was not removed from a vapour-exposed workstation, as asserted in the list of issues.

25. The claimant did not say that he was Instructed to continue working in the affected area, as asserted in the list of issues.

26. The claimant did not say that no incident report was completed, as asserted in the list of issues.

27. The claimant did not say that there was no first aider assessment, as asserted in the list of issues.

28. The claimant did not say that his health and safety or the health and safety of others was being endangered or breached or anything to that effect, as asserted in the list of issues.

29. The claimant did not make an allegation that any of his statutory rights had been infringed or anything to that effect, as asserted in the list of issues.

30. Mr Whittham wanted to dismiss the claimant at that meeting because of his unreliable attendance. The respondent's HR representative persuaded him to give the claimant another chance, to allow more time to assess his performance. It was felt that due to his large number of absences it had not been possible to assess his performance.

8 July 2025

31. On 8 July 2025 the claimant attended a second scheduled probationary review meeting with Mr Whittham. Fiona Simpson from HR attended as notetaker. She took handwritten summary notes of the meeting.

32. Mr Whittham raised his concerns about the claimant's performance with him. Mr Whittham said the claimant was struggling with accuracy in his paperwork. He said the claimant was making "schoolboy errors". He said the claimant was making mistakes with the completion tracker. Various Team Leads and Section Leads, including Ms Barnes and Mr Slaney had told Mr Whittham about the claimant's mistakes.

33. Due to the concerns which Mr Whittham had about the claimant's performance he decided to extend the claimant's probation period for a further 4 weeks.

5 August 2025

34. On 5 August 2025 the claimant attended a third scheduled probationary review meeting with Mr Whittham. Fiona Simpson from HR attended as notetaker. She took handwritten summary notes of the meeting.

35. Mr Whittham raised his concerns about the claimant's attendance and time keeping. He raised that since the last meeting the claimant had had a further period of absence on 24 July 2025. He raised that there were occasions when the claimant had been late for work and left early.

36. Mr Whittham raised his concerns about the claimant's performance with him. He said there were concerns about his accuracy with paperwork; concerns that he was a "lone wolf" and doing his own thing; concerns that he was not

leading his team; concerns that he had left the factory early during working hours without telling anyone; and concerns that he was taking extended breaks.

37. Various Team Leads and Section Leads, including Ms Barnes and Mr Slaney and Production Managers had all told Mr Whittham of their concerns about the claimant.

38. Due to the concerns which Mr Whittham had about the claimant he decided to extend the claimant's probation period for a further 4 weeks.

9 September 2025

39. On 9 September 2025 the claimant attended a fourth scheduled probationary review meeting with Mr Whittham. Leeanne Brown from HR attended as notetaker. She prepared typewritten notes of the meeting.

40. In the meeting Mr Whittham raised his concerns about the claimant's performance. He said he had obtained feedback on the claimant's performance from Production Managers, Team Leads and others. He said he was relying on that feedback as he had not been in the business for some of the last few weeks.

41. Mr Whittham said there were concerns that the claimant was taking extended breaks; concerns about events on 31 August 2025 where the claimant finished work early, leaving his team without a Team Lead; and concerns about the quality and accuracy of the claimant's work. Mr Whittham said that the purpose of the meeting was to assess the claimant's probation period and reach a decision. There was a short adjournment for Mr Whittham to reach a decision. The meeting resumed.

42. Mr Whittam said he remained concerned that the claimant was taking extended breaks. He remained concerned that the claimant had left work early, leaving his team without a Team Lead. He remained concerned about the quality and accuracy of the claimant's work. Mr Whittham told the claimant "*My decision today is Sean that we are not going to retain you*". He told the claimant that he had a right of appeal against the decision. Mr Whittam said he would receive a letter in a few days with his right to appeal. He said "*You will not be processed as a leaver until you have had your chance to appeal should you wish to do so*".

43. The claimant's employment ended on 9 September 2025.

Post 9 September 2025

44. On 12 September 2025 Mr Whittham wrote to the claimant. The letter referred to the probationary review meetings in June, July and August 2025. The letter said "*We met with you again on the 9 September 2025 following the completion of your probationary period and after careful consideration of the above and as discussed with you, I regret to inform you that I have concluded that you have not demonstrated sufficient improvement in the areas required for the role. You will receive one week's pay in lieu of notice as well as any outstanding holiday pay and any wages due to you.....If you consider that this decision is unfair, you may appeal against it to Graham Paterson...*". The claimant received a payment in lieu of his one week's notice.

45. On 22 September 2025 the claimant appealed against the dismissal decision reached by Mr Whittham.

46. On 2 October 2025 an appeal hearing took place with Graham Paterson. Mitcheal Jamu from HR attended as notetaker and prepared typewritten notes of the meeting. The meeting notes recorded that the claimant opened the meeting by saying "*I have a few reasons for my decision to appeal against the dismissal I received on 9/09/2025*".

47. Mr Paterson considered what the claimant said in the appeal hearing and the contents of his written grounds of appeal sent on 22 September 2025. On 7 October 2025 Mr Paterson wrote to the claimant. His appeal against dismissal was not upheld.

48. The respondent does not process payments in lieu of notice and payments for holidays accrued but untaken on termination of employment until the end of the appeal process against dismissal. This is because if payments had already been made and the dismissal of any employee was overturned on appeal it may be difficult to recover these sums from the employee.

49. The claimant did not do any work for the respondent after 9 September 2025. He was entitled to one week's notice or pay in lieu of notice. He was paid one week's pay in lieu of notice.

3 October 2025 emails

50. On 3 October 2025 the claimant received a text message from another employee called Destiny Sneddon. She is a friend of the claimant. She worked in a different department to the claimant. Ms Sneddon's mother, called Gemma, also works for the respondent. Ms Sneddon said that her mother had

told her that there were two vacancies in the respondent's technical team and that her mother would "happily interview the claimant if he applied.

51. On 3 October 2025 at 16.16 the claimant sent an email to Ms Brown in HR. He asked if he could be interviewed for the position in Gemma's team

52. On 3 October 2025 at 20.30 the claimant received an email from the respondent's careers administration email address. It notified the claimant that his internal profile had been converted to an external candidate profile.

53. On 7 October 2025 Ms Brown replied to the claimant's email of 3 October 2025. She said "Hi Sean, If we have an external vacancy, of course you can apply". The claimant did not make any such application.

Observations on the evidence

54. This judgment does not seek to address every point upon which the parties gave evidence. It only deals with the points which are relevant to the issues the Tribunal must consider, to decide if the claim succeeds or fails. If the Tribunal has not mentioned a particular point, it does not mean that it has overlooked it. It is simply because it is not relevant to the issues.

55. The standard of proof is on a balance of probabilities. This means that if the Tribunal considers that, on the evidence, the occurrence of an event was more likely than not, then it is satisfied that the event in fact occurred. Likewise, if it considers that, on the evidence, an event's occurrence was more likely not to have occurred, then it is satisfied that it did not occur.

56. There was a dispute in the evidence about what the claimant said to Mr Whittham in the scheduled probation review meeting on 10 June 2025.

57. The claimant said near the beginning of his evidence in chief that Ms Simpson's notes of the meeting were "precisely what was said at the meeting". The claimant then modified his evidence to say that the notes "captured" what had been said. Thereafter the claimant's evidence in chief significantly contradicted his earlier position that the notes were either precisely what was said or captured what had been said.

58. The Tribunal asked the claimant to recall as best he could precisely what words he had used in the meeting on 10 June 2025 when making what he now relied upon as protected disclosure. The claimant's evidence was that he had said the following words "There have been health and safety issues when handling my personal safety; these failings extended beyond just me as there were failings in procedures; the failings had come as a result of Scott's

Slaney's handling of the incidents; I was not referred to OH by Scott as instructed by OH; I was made to work in the exact same exposed area whilst symptomatic; for an extended period I did not receive any PPE whilst being exposed in that risk area; the dates that occurred were 20 – 22 May 2025; the symptoms I was experiencing were worsening while I was kept there; on 22 May 2025 I experienced an asphyxiation attack I was near collapse at which point Scott told me he would be referring me to OH; Scott then told me he had cancelled it so I wasn't sure if he had booked an OH appointment and that ought to be looked at".

59. Mr Whittham's evidence was that in meeting on 10 June 2025 the claimant told him: he had been working near to Basketwash on 20 –22 May 2025; he had been feeling short of breath for about 15 minutes before the end of one of those shifts and couldn't get any air; he had since been to his GP who thought that his shortness of breath was probably a combination of his reaction to vinegar vapour and his hay fever; he wasn't sure if Scott [Mr Slaney] had cancelled the OH appointment; his coughing was away now. This was consistent with Ms Simpson's contemporaneous summary handwritten notes.

60. Mr Whittham's evidence was that in the meeting on 10 June 2025 the claimant did not say the words which the claimant now relied upon or anything like them. Mr Whittham's evidence was that the claimant did not say: no PPE was provided during the symptomatic period; he was not removed from vapour-exposed workstation; he was instructed to continue working in the affected area; no incident report was completed; there was no first aider assessment. These were assertions set out in in the list of issues. Ms Simpson's contemporaneous summary notes do not record that these things were said.

61. As already stated, the claimant said near the beginning of his evidence in chief that the notes were "precisely what was said at the meeting". The claimant then modified his evidence to say that the notes "captured" what had been said. Thereafter the claimant's evidence in chief significantly contradicted his earlier position that the notes were either precisely what was said or captured what had been said. His evidence was that many more things had been said by him in the meeting – as set out in the list of issues. As a result of its contradictory nature, the Tribunal found the claimant's evidence about what he said on 10 June 2025 to be unreliable.

62. The Tribunal appreciates that the notes are in summary form. That said, the Tribunal thought it likely that if the claimant had said to Mr Whittham in the meeting that there had been health and safety failings by Mr Slaney who had made him work in the exact same exposed area whilst symptomatic; had

made him work for an extended period without receiving PPE whilst being exposed in that risk area" that is something which would have been captured in the notes. These matters were not captured in the notes.

63. The summary notes of Ms Simpson are the contemporaneous account of what was said. The Tribunal preferred the evidence of Mr Whittham which was supported by the contemporaneous notes. Accordingly, the Tribunal determined on balance that the claimant did not say: no PPE was provided during the symptomatic period; he was not removed from vapour-exposed workstation; he was instructed to continue working in the affected area; no incident report was completed; there was no first aider assessment.

Relevant law

Qualifying disclosure

64. Under section 43A ERA a protected disclosure is a qualifying disclosure (as defined by section 43B ERA) made by a worker in accordance with any of sections 43C – 43H ERA.

65. Under section 43B ERA a qualifying disclosure means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show relevant wrongdoing including "(*b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject*" and/or "(*d) that the health or safety of any individual has been, is being or is likely to be endangered*".

66. Section 47B ERA prohibits a worker who has made a protected disclosure from being subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker made a protected disclosure.

Disclosure of information

67. The disclosure must be an effective communication of information, but it does not require to be in writing. The disclosure must convey information or facts, and not merely amount to a statement of position or an allegation (**Cavendish Munro Professional Risks Management Ltd v Geduld** 2010 IRLR 38, EAT).

Reasonable belief

68. The worker must genuinely believe that the disclosure tended to show relevant wrongdoing and was in the public interest. This does not have to be their predominant motivation for making the disclosure (**Chesterton Global Ltd v Nurmohamed** [2018] ICR 731, CA). Their genuine belief must be based upon reasonable grounds. This depends upon the facts reasonably understood by the worker at the time.

69. The burden of proof is on the claimant. It is for him to show that when he carried out the acts which he asserts are protected disclosures or any one of them he reasonably believed that that the information he provided tended to show that a person had failed, was failing or was likely to fail to comply with any legal obligation or that health and safety was being endangered.

Detriment meaning

70. If a reasonable worker (even if not all reasonable workers) might take the view that, in all the circumstances, the conduct was to the worker's detriment, the test is satisfied. The test of detriment has both subjective and objective elements. The situation must be looked at from the claimant's point of view, but the claimant's perception must be 'reasonable' in the circumstances (**Warburton v Chief Constable of Northamptonshire Police** 2022 ICR 925, EAT).

71. It is not necessary for there to be physical or economic consequences to the employer's act or inaction for it to amount to a detriment. What matters is that the complainant is shown to have suffered a disadvantage of some kind (**Shamoon v Chief Constable of the Royal Ulster Constabulary** 2003 ICR 337, HL).

Detriment causation

72. When determining whether any act, or any deliberate failure to act by the employer is done on the ground that the worker made a protected disclosure the causation test is whether the protected disclosure materially (in the sense of more than trivially) influences the employer's treatment of the whistleblower (**Fecitt and ors v NHS Manchester (Public Concern at Work intervening)** 2012 ICR 372, CA).

Automatically unfair dismissal

73. Section 97(1) ERA provides: "*Effective date of termination.(1) Subject to the following provisions of this section, in this Part "the effective date of termination"—(a)in relation to an employee whose contract of employment is terminated by notice, whether given by his employer or by the employee, means the date on which the notice expires,(b)in relation to an employee whose contract of employment is terminated without notice, means the date on which the termination takes effect, and (c)....*"

74. Section 100(1) ERA provides: "*Health and safety cases.(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that—(a).....(b).....(c)being an employee at a place where—(i)there was no such representative or safety committee, or(ii)there was such a representative or safety committee but it was not reasonably practicable for the employee to raise the matter by those means, he brought to his employer's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety,(d).....(e).....*".

75. Section 103A ERA provides: "*Protected disclosure An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure*".

76. Section 104 ERA provides: "*Assertion of statutory right (1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee (a).... (b)alleged that the employer had infringed a right of his which is a relevant statutory right (2)It is immaterial for the purposes of subsection (1)—(a)whether or not the employee has the right, or(b)whether or not the right has been infringed; but, for that subsection to apply, the claim to the right and that it has been infringed must be made good faith (3)It is sufficient for subsection (1) to apply that the employee, without specifying the right, made it reasonably clear to the employer what the right claimed to have been infringed was (4)....(5)....*".

Submissions

77. The claimant provided written submissions and made oral submissions in support of those. The respondent provided skeleton written submissions and made oral submissions in support of those. The Tribunal carefully considered

the submissions of both parties during its deliberations. The Tribunal has dealt with the points made in submissions, where relevant, when setting out the facts, the law and the application of the law to those facts in reaching its decision. It should not be taken that a submission was not considered because it is not part of the discussion and decision recorded

Discussion and decision

Asserted protected disclosures

PD1 - 10 June 2025 in a meeting with Chris Whittham

78. The claimant asserts that he made a protected disclosure to Mr Whittham in a meeting on 10 June 2025.

79. The claimant and Mr Whittham met on 10 June 2025. This was a scheduled probation review meeting. The Tribunal has found that in that meeting the claimant said he had been working near to Basketwash on 20 –22 May 2025; he had been feeling short of breath for about 15 minutes before the end of one of those shifts and couldn't get any air; he had since been to his GP who thought that his shortness of breath was probably a combination of his reaction to vinegar vapour and his hay fever; he wasn't sure if Scott [Mr Slaney] had cancelled the OH appointment; his coughing was away now. It was known to Mr Whittham that when the claimant said he had been working near to Basketwash this meant that he had been exposed to vinegar vapour.

80. The Tribunal has found that the claimant did not say the other things which he sought to rely on in the list of issues at point 1.3 (see also the findings in fact paragraphs 22 – 29).

81. The Tribunal was satisfied that what the claimant said about his exposure to vinegar vapour and that he had been feeling short of breath for about 15 minutes before the end of a shift conveyed information or facts (**Cavendish Munro Professional Risks Management Ltd**).

82. The Tribunal next considered whether the claimant genuinely believed that information or facts was in the public interest and tended to show relevant wrongdoing.

83. Section 43B(1) ERA requires that, in order for any disclosure to qualify for protection, the disclosure must, in the 'reasonable belief' of the worker be made in the public interest and tend to show that one or more of the six

relevant failures has occurred, is occurring, or is likely to occur. Reasonable belief applies to both limbs of the test.

84. The claimant asserts that the information or fact of him being exposed to vinegar vapour and being short of breath tended to show a failure to comply with a legal obligation and/or that health and safety was being endangered (as set out in the list of issues).

85. The test is the reasonable belief of the claimant. The focus is on what the claimant believed rather than what a hypothetical reasonable worker might have believed. The test is not entirely subjective. There must be some objective basis for the claimant's belief that there was a failure to comply with a legal obligation and/or that health and safety was being endangered (**Korashi v Abertawe Bro Morgannwg University Local Health Board** 2012 IRLR 4, EAT).

86. The context of the information that the claimant provided in the meeting when he said he has been exposed to vinegar vapour and had been short of breath is important. One of the respondent's standard food preparation processes uses vinegar. As a result, there is vinegar vapour at certain locations in the respondent's workplace. The respondent knows that some employees may be reactive to vinegar vapour in the respondent's workplace. It is not uncommon.

87. If a staff member reports a possible reaction to vinegar vapour there is a standard procedure which the respondent follows. The staff member is referred to Occupational Health (OH). Depending on the outcome of the OH referral, the staff member has a fitting for a face mask. That standard procedure was followed for the claimant.

88. The claimant also knew that some employees may be reactive to vinegar vapour, that this was not uncommon in the respondent's workplace and that the respondent had a standard procedure for a referral to OH. He knew this when he told Mr Slaney on around 22 May 2025 about his possible reaction and likewise when he told Mr Whittam on 10 June 2025. The claimant knew this when his employment started as he had previously worked in the respondent's business. What the claimant was doing was telling Mr Whittham that he was one of the employees who had a well known potential reaction to vinegar vapour. It was said in the context of a discussion about his own personal absences. He was saying his GP thought it might be a combination of a reaction to vinegar vapour and his hay fever.

89. The worker must genuinely believe that the disclosure tended to show relevant wrongdoing and was in the public interest. This does not have to be their predominant motivation for making the disclosure (**Chesterton Global Ltd v Nurmohamed** [2018] ICR 731, CA). Their genuine belief must be based upon reasonable grounds. This depends upon the facts reasonably understood by the worker at the time.

90. Given the respondent's and the claimant's prior knowledge about the reaction of some employees to vinegar vapour, the claimant's knowledge about the standard procedure in place for a referral to OH, and the context in which the information was provided in response to questions about his absences, the Tribunal concluded that the claimant did not have a genuine belief based upon reasonable grounds that the information he provided about his possible reaction to vinegar vapour and being short of breath tended to show relevant wrongdoing and was in the public interest. There could be no reasonable belief in wrongdoing, when well established procedures were already in place for managing a potential reaction to vinegar vapour.

91. Accordingly the Tribunal concluded that there was no protected disclosure made to Mr Whittham on 10 June 2025.

PD2 - 22 September 2025 in written grounds of appeal to Graham Patterson

92. The claimant asserts that he made a protected disclosure to Mr Graham Patterson in writing on 22 September 2025. It is necessary to determine the claimant's effective date of termination of employment. This was in dispute. The reason this needs to be determined first is that if the claimant's effective date of termination of employment was before 22 September 2025 his grounds of appeal letter cannot be a protected disclosure. A protected disclosure is defined in section 43A ERA as a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with section 43C to 43H ERA. If the claimant was not a worker on 22 September 2025 his grounds of appeal cannot meet the first requirement for a protected disclosure, that of being a worker or employee.

93. The claimant submits that his effective date of termination of employment was on 7 October 2025 when he received the letter from Mr Patterson stating that his appeal against dismissal was not upheld. The claimant submits that on 22 September 2025 he was an employee making a disclosure to his employer.

94. The respondent submits that the claimant's effective date of termination of employment was on 9 September 2025.

95. The Tribunal was satisfied that the effective date of termination of employment was 9 September 2025. The claimant was told on that date that he was not going to be retained. The claimant was told he had a right of appeal against that decision. The claimant understood at the time that he had been dismissed on 9 September 2025. The claimant opened the appeal hearing against his dismissal by saying "*I have a few reasons for my decision to appeal against the dismissal I received on 9/09/2025*". The claimant received a payment in lieu of his one week's notice period.

96. The claimant's submission that his effective date of termination of employment was on 7 October 2025 is rooted in the statement which Mr Whittham made at the very end of the meeting on 9 September 2025 when he said "You will not be processed as a leaver until you have had your chance to appeal should you wish to do so". The claimant submitted this meant that he was still employed by the respondent and the effective date of termination of employment was not until the end of the appeal process, if his appeal was unsuccessful.

97. The Tribunal did not agree that the effective date of termination of employment was 7 October 2025. The Tribunal was satisfied that the claimant had been dismissed by Mr Whittham with immediate effect on 9 September 2025. At the time of his appeal the claimant understood that to be the case. The claimant did not work for the respondent after 9 September 2025. The termination of his employment on 9 September 2025 was followed up in writing by the respondent on 12 September 2025. It confirmed what had been discussed and that the claimant would receive a payment in lieu of his notice period. The Tribunal accepted the respondent's explanation that the respondent does not process payments in lieu of notice and payments for holidays accrued but untaken on termination of employment until the end of the appeal process against dismissal. This is because if payments had already been made and the dismissal of any employee was overturned on appeal it may be difficult to recover these sums from the employee.

98. The respondent submitted in the alternative that the effective date of termination of employment was, at the latest, on 16 September 2025 following one week of notice. If the Tribunal is wrong about the effective date of termination of employment being on 9 September 2025 it was satisfied that the effective date of termination of employment was on 16 September 2025. If there was any uncertainty as to whether the claimant's dismissal was effective with immediate effect on 9 September 2025 the Tribunal was satisfied in the alternative that the claimant was given notice of termination of employment on 9 September 2025 and that his contractual period of notice

was one week. Accordingly, the latest the claimant's employment would have ended would have been 16 September 2025.

99. The Tribunal has concluded that the claimant's effective date of termination of employment was before 22 September 2025. A protected disclosures is defined in section 43A ERA as a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with section 43C to 43H ERA. As the claimant was not a worker or an employee on 22 September 2025 his grounds of appeal cannot meet the first requirement for a protected disclosure as set out in section 43A ERA.

100. Accordingly, the Tribunal concluded that there was no protected disclosure made to Mr Patterson on 22 September 2025.

Automatically unfair dismissal - protected disclosures

101. Section 103A ERA provides that an employee who is dismissed shall be regarded as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure. The Tribunal found that the claimant did not make a protected disclosure on 10 June 2025 or 22 September 2025.

102. Accordingly, the complaint of automatically unfair dismissal is not well-founded and is dismissed.

103. If the Tribunal is wrong on the question of whether the claimant made a protected disclosure, it is satisfied that the reason or principal reason for the claimant's dismissal, which was upheld on appeal, was because of concerns about the claimant's performance. There were concerns the claimant was taking extended breaks; concerns that the claimant had left work early leaving his team without a Team Lead and concerns about the quality and accuracy of the claimant's work. Those concerns had been shared with Mr Whittham by other Team Leads, Section Leads and Production Managers. Accordingly, the Tribunal was satisfied that the reason or principal reason for his dismissal was not what the claimant said on 10 June 2025 or wrote on 22 September 2025.

Automatically unfair dismissal section 100 ERA

104. The Tribunal found that the respondent's workplace had accessible health and safety representatives, committees and reporting mechanisms.

105. Section 100(1) ERA provides that an employee who is dismissed shall be regarded as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that where there was a representative on matters of health and safety or a safety committee but it was not reasonably practicable for the employee to raise the matter by those means, he brought to his employer's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety.

106. There was no evidence led by the claimant or cross examination of respondent witnesses about this complaint. From the unchallenged evidence of the respondent, the Tribunal concluded that it was reasonably practicable for the claimant to raise any health and safety concerns he may have had by those means. He did not do so.

107. Accordingly, the complaint of automatically unfair dismissal under section 100 ERA is not well-founded and is dismissed.

Automatically unfair dismissal section 104 ERA

108. Section 104 ERA provides that an employee who is dismissed shall be regarded as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee alleged that the employer had infringed a right of his which is a relevant statutory right. The claim to the right and that it has been infringed must be made good faith

109. The claimant relied only on what he said at the meeting on 10 June 2025 as an allegation of breach of a statutory right.

110. The list of issues recorded that the claimant alleged a breach of section 44(1)(c) ERA and a breach of section 100(1c) ERA. The claimant's evidence about this complaint was brief. In examination in chief the claimant said only that he was saying that he had the right to a safe place of work and PPE.

111. As already set out, section 100(c) ERA is about circumstances where there was a health and safety representative or safety committee, as in the respondent's workplace, but it was not reasonably practicable for the claimant to raise matters with them. It provides a right not to be dismissed in such circumstances. There was no evidence led by the claimant to this effect. For the claimant to say only that he had the right to a safe place of work and PPE does not meet the statutory test. In any event the Tribunal did not find that the claimant had said this on 10 June 2025.

112. Section 44(1)(c) ERA is also about circumstances where there was a health and safety representative or safety committee, as in the respondent's workplace, but it was not reasonably practicable for the claimant to raise matters with them. It provides a right not to suffer a detriment in such circumstances. There was no evidence led by the claimant to this effect. For the claimant to say only that he had the right to a safe place of work and PPE does not meet the statutory test. In any event the Tribunal did not find that the claimant had said this on 10 June 2025.

113. Accordingly, the complaint of automatically unfair dismissal under section 104 ERA is not well-founded and is dismissed.

Detriments for making protected disclosures

114. Section 47B ERA prohibits a worker who has made a protected disclosure from being subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker made a protected disclosure The Tribunal found that the claimant did not make a protected disclosure on 10 June 2025 or 22 September 2025.

115. Accordingly, the complaints of being subjected to detriments for making protected disclosures are not well founded and are dismissed.

116. If the Tribunal is wrong on the question of whether the claimant made a protected disclosure, it is satisfied that the claimant was not subjected to any detriment on the ground that he made a protected disclosure.

117. When determining whether any act, or any deliberate failure to act by the employer is done on the ground that the worker made a protected disclosure the causation test is whether the protected disclosure materially (in the sense of more than trivially) influences the employer's treatment of the whistleblower (**Fecitt and ors v NHS Manchester (Public Concern at Work intervening)** 2012 ICR 372, CA

118. The Tribunal was satisfied that for each of the detriments pled, even if the claimant might reasonably take the view that he has suffered a disadvantage, what the claimant said on 10 June 2025 and his grounds of appeal on 22 September 2025 could not be said to have materially influenced his treatment. The claimant was not subjected to increased scrutiny and criticism of his conduct and performance by Mr Slaney alone. Team Leads, Section Leads and Production Managers were all variously reporting their concerns to Mr Whittham about the claimant's conduct and performance. Mr Whittham had the same concerns. In any event Mr Slaney did not know what the claimant

had said to Mr Whittham in their meeting on 10 June 2025. The decision to extend the claimant's probationary period on 5 August 2025 was because of the concerns of Mr Whittham and others. It was not materially influenced by what the claimant had said to Mr Whittham on 10 June 2025. The claimant was told that he would receive his accrued holiday pay once the appeal process was completed. This was the respondent's practice because if payments had already been made and the dismissal of any employee was overturned on appeal it may be difficult to recover these sums from the employee. There was no decision not to redeploy the claimant on around 3 October 2025. The claimant was told he could apply for an external vacancy but did not do so

Conclusion

119. Having concluded that each of the complaints is not well founded there is no requirement for the Tribunal to consider remedy. Accordingly, the claimant's claim is dismissed.

Date sent to parties **23 September 2026**

APPENDIX 1

AGREED LIST OF ISSUES

List of issues for final hearing

1. Public Interest Disclosure – 10 June 2025

1.1. Did the Claimant make a disclosure of information to Chris Whittam on 10 June 2025 tending to show either of the following:

1.1.1. A failure to comply with a legal obligation

1.1.2. That health and safety was being endangered

1.2. What did the Claimant specifically say?

1.3. Did the Claimant disclose any of the following information:

1.3.1. Exposure to vinegar/acetic vapour between 20–22 May 2025 at Table 1 beside Basketwash.

1.3.2. Near-asphyxiation episode on 22 May 2025 (approx. 13:30–14:00).

1.3.3. No PPE provided during symptomatic period.

1.3.4. Not removed from vapour-exposed workstation.

1.3.5. Instructed to continue working in affected area.

1.3.6. No incident report completed.

1.3.7. No first aider assessment.

1.4. Did the Claimant reasonably believe this disclosure to be in the public interest?

1.5. Was this a protected disclosure under Section 43B of the Employment Rights Act?

2. Public Interest Disclosure – 22 September 2025

2.1. Did the Claimant make a disclosure of information to Graham Patterson on 22 September 2025 tending to show the following:

2.1.1. A failure to comply with a legal obligation

2.1.2. That health and safety was being endangered

2.1.3. Concealment of such matters

2.2. What did the Claimant specifically say?

2.3. Did the Claimant disclose any of the following information:

2.3.1. No OH referral made on 20 May 2025

2.3.2. No documented cancellation communication 21 May 2025

2.3.3. No incident report for 22 May 2025 episode

2.3.4. No investigation outcome following 10 June disclosure

2.3.5. PPE not provided until 06 June 2025

2.3.6. Continued vapour exposure whilst symptomatic

2.3.7. CCTV would evidence condition on 22 May

2.3.8. No investigation findings were produced prior to dismissal

2.4. Did the Claimant reasonably believe this disclosure to be in the public interest?

2.5. Was this a protected disclosure under Section 43B of the Employment Rights Act?

3. Section 103A Employment Rights Act Claim

3.1. If it is found that the Claimant made the protected disclosure described at Section 1, was he dismissed because he made this disclosure?

3.2. If it is found that the Claimant made the protected disclosure described at Section 2, was he dismissed because he made this disclosure?

3.3. When was the Claimant dismissed?

3.3.1. The Respondent submits that the Claimant was dismissed on 9 September 2025 or 12 September 2025

3.3.2. Whereas the Claimant submits that he was dismissed on 07 October 2025

4. Section 100 Employment Rights Act Claim

4.1. Did the Claimant bring to the Respondent's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety?

4.2. Did he reasonably believe vinegar vapour was potentially harmful to health or safety?

4.3. Was it reasonably practicable for the Claimant to raise these matters with the Respondent's health and safety committee.

4.4. Was the Claimant unfairly dismissed for bringing such concerns as alleged at 4.1?

5. Section 104 Employment Rights Act Claim

5.1. Did the Claimant allege that the Respondent had infringed a right of his which is a relevant statutory right, specifically:

5.1.1. Employment Rights Act 1996 s.44(1)(c).

5.1.2. Employment Rights Act 1996 s.100(1)(c).

5.2. To whom did the Claimant allege that such rights had been breached?

5.3. What specifically did the Claimant state?

5.4. Was such an assertion made by the Claimant in good faith?

5.5. Was the Claimant dismissed for asserting that these statutory rights had been infringed?

6. Section 47B Employment Rights Act Claim

6.1. Was the Claimant subjected to any of the following detriments because he made either of the protected disclosures at 1. or 2. above?

6.1.1. Increased scrutiny and criticism of his conduct and performance by Mr Slaney, who conveyed this by way of adverse feedback to Mr

Whitham, the person conducting the claimant's performance review meetings. This was said to have been evident in a review meeting on 8 July, then at the next one on 5 August, then at the end of probation meeting on 9 September 2025, and continued up to the point of dismissal;

6.1.2. Mr Whitham's decision on 5 August 2025 to extend the claimant's probationary period rather than confirm he had passed at that time;

6.1.3. Withholding of accrued holiday pay between the end of probation meeting on 9 September 2025 and the conclusion of an appeal against dismissal on or around 2 October 2025. The claimant said that he repeated his request for payment on 17 and 22 September 2025. The money was paid on 10 October 2025;

6.1.4. A decision not to redeploy him on or around 3 October 2025 after he was approached by another department head. Instead, he says he was told on or around 7 October 2025 that he would be dismissed

7. Remedy

7.1. In the event the Claimant succeeds with his claim, what award of damages would be just and equitable for the Tribunal to make?

7.2. What steps, if any, has the Claimant made to mitigate his losses?

7.3. Should there be a deduction for failure to mitigate his losses?

7.4. Should there be a deduction to reflect the principles established in the case of *A E Dayton v Polkey*?

7.5. Should there be a deduction to account for the Claimant's contributory conduct with regard to his dismissal?

8. Time-bar

8.1. Are the complaints raised by the Claimant in time?

8.2. If any of the complaints were not raised in time, was it reasonably practicable for the Claimant to raise these within time?

8.3. If so, should those complaints be dismissed?