



EMPLOYMENT TRIBUNALS

Claimant: Mr S Black

Respondent: Eurotube (2005) Ltd t/a Global Tube Fabrications

Heard at: Birmingham **On:** 17, 18, 19 and 20 May 2021 and
7 June 2021 (in chambers)

Before: Employment Judge Miler
Miss L Clarke
Mr S Woodall

Representation

Claimant: In person

Respondent: Mr S Hoyle (solicitor)

RESERVED JUDGMENT

1. The claimant's claim that he was unfairly dismissed pursuant to section 100 Employment Rights Act 1996 is unsuccessful and is dismissed.
2. The claimant's claim that he was unfairly dismissed pursuant to section 103 Employment Rights Act 1996 is unsuccessful and is dismissed.
3. The claimant's claim that he was unfairly dismissed pursuant to section 104 Employment Rights Act 1996 is unsuccessful and is dismissed.
4. The claimant's claim that he was subject to detriments on the grounds of making protected disclosures pursuant to section 43B Employment Rights Act 1996 is unsuccessful and is dismissed.
5. The tribunal declares pursuant to sections 11 and 12 of the Employment Rights Act 1996 that the claimant was not provided with itemised pay statements for a period of between two and three months prior to May 2018 in breach of section 8 of the Employment Rights Act 1996. The tribunal makes no financial award in respect of this.
6. The remedy hearing listed for 24 August 2021 is cancelled and will not go ahead.

REASONS

Introduction and procedural history

1. The claimant, Mr Black, was employed by the respondent from 4 September 2017 until his dismissal with effect from 1 September 2018. The claimant was employed as the powder coating manager. The respondent is a company that manufactures metal tubes. It is a reasonably small employer with 35 manufacturing staff as well as some office staff.
2. In a claim form dated 22 December 2018 following a period of early conciliation from 19 September 2018 until 19 October 2018 the claimant brought a claim that he was unfairly dismissed. There were some issues initially about the timing of the claimant's claim and the validity of the early conciliation. That was, however, dealt with previously and it has been determined that the claimant's claim of 22 December 2018 was validly brought.
3. In his claim form the claimant says that he was dismissed because he complained about PPE and other employer responsibilities.
4. The respondent's response was that the claimant did not raise any protected disclosures (and he did not make any complaints about health and safety) either formally or informally and certainly not before his dismissal, and that the reason the claimant was dismissed was because of his performance in the way in which he undertook his job and particularly in his failure to manage his team.
5. There was a case management hearing on 13 August 2019 before Employment Judge Self at which the issues were identified. They are set out below. The complaints comprised of
 - 5.1. unfair dismissal under section 103A of the employment rights act 1996 (protected disclosures)
 - 5.2. unfair dismissal under section 100 (1) (c) of the Employment Rights Act 1996 (health and safety)
 - 5.3. unfair dismissal under section 104 (1) (b) of the Employment Rights Act 1996 (asserting a statutory right)
 - 5.4. being subject to detriments for making protected disclosures under section 47B Employment Rights Act 1996
 - 5.5. failure to provide the claimant with a contract of employment giving rise to the right to compensation under section 38 of the Employment Act 2002; and

- 5.6. that the claimant had not been provided payslips for a period of some three months pursuant to section 8 of the Employment Rights Act 1996
6. At that hearing the final hearing was listed for four days to start on 14 July 2020 but because of the covid-19 pandemic that hearing did not go ahead and there was a further case management hearing on 14 July 2020 before Employment Judge Gaskell. By that time not all of the orders of EJ Self had been complied with so EJ Gaskell made further case management orders for the preparation for this hearing and it was listed for a four-day hearing from 17 May 2021.

The issues

7. The issues recorded in the case management order of EJ self to be determined by this tribunal are set out in the appendix to this judgment.

The hearing

8. The hearing was conducted over four days and the Tribunal had a further one day in chambers for deliberations.
9. We were provided with a bundle of documents comprising 54 pages. Of those 54 pages, there was a total of 11 pages of contemporaneous relevant documents. Those were:
 - 9.1. A letter from Mr Groves to the claimant dated 20 August 2018 inviting him to a meeting on 23 August 2018
 - 9.2. A letter from Mr Groves to the claimant dated 21 August 2018 agreeing to postpone the meeting and rearranging it for 20 August 2018
 - 9.3. Notes of the meeting between Mr Groves and the claimant
 - 9.4. A letter from Mr Simon Brandreth to the claimant dated 1 September 2018 dismissing the claimant
 - 9.5. A letter from the claiming to Mr Nions dated 3 September 2018 appealing against his dismissal
 - 9.6. A letter from Mr Nions to the claimant inviting him to an appeal hearing on 12 September 2019
 - 9.7. Notes of the appeal meeting
 - 9.8. A letter from Mr Nions to the claimant dated 17 September 2018 with the outcome of the claimant's appeal.
10. In the course of the hearing, the claimant produced photographs of machines at the respondent's factory and a letter, from the respondent, relating to an allegation that another employee had been bullying the

claimant. We admitted those documents despite their late disclosure as they were relevant. The document relating to the bullying was a document of the respondent and ought to have been disclosed by them earlier in the proceedings in any event.

11. The respondent also produced further documents relating to the allegation of bullying in response to the claimant's disclosure.
12. Other potentially relevant documents that were not provided to the Tribunal were referred to in evidence in the course of the hearing and where appropriate they are referred to below. The notable absence of relevant documents in this case has made it more difficult to find the facts we need to find to decide this case and, where appropriate, we have drawn inferences from the late disclosure or non-disclosure of relevant or potentially relevant documents.
13. The respondent had provided witness statements from the following individuals:
 - 13.1. Mr Roy Groves – the claimant's line manager
 - 13.2. Mr Mark Tucker – Health and safety manager and quality manager
 - 13.3. Mr Paul Nions – Director
14. All witnesses attended and gave evidence.
15. The claimant produced witness statements from:
 - 15.1. Mr Adrian Ambrozewicz – former employee of the respondent
 - 15.2. Mr Valeriu Didie Iohita – former employee of the respondent
 - 15.3. Mr William Russell – employee of the respondent and claimant's companion at the appeal meeting
16. Mr Ambrozewicz and Mr Iohita attended and gave evidence, Mr Iohita with the assistance of a Romanian interpreter, Ms Dubita, for whose assistance we are grateful. Mr Russell did not attend. The claimant's application for a witness order in respect of Mr Russell was refused for reasons given at the time.
17. The claimant did not provide a witness statement for himself. It was agreed that the particulars of claim in the claimant's ET1 and the list of issues from the case management summary of EJ Self (and as set out in the appendix attached) would stand as his evidence in chief.
18. The claimant gave oral evidence and was assisted by a Czech interpreter, Mr Grunt, for whose assistance we are also grateful.
19. Before Mr Ambrozewicz gave his evidence, Mr Hoyle raised an issue relating to an agreement Mr Ambrozewicz had entered into with the

respondent about his employment which, Mr Hoyle indicated, contained a confidentiality clause. We did not see the agreement. Mr Hoyle said, by way of warning to Mr Ambrozewicz, that he might be putting himself at risk of a claim from the respondent if he said anything in the course of giving evidence that was in breach of that agreement.

20. We asked Mr Hoyle why he considered that the evidence would not be covered by judicial privilege but Mr Hoyle declined to make any submissions about that. We therefore explained to Mr Ambrozewicz that any oral evidence he gave to the Tribunal at the hearing and anything he had said in his written statement would be covered by judicial privilege. This means that Mr Ambrozewicz cannot be sued for breach of a confidentiality agreement for anything he said to this Tribunal in oral evidence, in his witness statement or any conversations he had had or documents he had prepared with a solicitor or other legally qualified representative in preparation for this hearing. We referred to *South London & Maudsley NHS Trust v Dathi* [2008] IRLR 350, in which Judge McMullen QC said:

“The rules relating to absolute immunity for legal proceedings were restated by Devlin LJ in *Lincoln v Daniels* [1962] 1 QB 237 at 258, where he said this:

‘The absolute privilege which covers proceedings in or before a court of justice can be divided into three categories. The first category covers all matters that are done coram iudice. This extends to everything that is said in the course of proceedings by judges, parties, counsel and witnesses, and includes the contents of documents put in as evidence. The second covers everything that is done from the inception of the proceedings onwards and extends to all pleadings and other documents brought into existence for the purpose of the proceedings and starting with the writ or other document which institutes the proceedings. The third category is the most difficult of the three to define. It is based on the authority of *Watson v M'Ewen*, in which the House of Lords held that the privilege attaching to evidence which a witness gives coram iudice extended to the pre-recognition or proof of that evidence taken by a solicitor. It is immaterial whether the proof is or is not taken in the course of proceedings. In *Beresford v White*, the privilege was held to attach to what was said in the course of an interview by a solicitor with the person who might or might not be in a position to be a witness on behalf of his client in contemplated proceedings.’”

21. Mr Hoyle also queried the reference to the third category set out above and whether that included conversations had or documents prepared between a witness and a self-representing claimant in preparation for the hearing.
22. Mr Hoyle did put to the claimant in cross examination that Mr Ambrozewicz disclosed something about the agreement to him. However, the claimant's answer was that Mr Ambrozewicz had told him something about his claim to the Employment Tribunal. Mr Hoyle asked Mr Ambrozewicz if the claimant had told him about the settlement he had got and the claimant said “Not clearly, but yes”. Mr Hoyle then said “He discussed the fact that he had

reached a settlement with his employer?” to which the claimant replied “Yes, he said he was happy it had all finished”.

23. Mr Hoyle declined to make any submissions about the application of judicial privilege, despite having raised the related issue. In our view, and without the benefit of legal argument about it, it seems likely that the privilege referred to as the “third category” in *Dathi*, above, must include circumstances where a claimant is representing themselves and needs to explore and obtain evidence to support their claim. One of the purposes of judicial privilege is to allow witnesses to give evidence without fear of subsequent claims based on their evidence. If such a principle can only be applied for the benefit of people who instruct a legal professional, that appears to us to fundamentally undermine the ability of litigants in person to be able to prepare and bring as full a case as they would otherwise be able to bring if they were legally represented.
24. Our decision on this issue is not binding on another court, but we have set out our view of the legal position and the basis on which we heard the evidence in this case.

Findings of fact

25. We heard a great deal of evidence, not all of which was directly relevant to the issues we have to decide. We have only, therefore, made findings about matters that are necessary for us to determine the claim. Where factual issues are disputed, we have made our decision on the balance of probabilities.
26. The issues are relatively narrow and cover a reasonably short period of time. However, in respect of most of the issues, we did not hear any evidence about when the alleged acts are said to have occurred. We therefore address the allegations in the order in which they are set out in the list of issues. We attempt to set out a chronology as far as we can but our ability to do so is limited by the evidence we heard and saw.

Start of the claimant’s employment

27. The claimant’s employment with the respondent started on 4 September 2017. It transpired, in the course of oral evidence, that the claimant had actually started working for the respondent some time before that but through an agency. We heard no specific evidence about that or what role he undertook but it appeared to be common ground that by the time of his dismissal, the claimant had been working at the respondent (rather than necessarily directly employed by them) for almost two years. We conclude, therefore, that that claimant started working at the respondent’s factory sometime in the latter half of 2016.
28. There was no dispute that we heard, however, that the claimant’s employment directly with the respondent started on 4 September 2017.
29. It was agreed that the claimant was not given a written contract of employment, or any record of his terms of employment, at any point when

he was employed by the respondent or prior to the commencement of these proceedings.

The claimant's job

30. The claimant was employed as a Powder Coating Manager. There was no job description. We understand that the claimant was responsible for part of the production line for the manufacturing of metal pipes. There was a dispute as to what parts of the production line the claimant's management responsibilities covered. Mr Groves said that the claimant's responsibilities started with pressure testing (after the pipes had been welded) and included degreasing, cleaning, loading and unloading. We conclude that it also included powder coating/painting as this was the claimant's primary activity at work. The claimant said his management responsibilities only included degreasing, cleaning and painting.
31. We heard no disputes about the loading function. The main dispute was whether the claimant or Mr Groves were responsible for managing the pressure testing. This was, Mr Groves said, undertaken by Mr Will Russell and Mr Paul Avery at the relevant time.
32. The claimant did not dispute that he was responsible for managing Mr Russell so that, Mr Groves implied, it was obvious that the claimant was responsible for managing the pressure testing.
33. The respondent also said that the claimant ought to be training Mr Russell to undertake the powder coating and the claimant said that he was trying, but Mr Russell would not follow his instructions. There was also a reference to Mr Russell possibly being trained to use the crane (as to which, see below). It appears, therefore, that Mr Russell had a number of roles.
34. There was no documentary evidence about the claimant's role or the management structure. We recognise that this is a small company, but the complete lack of any documentary evidence about these types of issues makes it difficult to be clear who was responsible for what and we find that the claimant's management responsibilities were unclear to him. However, Mr Groves was clear in his evidence about his belief that the claimant was responsible for managing Mr Avery and we find that Mr Groves genuinely believed that pressure testing formed part of the claimant's management responsibilities and that the claimant was responsible for managing Mr Avery.
35. We also heard no evidence that there was any health or safety committee or representatives and we conclude, on the balance of probabilities, that there were none.

Alleged disclosures

Overalls, boots, masks

36. The claimant said (in the list of issues) that he made a complaint to Mark Tucker that he did not get appropriate boots, overalls and spraying mask.

37. There was no further evidence in chief from the claimant about this alleged complaint. We have had to, therefore, reach our conclusions on this allegation, and a number of others, on the basis of the oral evidence at the hearing and the respondent's witness evidence.
38. In respect of a conversation about boots, we conclude that there was a conversation, but that it was between the claimant and Mr Groves, not the claimant and Mr Tucker. Mr Tucker denied in his witness statement that the claimant had made a complaint to him about his boots and says that if he had done so, he would have "recorded his concern, investigated, reported to management and the reverted to the claimant with the outcome or resolution". This was in reference to complaints about boots, mask or overalls. However, we have to conclude it was intended to refer to each item.
39. We simply don't believe this. In oral evidence, Mr Tucker said if the claimant had a problem with boots he would have told him the respondent's policy – namely that they contribute £15 to the cost of boots – and facilitated that. He said that he would not have needed to discuss it with anybody. This seems far more likely given the respondent's apparent approach to keeping records as evidenced by the scant documentation in the bundle. It was also consistent with Mr Groves' oral evidence, which was that he had had a conversation with the claimant about boots and as a result had shown the claimant the catalogue of boots and, when the claimant said he didn't like any of those, he offered or gave him £15 towards the cost of his own boots. The claimant said he did buy his own boots. Mr Groves does not refer to a conversation about boots in his witness statement but the allegation was not about a conversation with Mr Groves. Although, therefore, a conversation about boots between the claimant and Mr Groves was not referenced by the claimant, we would have expected Mr Groves to mention his interaction in his witness statement to explain the actual position in respect of boots.
40. We are unable to determine what the actual content of that conversation was because no one was able to provide us with detailed evidence of it. Whether it was a request by the claimant for boots, a discussion in which the claimant said he did not have suitable boots or something else. We must conclude, therefore, that the claimant has not shown, on the balance of probabilities, that he disclosed any information to Mr Groves in the course of that conversation, and we find that he did not disclose any information to Mr Tucker about boots because we have found that he did not have the conversation with Mr Tucker.
41. In respect of the conversation about overalls, again, we find that there was a conversation between the claimant and Mr Groves about overalls. Mr Groves agreed that there was. The claimant said that he had to provide his own standard, blue material overalls for normal work., It was agreed that the claimant was provided with white, disposable paper style overalls for spraying purposes. Mr Tucker denied in his witness statement ever having a conversation with the claimant about his overalls. We prefer the evidence of Mr Tucker on this point – that the claimant never made a complaint to

him about the provision of overalls. In any event, even if there was a conversation at some point about overalls between Mr Tucker and the claimant, we have heard no evidence at all as to what the content of such a conversation might have been.

42. The claimant's complaints seemed to be that he did not have appropriate safety equipment and that this included overalls. However, the claimant confirmed that he had access to and used, when he chose to, disposable suits for use when painting. His complaint at the Tribunal about the overalls was that he was not provided with appropriate overalls for other non-painting work. Mr Abrozewicz confirmed that grease or rust would go through the standard blue overalls, that he had also purchased himself.
43. The claimant did not explain how he considered that the non-provision of material overalls put his health and safety at risk.
44. Mr Groves said, in evidence, that in fact material overalls were available for workers and the claimant acknowledged that some people had those overalls, but said that he did not. However, the respondent did not always provide new ones – it had a stock of used ones that people could use. This was because, he said, they had a high turnover of staff and it was not proportionate to provide new overalls for each employee.
45. We note, again, the absence of any evidence about these overalls in any witness statements or documents. We found it difficult to have a high degree of confidence in the respondent's witnesses' evidence because matters which ought to obviously (in circumstances where they were professionally represented) have been included in their witness statements, such as the availability of overalls, was missing. Conversely, of course, the claimant did not provide a witness statement at all. On balance, however, we prefer the evidence of Mr Groves that overalls were available, albeit used ones. The claimant's evidence was that all the people he worked with wore blue overalls and this is consistent with one type of overall being made available by the respondent to the workers. The claimant said that he provided and wore his own overalls. None of the respondent's witnesses specifically said that the claimant was given or offered the blue overalls, and we prefer that claimant's evidence that he provided his own material overalls.
46. In respect of complaints about masks, we find that that claimant did complain to Mark Tucker about masks. Although in his witness statement Mr Tucker said "the claimant never made a complaint to me that he did not have appropriate boots, overalls or masks" in oral evidence in response to a question from the claimant he said " you moaned about the PPE FFP3 masks that you were told to wear after you didn't want to wear any mask". The written and oral evidence of Mr Tucker on this matter is inconsistent and we prefer his oral evidence. We also note the evidence of Mr Iohita, which we found to be disinterested and reliable, that he overheard the claimant complain to managers about masks as well as other issues.

47. It was agreed that masks were available to the claimant. These were FFP3 masks which cover the nose and mouth and are held in place with thin elastic. They have the appearance of paper or thin cloth (although we heard no evidence as to their exact construction). Mr Hoyle put questions and made submissions on the basis that if the masks were good enough for Covid – 19 purposes (being of the type frequently worn during the pandemic) they are good enough for powder coating. With all due respect to Mr Hoyle, this is, in our view, to entirely miss the point. Firstly, we heard no expert evidence about the appropriate protection required for powder coating or the protection offered by FFP3 masks and secondly, our recollection of the public health announcements is that Covid-masks are to protect other people from the virus, not the mask wearer.
48. The claimant also said that the FFP3 face masks do not provide any protection for eyes, nose or skin/hair generally.
49. The claimant agreed that he did not always wear the FFP3 masks. He said they were too hot in the very hot environment which made them very uncomfortable and did not offer adequate protection in any event.
50. In May 2018 the respondent was visited by the Health and Safety Executive (HSE). It is unclear when in May – in their response the respondent said 2 May 2018, but questions were lead on the basis that it was 28 May 2018. In any event, there were (again) no records and no-one could appear to remember. The HSE made a recommendation that an electrically powered, air conditioned, full face mask be provided, and that was provided by the respondent (at a cost in excess of £400) sometime around the end of July 2018. Again, there are no records and no-one was able to convincingly recall the exact date.
51. In any event, the claimant says in his particulars of claim that at this time – on 30 July 2018 – he made his second complaint of not having a suitable mask and that he had made a few complaints about the ongoing mask issue throughout the preceding year. This is consistent with Mr Tucker's evidence.
52. Although there are no dates and no specific evidence about what was said, having heard the evidence, and the claimant's consistent evidence, about his complaints about the PPF3 mask, in our view and on the balance of probabilities, the claimant told Mr Tucker on a number of occasions prior to 30 July 2018 that he considered the PF3 mask was not suitable for powder coating as it was too hot and did not provide adequate protection – particularly in respect of his eyes and exposed skin – for powder coating.

Working in water/unchecked electrical equipment

53. The claimant's next complaint he said he made was that he told Mr Tucker and Paul Nions that he was working in water using electrical equipment that was not properly checked.
54. This record in the list of issues comprises the entirety of the claimant's evidence in chief. Mr Nions also fails to address this in his witness

statement. Mr Tucker says “The Claimant never complained that he was working in water using electrical equipment that was not checked. Firstly, all of our equipment is tested to manufacturers recommendations as part of a PAT testing regime. Secondly, no person would be standing in water whilst operating electrical equipment in any part of our business. Had I seen it I would have caused it to stop immediately, and had it been reported to me I would have ordered the process or procedure to stop whilst I thoroughly investigated and reported to management. This is the sort of thing that has a high risk of death and serious injury. It is inconceivable that I would not have reacted had it been brought to my attention as I would have shared liability with the respondent if something untoward occurred”.

55. Mr Groves said, in his statement, “There was never a situation where the claimant was operating electrical equipment in water, and that the equipment was not properly checked. No employee would be working in water, and our equipment is properly maintained. He does not say when, where or what equipment he was using, but we would never have permitted dangerous practices in our workshop”.
56. In oral evidence, Mr Tucker in fact agreed that there was a hole in the roof above the powder coating machine where the claimant was working and that water gathered on the floor. However, he said that water only gathered overnight or at the weekend and the claimant always helped clear it up before starting work. The claimant had provided a picture of the machine, which we admitted late as it appeared relevant, which showed a tarpaulin suspended above the machine apparently protecting it from water and water pooling in the tarpaulin.
57. The claimant said he had been asked to take the tarpaulin down by Mr Tucker, to which the claimant had objected on the basis that the rain would spoil the powder. However, the claimant also said that the tarpaulin was already there when he started and Mr Groves said the issues went on for some time while the respondent was waiting for its landlord to fix the hole. We think it unlikely, therefore, that the claimant would have been asked to take the tarpaulin down.
58. In our view, all of the respondent’s witnesses have been slightly disingenuous in the way they have written their evidence about this matter. It is clear that there was an issue with water near the claimant’s workplace, and it is clear they were all aware of it. In oral evidence, it was their case that they already knew about it and the claimant helped clear it up when necessary. They also said that if water would start to pool, they would stop production.
59. We conclude that the claimant did, on the balance of probabilities, draw to the attention of Mr Tucker, being the health and safety manager, the presence of water at his machine on at least one occasion. We infer, from the way the respondent has presented their evidence, that they recognise that this would in all probability have amounted to the disclosure of information that indicated the health and safety of any person was at risk so we conclude that the claimant did disclose, to Mr Tucker, if not Mr Nions, on

at least one occasion prior to his dismissal that there was water on the floor near his machine and that this was potentially dangerous.

60. However, we also find it difficult to believe, given the claimant's assertiveness (see below in respect of the changing room issue) and the obvious high risk, that the claimant would have actually worked in the water, and we accept the respondent's evidence that all the water was cleared up before the claimant started work each time there was a leak.
61. In respect of the electrical testing, it was agreed that as at 2018, the last electrical inspection (Portable Appliance Test) of the powder coating machine was 2014. The respondent agreed that it had not been done between 2014 and 2018, that it did not have a regular inspection and testing regime and that they were unable to provide any records of the test.
62. The claimant said that once reported, the maintenance operative came and inspected the machine. We therefore conclude, on the balance of probabilities, that the claimant did report the out of date PAT test. The only evidence we have is from the claimant that he reported it to Mr Tucker. The oral evidence of the claimant was that he reported it to management and Mr Groves said that he and Mr Tucker were responsible for ensuring maintenance was done. On the balance of probabilities, therefore, and in the absence of any evidence to the contrary we find that the claimant did say to Mr Tucker at some point during his employment that the PAT test on the relevant machine was out of date. However, we also find that the respondent then arranged for the appropriate test to be done.

Complaint about training

63. This complaint was, it transpired, that the claimant had not been trained to use a crane for lifting pipes in and out of a cleaning vat. The claimant also said, in the course of the hearing, that he had not been trained to use the powder coating gun he was operating.
64. We were not shown any training records. Mr Tucker said there were training records for forklifts and the crane, but the claimant was not required or expected to use the crane and he should not have been doing so without training. There were, he said, sufficient other people trained to use the crane. In respect of the powder coating, Mr Tucker said the respondent would rely on the claimant's previous experience and Mr Groves said that the claimant had never raised the issue of training. If he had, however, he would have received training.
65. The claimant's clear evidence was that he considered that he was a highly competent and experienced powder coater. He also said that he did need to use the crane on occasions.
66. We prefer the evidence of the respondent. On the balance of probabilities, and in light of the claimant's management role, the claimant was not required to use the crane. We prefer Mr Groves' evidence that the claimant did not request training on the crane or raise it as an issue but, if he had, it would have been provided. In respect of training on the powder coating, we

find that the claimant was an experienced powder coater who had been engaged through an agency for some period before his direct employment. We find that neither the claimant nor the respondent considered that the claimant needed training on this and, consequently, the claimant did not raise it as an issue.

CCTV

67. The claimant's complaint at the tribunal about his was that CCTV had been installed and was pointing directly at him. We conclude that the claimant's complaint was that it was installed without consulting him and in breach of his contract. Mr Groves denied that the claimant complained about this and the claimant was unable to provide any additional clarity as to what he says he said to Mr Groves or when. In the absence of any compelling evidence about this, we find that the claimant has not shown on the balance of probabilities that he made a complaint to, or raised an issue with, Mr Groves about CCTV of any kind.

COSHH

68. This relates to the provision and display of information about products used in the powder coating process. Again, the respondent's written evidence about this was somewhat misleading and disingenuous. Mr Groves said "Again, COSHH documents were available, and we expected them to be followed. He never made such a complaint however".
69. In oral evidence, Mr Groves agreed that the claimant had in fact brought in his own additional information and added that to the information that was displayed in the appropriate place. It was clear from the exchange in cross examination between the claimant and Mr Groves that Mr Groves was aware at the time that the claimant had brought in additional COSHH documents. Mr Groves said "...our documents were there and you added [to them]. You did put COSHH documents among ours that were already there"
70. The claimant said he had printed the information from the internet and brought it in to display, The respondent said they did not object to this.
71. We conclude, therefore, that the claimant did say to Mr Groves during his employment that the COSHH information provided by the respondent was inadequate (or words to that effect) and he took it upon himself to remedy this problem by printing and bringing his own additional information to display. The claimant put the rhetorical question to Mr Groves in cross examination "Why waste time at home making something already there" from which we conclude that the claimant did have a genuine belief that the provision of additional COSHH information was necessary.

Fire training/health and safety manual

72. The claimant's complaint is that he complained to Mr Tucker that he was not trained in fire hazards and had not received a copy of the health and safety manual.

73. It was very clear from the evidence of Mr Tucker and Mr Groves that the claimant was not actually given any training on fire safety procedures – such as evacuation procedure or muster points – and nor was he given a copy of any health and safety policy. The health and safety policy was on display in the office.
74. Mr Tucker said there was an induction process but there was no record that the claimant had undergone such a process and the claimant denied that he had. It is perfectly clear that the respondent's record keeping at that time was very poor.
75. However, while the respondent's procedures were obviously lacking at that time, we heard no evidence of any complaint by the claimant to Mr Tucker during his employment about the lack of training on fire safety and the health and safety policy. Our view of the respondent from the evidence we saw was that they are not proactive, but when they are required to respond (either to a complaint from the claimant or by intervention by the HSE for example) they generally do so. We think that, on the balance of probabilities, had the claimant raised either of these issues with Mr Tucker during his employment he would have been given the requisite information.
76. We find, therefore, on the balance of probabilities that the claimant did not raise any issues with Mr Tucker about fire safety or the health and safety policy, manual or procedure.

Quality Control manual

77. The next alleged disclosure is that the claimant says he complained to Mr Groves that he was not given a quality control procedure manual (QCP). This is a book of instructions setting out in detail the processes and standards for the workers to follow and meet in respect of each part of the manufacturing process.
78. In his witness statement Mr Groves said "The claimant was the manager of the powder coating area. He had the quality control manual but failed to follow it".
79. However, in cross examination Mr Groves confirmed that he had not given the claimant the QCP, but that it was available in the office to look at. Once again, the respondent's written and oral witness evidence is inconsistent and we prefer the oral evidence. However, while we find that the claimant was not given a copy of the QCP, there was again no convincing evidence that the claimant had raised it as an issue or requested it. Mr Groves denied that the claimant had made a complaint about it, the claimant has given no information either written or oral about the context of any alleged conversations with Mr Groves and, even if the claimant did raise it, the most likely context would be him asking for a copy, and, in any event, in light of Mr Groves's evidence about the QCP being in the office, the claimant would have been directed to it.
80. On balance, however, we find that the claimant did not make a complaint to Mr Groves that he was not given the Quality Control Procedure manual.

Changing area

81. The next alleged disclosure is that the claimant said that he made a complaint to Mr Nions that there was no suitable place to change clothes. It was agreed that the facilities provided by the respondent were that employees could get changed in a room that was also used for lunch breaks and eating. Mr Nions again did not address this alleged disclosure in his witness statement but in oral evidence it was clear that Mr Nions had had a discussion with the claimant about the adequacy of the changing facilities. He said that the claimant had shown him details of some lockers that were available free to collect from Yorkshire. The claimant's concern, Mr Nions said, was that the lockers that were provided were too small for the claimant's motorcycle helmet. It was, Mr Nions said, his suggestion that the claimant be given a spare office to clear out and use to change and store his belongings. The claimant did then use that office and did obtain the lockers.
82. Mr Groves agreed that the space where the employees would change and eat their lunch was dusty and he could understand why the claimant would not want to get changed there. The claimant's case at the tribunal was that it was not reasonable to eat in the same place that employees were required to get changed. He asked Mr Tucker if he thought it correct that employees should be required to change their dirty clothes where they eat, and Mr Tucker said "it shouldn't matter, no toxic substances, dust wise may be an issue".
83. We find that the claimant did make a complaint to Mr Nions that there was no suitable place to change clothes. On the basis of the case presented by the claimant at the tribunal we think it likely that he considered that being required to get changed in the same place as people were eating presented a health and safety risk to employees and we consider it likely, on the basis that he sought to obtain a number of larger lockers, not just one, that he was concerned for the welfare of his colleagues, not just himself. He was also, we find, motivated by the problems that he had storing his motorcycle equipment and the impact on him of having to change in the eating area.
84. However, we also find that once the problem was identified to Mr Nions, the claimant's concerns were acknowledged, and a solution was affected.

Bullying

85. The claimant says that he made a complaint to Mr Groves about bullying. In his witness statement, Mr Groves said "Nobody at any time, including the claimant, complained of bullying and he does not say what that bullying is". Mr Hoyle had indicated that he intended to ask Mr Groves to correct his statement but did not do so. It came up in cross examination and we noted that Mr Groves had intended to correct this statement.
86. This is because the claimant produced a document during the hearing which was the outcome of an investigation into an allegation of bullying made by the claimant. That document was a witness statement taken by Mr

Nions from the claimant dated 31 October 2017 and includes a number of allegations against a Mr Hardman that he has been abusive to the claimant and deliberately disrupting work.

87. At the end of that statement it says “Roy has been informed that SH has been acting against me and he should deal with him”.
88. Mr Groves said that when it was reported to him, he took the matter to Mr Nions. The claimant disputed this – he said that he reported it directly to Mr Nions, and Mr Nions did not appear to dispute this. We prefer the evidence of the claimant on this point – that he had spoken to Mr Groves but nothing was done so he had to approach Mr Nions directly. This is consistent with what is recorded in the notes of interview and it seems unlikely that Mr Nions would not have corrected the claimant in the course of that interview if the report had actually come from Mr Groves.
89. We note also that Mr Tucker agrees that an allegation of bullying is a health and safety matter. He says in his witness statement “bullying in the workplace is a health and safety issue, It can lead to injury and also result in lost work days. It has never been brought to my attention that bullying has taken place, to or by whom”.
90. In oral evidence, however, Mr Tucker confirmed that he had been told about the allegation soon after the claimant brought it to Mr Nions’ attention. Mr Tucker’s witness statement is clearly wrong. His explanation that by saying “it has never been brought to my attention that bullying has taken place” just meant that it had never been brought directly to his attention on the shop floor was wholly lacking in credibility. This is another example of the complete unreliability of the respondent’s evidence in this case.
91. In fact, it was clear from the evidence of Mr Nions and the contemporaneous documentary evidence that was subsequently produced by the respondent that Mr Nions did take the allegation seriously and it was investigated and responded to appropriately. This only makes the respondent’s omissions and inaccuracies in its witnesses statements harder to comprehend.
92. We therefore find that the claimant did complain to Mr Groves about bullying and that this must have happened before 30 October 2017, because that is the date of the statements taken by Mr Nions. We do not need to set out the detail of the allegations but, on the basis of the information in the contemporaneous statement, we think it likely that the claimant gave Mr Groves the same kind of information about what he said Mr Hardman had done as he subsequently gave to Mr Nions. That information was a clear and explicit list of alleged acts by Mr Hardman and any reasonable person would have concluded that the claimant was making an allegation that he was being bullied on hearing that information.

30 July mask complaint

93. The claimant says that on 30 July 2018 he complained that he did not have a suitable mask for powder coating. It is not explicit to whom the claimant says he made the complaint but from the context of his ET1 it appears that he says the complaint was made to Mr Tucker. Mark Tucker says that no complaint was made to him and that in any event the claimant was provided with a battery powered mask. It was agreed that the claimant was provided with such a mask but no one was clear when and, again, there are no records. It was agreed that it was a few days before the claimant went on holiday on 2 August but it is not clear whether the complaint was said to be made before or after the provision of the battery powered mask.
94. The alleged complaint was about the FFP3 masks. The claimant says in his ET1:
- “On Monday 30 July 2018, I lodged my second complaint about not having a suitable mask for powder coating to perform a job duty and in addition, the previous mask provided was intended for one-off use only and is therefore no longer fit for purpose.
I had made a few complaints with regards to the ongoing issue during this year (I cannot recall the specific period of time) yet Mark Tucker, health and safety manager responded me that the powder coating mask is very expensive and the current ones are sufficient enough and moreover, I already wore a pair of glasses”.
95. The respondent sought to argue that the claimant had been provided with the battery powered mask prior to making this complaint. There was no obligation, the respondent said, on them to provide this mask which had been provided the cost of in excess of £400. It was provided following a recommendation from the HSE after their visit in May.
96. In our view and bearing in mind that the ET1 was translated from Czechoslovakian, there is nothing in the paragraphs in the ET1 which suggest the claimant was complaining about the battery powered mask. In our view the claimant’s complaints about the masks are clearly directed solely at the FFP3 masks.
97. We think it likely, on the balance of probabilities, that the claimant did raise the issue of the disposable masks shortly before the battery powered mask was provided. Mr Tucker said that the claimant did ‘moan about’ the disposable masks that he had to wear and it was common ground that the claimant did not like wearing them.
98. Because of the numerous inconsistencies between Mr Tucker’s written witness statement and his oral evidence, in the absence of any corroborative or other contemporaneous evidence we are inclined to give the claimant’s evidence more weight. We find, therefore, that the claimant on the balance of probabilities did complain to Mark Tucker on around 30 July 2018 that the disposable masks with which he had been provided for powder coating were not suitable.

99. Further we find that the claimant made this complaint because he genuinely believed they were not suitable. He described that they were not effective to prevent contamination by powder coating particles and they did not provide any protection at all for his eyes. Although there was discussion of glasses, the claimant said the only glasses he wore at work were his reading glasses. It may be, as the respondent said, that goggles were made available. However, in our view, the claimant genuinely considered that he was not provided with adequate protection for powder coating.
100. We do note, however, that as far as we were aware the claimant was the only person who habitually undertook powder coating. It was an issue to which we will return that Mr Russell was, in the respondent's view, supposed to be undertaking some of the powder coating but in fact it was monopolised by the claimant.
101. We also find that on or shortly after 30 July 2018 the claimant was provided with a battery powered mask which appeared to be agreed between the parties was the most suitable type of mask for powder coating.

Other mask complaints

102. The final alleged disclosure is that "on other occasions the claimant complained about not having a suitable facemask".
103. We had no further additional evidence beyond that that we have set out under the heading quote overalls, boots and masks". We conclude that this allegation was a repetition of the previous alleged disclosures and we therefore make no further findings about that.

Dismissal

104. The claimant went on holiday on 2 August 2018. On his return he received a letter from Mr Groves dated 20 August 2018 inviting him to a meeting on 23 August at 8 AM. The letter says:
- "I write with reference to concerns I have around your ability to perform in your role since you started with the business in May 2017. You were employed at the company as a powder coating manager and it is felt that you are not carrying out your role as a manager. In line with this I would like to invite you to a meeting on the 23rd August at 8 AM in the meeting room. Given the relatively short period of time you have been with the company and the number of concerns I have relating to performance, coupled with the effects these issues are having on the workplace and other team members/morale in the rest of the company, I must warn you that the outcome could be dismissal".
105. The letter then says "you have the right to be accompanied at the meeting by a fellow worker or trade union official if you so wish". It then provides a summary of what the role of such a companion would be.

106. The claimant wrote to the respondent requesting a postponement of that meeting so that he would have time to discuss it with the trade union of which he was a member. Mr Groves replied by letter of the same date 21 August 2018 agreeing to that postponement, and the meeting was rearranged for 30 August 2018. That second letter also made it clear that the claimant had the right to be accompanied at the meeting by a fellow worker or trade union official if he so wished.
107. The claimant says in his claim form that on 21 August when his request for a postponement was granted he was told there was nothing to be worried about, it was an ordinary meeting and trade union representation would not be necessary. Mr Groves denies that he told the claimant that it was an ordinary meeting and that trade union representation would not be necessary. The claimant took great pains to point out that nowhere in either of the invitation letters does it refer to a disciplinary meeting. The claimant is correct, neither letter does explicitly refer to “disciplinary meeting” but in our view it is perfectly clear from the letters that the claimant’s job is at risk in the meetings. It is also perfectly clear from the letters that the respondent has twice informed the claimant of his right to be accompanied by trade union representative and in fact postponed the first meeting to allow the claimant to facilitate that representation.
108. It simply makes no sense that Mr Groves would then go out of his way to seek to persuade the claimant, as the claimant suggests, that this was an ordinary meeting and no trade union representation was necessary.
109. We find, therefore, that Mr Groves did not try to trick or deceive the claimant into accepting that trade union representation was not necessary at the meeting which was ultimately held on 30 August 2018.
110. At that meeting Mr Groves had a number of allegations to put to the claimant about his performance and conduct. A brief note of that meeting is set out in the papers. It comprises five prewritten questions and very brief notes of the claimant’s responses. It was common ground that this was not a comprehensive record of the meeting but a summary. The notes were taken by Mr Groves. The claimant was not given a copy of those notes at the time to comment on and nor are they signed by the claimant. The claimant said, and we accept, that he did not receive a copy of those notes until the disclosure process for this tribunal.
111. Mr Groves said that the claimant did not say at any point during the meeting that he was dissatisfied by his lack of representation and we heard nothing to contradict that from the claimant. We therefore find that the claimant did not raise the issue of attending the disciplinary meeting by himself during the course of that meeting.
112. We summarise the allegations that were put to the claimant in the course this meeting and his response
- 112.1. the first allegation was that the claimant had not done jobs in the order in which he was instructed which it meant that he had had to

change the colour of powder coating more often than he would otherwise have done if he had done the jobs in the order that the respondent instructed. The claimant's response was that one of the jobs was not ready so he did the other one. He did not deny the allegation, but he did provide an explanation for it.

112.2. The second allegation was that there were numerous occasions when orders have been completed late and that this would cause a problem with the respective clients resulting in the respondent being marked down on performance. This concerned particularly an allegation that the claimant was not managing his team appropriately to ensure the work could be done and that he did not notice when one worker, Mr Avery, was absent. Again, the claimant responded to this allegation with an explanation. He said that the parts were late reaching his part of the production line and he does not have enough staff. He did not answer specifically the allegation about Mr Avery. In the course of the hearing, the claimant denied knowing that Mr Avery was his responsibility.

112.3. We do not know if Mr Avery was the claimant's responsibility because there were no documents about the claimant's role or the structure of his department or the respondent at all. However, we are satisfied that Mr Groves genuinely believed that Mr Avery was the claimant's responsibility, and he considered that the claimant should have been aware of that and taken responsibility for ensuring that Mr Avery's job was covered in his absence.

112.4. The third allegation was that another employee, Mr Russell, should have been undertaking more of the powder coating work so that the claimant could undertake more management work. The claimant again responded to the effect that Mr Russell was not competent to undertake the role in his view.

112.5. The fourth allegation was that the claimant had failed to correctly label some products resulting in some parts leaving the company with incorrect labels on. Again, the claimant responded and said he did not think it was necessary to label in the way that the respondent wanted so he did not do it.

112.6. The final allegation was that the claimant had failed to put the new battery powered air mask referred to above on charge overnight on the first night that he had had it. Again, the claimant did not deny this happened, but simply said that it was not necessary.

113. We prefer the evidence of Mr Groves that the allegations set out above were genuine concerns that he had about the claimant's performance. The claimant did not deny any of the allegations, but he did seek to provide an explanation for his acts. We note that those explanations invariably involved him denying responsibility for any of the problems and blaming somebody else.

114. In respect particularly of the allegation about Mr Avery, we could not necessarily be satisfied that Mr Groves had any reasonable basis for believing that he was the claimant's line management responsibility. There was no suggestion that the claimant had been explicitly told this. However, we note the contemporaneous evidence of the questions prepared for the disciplinary hearing in which it says that by that point the claimant had been working for the respondent in the management role for a year. We therefore conclude that Mr Groves did actually and genuinely believe that the claimant understood his line management responsibilities in the same way that Mr Groves did. This, we find, was the reason for raising that allegation. In respect of all the other allegations, the claimant did not deny that they happened, rather just provided an explanation for them. Therefore, we conclude that the respondent had a real and genuine reason for raising these concerns with the claimant.
115. Following this meeting, Mr Groves discussed his view about the claimant's performance and his responses to the questions in the meeting with a director Mr Simon Brandreth. Mr Brandreth did not attend to give evidence which, given that he was the person who decided to dismiss the claimant, was surprising. Mr Groves' evidence was that he recommended the claimant's dismissal and Mr Brandreth accepted Mr Groves view and wrote and sent the letter dated 1 September 2018 dismissing the claimant.
116. Despite Mr Brandreth's absence and no evidence from him, we prefer the evidence of Mr Groves that the claimant was dismissed for the reasons set out in the letter which reflected the matters covered in the disciplinary meeting on 30 August 2018.
117. Mr Groves said that the claimant did not raise any of the issues that now form part of his claim at that meeting and we accept that evidence.
118. We find, therefore, that the reason that Mr Groves recommended the claimant for dismissal was that he genuinely believed that the claimant was not adequately performing his role as powder coating manager and that the reason that Mr Brandreth sent letter was solely because of Mr Groves recommendation to dismiss the claimant.

Appeal

119. On receipt of the letter of dismissal, the claimant exercised his right of appeal. Again, he was informed of his right to be accompanied at the appeal meeting and this time he took with him Mr Russell his colleague.
120. The reasons that the claimant gave for appealing against the decision to dismiss him were that he felt that the sanction of dismissal was too severe and that the disciplinary meeting was not conducted in a fair manner. The claimant did not make any reference to a belief that he was dismissed because of any of the alleged disclosures he had previously made.
121. The appeal was heard by Mr Nions on 12 September 2018. He was accompanied by Mr Tucker who took the minutes and the claimant was accompanied by Mr Russell. The notes of the appeal meeting are more

comprehensive than the notes of the dismissal meeting. The minutes record that the same issues were discussed as had been discussed at the dismissal meeting and again the claimant gave an explanation in response to each of the allegations.

122. The last entry in respect of the appeal meeting reads as follows “SB said he would like to raise other issues relating to health and safety. These were listened to and PN asked why he had not raised them at the last meeting or over the last year. SB said he had raised the issues”.
123. In his witness statement Mr Nions says that the claimant introduced the complaints that he has no contract, no safety clothing and no training at an earlier point in the meeting. Mr Nions said that he told claimant that they were not relevant to his dismissal and that they had not been raised previously. Mr Nions says, and we accept his evidence on this, that the claimant did not say that the reason for his dismissal was because he raised health and safety concerns or that he had not been given a contract.
124. Mr Nions observes that the claimant failed to take any responsibility for any of the allegations put to him and that consequently the respondent could not have any trust in him as an employee.
125. Although the respondent has provided inconsistent and contradictory evidence at times and little to no documentary evidence of any of the things they've done, we do find that the reason for the claimant's dismissal and for the failure to uphold this appeal was that the respondent's managers genuinely believed that the claimant was not performing as required and had not taken responsibility for any of the matters that they perceived to be his fault.
126. Finally, in respect of the appeal, Mr Nions said in his statement, and it is recorded in the notes of the appeal, that the claimant again sought to raise the matters relating to health and safety and failure to provide a contract at the conclusion of the appeal. We find that he did so. We have made findings above about the matters that the claimant raised throughout his employment, but we think it likely, on the balance of probabilities, that during and at the end of the appeal was the first time the claimant had sought to raise these issues as specifically health and safety complaints rather than just complaints or issues in the normal course of his employment.

Using the office

127. It was one of the claimant's complaints that he was banned from using the office. We heard no evidence from anyone of any context about this. The only evidence we heard was that the claimant said in response to a question in cross examination that he was banned from going into the office so he did not know what was going on there.
128. We conclude that this must be a main office where managers work as later on the claimant said that he was not allowed in the office unless Mark Tucker said he could. In the absence of any evidence to the contrary we

accept the claimant's account but in our view given the claimant's job as powder coater, this was not an unreasonable approach for the respondent to adopt.

129. However, we heard no evidence from any person as to why the claimant was prevented from going into the office.

Other issues

Contract

130. It was one of the claimant's complaints that he had never received a written contract of employment. This is not disputed. The claimant had not received written contract of employment and had not done so by the time he started these proceedings.
131. We heard no direct evidence from the claimant that he had requested a copy of his contract or asserted that the respondent was in breach of its obligations to provide him with one, although he did agree in response to a question from Mr Hoyle that he raised the issue in either the disciplinary meeting or the appeal meeting. Mr Nions' evidence was that he did not recall that claimant requesting a copy of his contract.
132. The claimant does not refer to raising the issue at all in his particulars of claim.
133. We find, on the balance of probabilities, that the earliest occasion on which the claimant raised with any member of the respondent the failure to provide a contract was in his disciplinary meeting following which he was dismissed.

Pay slips

134. It was another one of the claimant's complaints that for a period of his employment he had not been provided with pay slips. This was at the beginning of the claimant's employment with the respondent. He said that he told Mr Nions tried to sort it out and it took a while. It appears that the payroll provider had the wrong email address for the claimant. The claimant was unclear when this was but he said that it was at the start of employment and certainly by May 2018 he was receiving pay slips regularly. There was a total of 8 to 12 pay slips that he did not receive extending over a period of 2 to 3 months (the claimant being paid weekly). The respondent did not deny this and neither party was able to provide any further information about the dates when pay slips were not provided on time prior to payment of wages.
135. The claimant did not give any evidence of any deductions of which he was not aware being made from the pay in those periods and nor did he give any explanation for the delay in bringing a claim about the alleged failure.

Public interest

136. We refer, finally, to the witness statement of Mr Iohita and Mr Ambrozewicz. Both witnesses gave evidence that the claimant sought improvements in their working conditions, as well as his own, through the provision of additional PPE. We found both witnesses to be plausible and with no particular interest in the outcome of proceedings and we accept their evidence of these matters.

Law

Protected disclosures

137. The law relating to protected disclosures is set out in Part IVA of the Employment Rights Act 1996.

138. Section 43A (Meaning of “protected disclosure”) provides:

In this Act a “protected disclosure” means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H.

139. Section 43B (Disclosures qualifying for protection) says, as far as is relevant:

(1) In this Part 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 one or more of the following—

...

(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,

...

(d) that the health or safety of any individual has been, is being or is likely to be endangered,

140. Section 43C (Disclosure to employer or other responsible person) provides:

(1) A qualifying disclosure is made in accordance with this section if the worker makes the disclosure . . .—

(a) to his employer..

141. This means that in order to be protected, the relevant disclosure must satisfy all of the following requirements:

141.1. It must be the disclosure of information. It does not matter whether the discloser already knows the information disclosed (*Parsons v Air Plus Ltd*. UKEAT/0111/17/JOJ)

141.2. The worker disclosing the information must reasonably believe both:

141.2.1. That the information tends to show one of the listed matters; and

141.2.2. That the disclosure is in the public interest.

141.3. The disclosure must also be made to an appropriate person – namely the worker’s employer or, where the conduct relates to someone other than his employer, that person or, in respect of any other matter for which someone other than his employer has responsibility, that person. It is not disputed that the alleged disclosures were made to the claimant’s employer, and that the claimant was a worker.

142. It is not necessary that the claimant’s belief is correct, only that it is reasonable. In *Korashi v Abertawe Bro Morgannwg University Local Health Board* 2012 IRLR 4, the EAT, held that reasonableness under S.43B(1) requires the Tribunal to apply an objective standard to the personal circumstances of the discloser. What is responsible for a particular person to believe will depend on their knowledge and experience.

143. The tribunal was referred to *Parsons v Air Plus Ltd*. UKEAT/0111/17/JOJ in which HHJ Eady referred to *Chesterton Global Ltd (t/a Chestertons) and anor v Nurmohamed (Public Concern at Work intervening)* 2018 ICR 731, CA. The court of appeal in that case explained what it means to say that the worker has a reasonable belief that the disclosure is made in the public interest. There is, in effect, a two-stage test for the tribunal in determining this question:

143.1. At the time of making the disclosure, did the worker actually believe that the disclosure was in the public interest; and

143.2. If so, was that belief reasonable.

144. It was also explained in *Chesterton* that “while the worker must have a genuine (and reasonable) belief that the disclosure is in the public interest, that does not have to be his or her predominant motive in making it”.

145. Finally, in respect of protected disclosures, it was held in *Kilraine v London Borough of Wandsworth* [2018] EWCA Civ 1436 at paragraphs 35 and 36 (cited in *Parsons v Air Plus Ltd*. UKEAT/0111/17/JOJ and as confirmed in *Simpson v Cantor Fitzgerald Europe* [2021] IRLR 238) that

“35. The question in each case in relation to s 43B(1) (as it stood prior to amendment in 2013) is whether a particular statement or disclosure is a ‘disclosure of information which, in the reasonable belief of the worker

making the disclosure, tends to show one or more of the [matters set out in sub-paragraphs (a) to (f)]'. Grammatically, the word 'information' has to be read with the qualifying phrase, 'which tends to show [etc]' (as, for example, in the present case, information which tends to show 'that a person has failed or is likely to fail to comply with any legal obligation to which he is subject'). In order for a statement or disclosure to be a qualifying disclosure according to this language, it has to have a sufficient factual content and specificity such as is capable of tending to show one of the matters listed in sub-s (1). The statements in the solicitors' letter in Cavendish Munro did not meet that standard.

36. Whether an identified statement or disclosure in any particular case does meet that standard will be a matter for evaluative judgment by a tribunal in the light of all the facts of the case. It is a question which is likely to be closely aligned with the other requirement set out in s 43B(1), namely that the worker making the disclosure should have the reasonable belief that the information he discloses does tend to show one of the listed matters. As explained by Underhill LJ in Chesterton Global at [8], this has both a subjective and an objective element. If the worker subjectively believes that the information he discloses does tend to show one of the listed matters and the statement or disclosure he makes has a sufficient factual content and specificity such that it is capable of tending to show that listed matter, it is likely that his belief will be a reasonable belief".

146. In respect of each of the alleged disclosures, therefore, the claimant must have actually disclosed sufficient factual information to be capable of showing that the health or safety of any individual has been, is being or is likely to be endangered or that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject.

Unfair dismissal

147. The claim that the claimant is bringing is that he was unfairly dismissed under section 103A of the Employment Rights Act 1996. This says

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 protected disclosure.

148. In respect of the causal link between any disclosures that claimant makes and the reason for his dismissal, the burden of proving that the reason he was dismissed was the making of protected disclosures falls to the claimant. (*Parsons v Airplus Ltd* UKEAT/0111/17/JOJ)

149. In *Abernethy v Mott, Hay and Anderson* [1974] ICR 323,330, Cairns LJ set out the well-known explanation of what the employer's reasons for dismissal means:

"A reason for the dismissal of an employee is a set of facts known to the employer, or it may be of beliefs held by him, which cause him to dismiss the employee"

150. We were also referred to the case of *Alidair Ltd. v Taylor* [1978] ICR 445 in which the Court of Appeal held that the tribunal have to consider the employer's reason and the employer's state of mind. If the company honestly believed on reasonable grounds that the employee is not capable of doing the job he is employed to do, they are entitled to dismiss him. The Tribunal must not substitute their own decision.
151. In this case, the sole question (in respect of this claim) for the Tribunal is whether the reason for the claimant's dismissal was because he made protected disclosures.

Detriments

152. The law relating to detriments is set out in Part V of the Employment Rights Act 1996

153. Section 47B (Protected disclosures) provides:

(1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.

(1A) A worker ("W") has the right not to be subjected to any detriment by any act, or any deliberate failure to act, done—

(a) by another worker of W's employer in the course of that other worker's employment, or

(b) by an agent of W's employer with the employer's authority,

on the ground that W has made a protected disclosure.

154. Detriment is not defined in the statute. However, it has a wide meaning and includes being put at a disadvantage. It does not necessarily have to be an economic disadvantage and should be considered from the worker's perspective.

155. In respect of bringing a claim of detriment on the grounds of making a protected disclosure, section 48 (Complaints to employment tribunals) provides

(1A) A worker may present a complaint to an employment tribunal that he has been subjected to a detriment in contravention of section 47B.

(2) On a complaint under subsection (1), (1ZA), (1A) or (1B) it is for the employer to show the ground on which any act, or deliberate failure to act, was done.

156. This means that it is for the employer to show the ground on which any act or deliberate failure to act was done. This is explained in Volume 14 of the IDS handbook as follows:

“it means that once all the other necessary elements of a claim have been proved on the balance of probabilities by the claimant — i.e. that there was a protected disclosure, there was a detriment, and the respondent subjected the claimant to that detriment — the burden will shift to the respondent to prove that the worker was not subjected to the detriment on the ground that he or she had made the protected disclosure”.

157. However, in *Ibekwe v Sussex Partnership NHS Foundation Trust* UKEAT/0072/14/MC, HHJ Clarke held

“I do not accept that a failure by the Respondent to show positively why no action was taken on the letter of 5 April before the form ET1 was lodged on 12 June means that the section 47B complaint succeeds by default (cf. the position under the ordinary discrimination legislation, considered by Elias LJ in *Fecitt*). Ultimately it was a question of fact for the Employment Tribunal as to whether or not the ‘managerial failure’ to deal with the Claimant’s letter of 5 April was on the ground that she there made a protected disclosure”.

158. In *Abernethy v Mott Hay and Anderson* [1974] IRLR 213, it was held that ‘A reason for [an act or omission] is a set of facts known to the employer, or it may be of beliefs held by him, which cause him to [act or refrain from acting]’

159. In *Fecitt v NHS Manchester* [2012] IRLR 64 Lord Justice Elias held “In my judgment, the better view is that s.47B will be infringed if the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer’s treatment of the whistleblower. If Parliament had wanted the test for the standard of proof in s.47B to be the same as for unfair dismissal, it could have used precisely the same language, but it did not do so”.

160. This means that if the claimant is able to show that he made protected disclosures, and that he was subject to a detriment the burden moves to the respondent to show the reason that caused the respondent to subject the claimant to the detriment and that the reason for the detriment was not materially influenced by any protected disclosures made by the claimant. However, a failure to show the reason for the detrimental act does not automatically mean that the claimant succeeds by default. There must still be some evidence from which the Tribunal could conclude that the detrimental act was materially influenced by a protected disclosure.

Health and safety dismissal

161. Section 100 Employment Rights Act 1996 provides, as far as is relevant:

(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) having been designated by the employer to carry out activities in connection with preventing or reducing risks to health and safety at work, the employee carried out (or proposed to carry out) any such activities,

(b) being a representative of workers on matters of health and safety at work or member of a safety committee—

(i) in accordance with arrangements established under or by virtue of any enactment, or

(ii) by reason of being acknowledged as such by the employer,

the employee performed (or proposed to perform) any functions as such a representative or a member of such a committee,

[(ba) the employee took part (or proposed to take part) in consultation with the employer pursuant to the Health and Safety (Consultation with Employees) Regulations 1996 or in an election of representatives of employee safety within the meaning of those Regulations (whether as a candidate or otherwise),]

(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) ...

(2) For the purposes of subsection (1)(e) whether steps which an employee took (or proposed to take) were appropriate is to be judged by reference to all the circumstances including, in particular, his knowledge and the facilities and advice available to him at the time.

(3) Where the reason (or, if more than one, the principal reason) for the dismissal of an employee is that specified in subsection (1)(e), he shall not be regarded as unfairly dismissed if the employer shows that it was (or would have been) so negligent for the employee to take the steps which he took (or proposed to take) that a reasonable employer might have dismissed him for taking (or proposing to take) them.

162. In deciding the reason, the burden, where he has less than 2 years' service, is on the claimant. The question for the tribunal is to ask why the employer acted as they did.

Dismissal for asserting a statutory right

163. Section 104 Employment Rights Act 1996 provides:

(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) brought proceedings against the employer to enforce a right of his which is a relevant statutory right, or

(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 in 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.

(a) any right conferred by the Act for which the remedy for its infringement is by way of a complaint or reference to an employment tribunal.

...

164. Where an employee has less than 2 years' service, the burden falls on them to prove, on the balance of probabilities, that the sole or principle reason for the dismissal was the assertion of the statutory right.

165. The allegation must be made in good faith and that question is a matter of fact for the Tribunal to determine. It is immaterial whether the employee actually had the right in question or if the right has actually been infringed.

166. The claimant is claiming that he was dismissed for asserting a statutory right when he requested a copy of his contract in January 2018 and on another unspecified date. Section 1 Employment Rights Act 1996 provides, as far as is relevant and as in force at the date of the claimant's dismissal,

(1) Where an employee begins employment with an employer, the employer shall give to the employee a written statement of particulars of employment.

167. A breach of section 1 is enforceable by way of a reference to the Employment Tribunal under section 11 Employment Rights Act 1996 so that a request for a copy of a statement under section 1 falls within section 104 (3)(a) of the Employment Rights Act 1996.

Payslips

168. Section 8 ERA provides

- (1) [A worker] has the right to be given by his employer, at or before the time at which any payment of wages or salary is made to him, a written itemised pay statement.
- (2) The statement shall contain particulars of—
 - (a) the gross amount of the wages or salary,
 - (b) the amounts of any variable, and (subject to section 9) any fixed, deductions from that gross amount and the purposes for which they are made,
 - (c) the net amount of wages or salary payable, . . .
 - (d) where different parts of the net amount are paid in different ways, the amount and method of payment of each part-payment[, and
 - (e) where the amount of wages or salary varies by reference to time worked, the total number of hours worked in respect of the variable amount of wages or salary either as—
 - (i) a single aggregate figure, or
 - (ii) separate figures for different types of work or different rates of pay].

Section 11 Employment Rights Act 1996 provides

169. (1) Where an employer does not give a worker a statement as required by section 1, 4 or 8 (either because the employer gives the worker no statement or because the statement the employer gives does not comply with what is required), the worker may require a reference to be made to an employment tribunal to determine what particulars ought to have been included or referred to in a statement so as to comply with the requirements of the section concerned.]

...

(4) An [employment tribunal] shall not consider a reference under this section in a case where the employment to which the reference relates has ceased unless an application requiring the reference to be made was made—

- (a) before the end of the period of three months beginning with the date on which the employment ceased, or
- (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the application to be made before the end of that period of three months.

[(6) [Section] 207B (extension of time limits to facilitate conciliation before institution of proceedings) also applies for the purposes of subsection (4)(a).]

170. This means that any claim by a claimant that he has not been provided with pay slips must be brought within 3 months of the termination of the claimant's employment.

171. Section 12 (3) provides:

(3) Where on a reference under section 11 an [employment tribunal] finds—

(a) that an employer has failed to give [a worker] any pay statement in accordance with section 8, or

(b) that a pay statement or standing statement of fixed deductions does not, in relation to a deduction, contain the particulars required to be included in that statement by that section or section 9,

the tribunal shall make a declaration to that effect.

(4) Where on a reference in the case of which subsection (3) applies the tribunal further finds that any unnotified deductions have been made (from the pay of [the worker] during the period of thirteen weeks immediately preceding the date of the application for the reference (whether or not the deductions were made in breach of the contract of employment), the tribunal may order the employer to pay [the worker] a sum not exceeding the aggregate of the unnotified deductions so made.

(5) For the purposes of subsection (4) a deduction is an unnotified deduction if it is made without the employer giving [the worker], in any pay statement or standing statement of fixed deductions, the particulars of the deduction required by section 8 or 9.

172. This means that where an employer has failed to provide a payslip, the tribunal must make a declaration to that effect. If the claimant has not been provided with a payslip in the 13 weeks prior to the claim to the Tribunal, and in that period he was subject to deductions from his wages of which he was not notified, the Tribunal may order the employer to pay to the claimant a sum not exceeding the amount of the unnotified deductions.

Failure to provide a statement of main terms of employment

173. Section 38 Employment Act 2002 provides that if the claimant is successful in respect of any of the claims listed under schedule 5 to the Employment Act 2002 and at the start of these proceedings the employer had not complied with its duties under section 1 or 4 of the Employment Rights Act 1996, the Tribunal must make an award of between 2 weeks' pay increased to 4 weeks if it is just and equitable in all the circumstances to do so.

174. The relevant claims under schedule 5 for the purposes of this claim are the claims of unfair dismissal under sections 100, 103A and 104 of the Employment Rights Act 1996 and the claims of detriment under section 48

Employment Rights Act 1996. It does not apply to the claim under s11 Employment Rights Act 1996 (failure to provide pay slips).

Conclusions

175. We consider first whether each of the alleged disclosures amounted to either qualifying protected disclosures under section 43B Employment Rights Act 1996 or a notification under section 100(3)(c) Employment Rights Act 1996 of a health and safety risk.
176. **A complaint to Mark Tucker that he did not get appropriate boots, overalls and a spraying mask;**
177. In respect of boots in in relation to s 43B we have found that the claimant did not discuss this matter with March Tucker at all. Even if we take a wider view, we have found that the claimant has not shown that he made a disclosure of information to Mr Groves either relating to the failure to provide boots.
178. Consequently, there has been no disclosure of information tending to show a breach of health and safety or the failure to comply with a legal obligation.
179. In respect of section 100, the claimant did have a conversation with Mr Groves about boots, the outcome of which is that there was a discussion about ways in which boots could be provided. We conclude that at that point the claimant did not have boots, or adequate boots. He thereafter bought his own. In our view, the requirements of s 100(1)(c) are much broader than for s 47B. The claimant merely has to bring to the employer's attention through reasonable means circumstances which he reasonably believed were harmful or potentially harmful to health or safety. However, we heard no evidence about the reason for this conversation and in cross examination the claimant said he had his own boots. We conclude therefore that the claimant was not raising the issue of boots because of a concern about health and safety. Rather, we conclude, he was raising it because he considered that the respondent should provide him with boots rather than being required to provide his own. This might be a reasonable position to take but, at the time he raised the issue, he can have had no real concern that his health and safety was at risk from the failure by the respondent to provide boots because he did have boots, albeit that they were his own.
180. In respect of the complaint about overalls and in relation to section 43B, again there was no conversation with Mr Tucker. In respect of the conversation with Mr Groves, we have found there was no disclosure of information tending to show that the health and safety of any individual was at risk or a legal obligation as not being complied with. The claimant agreed that he had access to protective overalls for spraying, and the issue about the blue overalls was about protecting the claimant's clothes. There is no basis, therefore, on which we could conclude that the claimant genuinely considered that the respondent was failing to comply with a legal obligation – no legal obligation was referenced in respect of the overalls – and no

basis on which the claimant could reasonably believe that the failure to provide blue overalls put the health and safety of any individual at risk.

181. Similarly, in respect of section 100, the claimant cannot have believed that the failure to provide blue overalls put his or anyone else's safety at risk. Again, we conclude that the claimant was raising this issue because he considered that the respondent should provide him with an overall rather than being required to provide his own. This might also be a reasonable position to take but, at the time he raised the issue, he can have had no real concern that his health and safety was at risk from the failure by the respondent to provide an overall because he did have overalls, albeit that they were his own; protective coverings were available for spraying and the lack of material overalls was not a health and safety risk in any event.
182. In respect of masks, we have found that the claimant did, on a number of unspecified dates, disclose information to Mr Tucker to the effect that he considered the FFP3 mask was not suitable for powder coating as it was too hot and did not provide adequate protection – particularly in respect of his eyes and exposed skin – for powder coating.
183. This is the disclosure of information and it does tend to show that the health and safety of a person, namely the claimant, is being put at risk. We conclude that the claimant reasonably believed that this is what this information tended to show at the time. This is because he was clear that he disliked wearing masks but appreciated the necessity of doing so. The only reason for this can have been the health and safety risks associated with not doing so. We also find that the claimant believed he was making this disclosure in the public interest. We refer to the evidence of Mr Iohita and Mr Ambrozewicz who gave evidence that the claimant sought improvements in their working conditions, as well as his own, through the provision of additional PPE. In our view, seeking additional protection for his work colleagues falls within the public interest test and we conclude that the claimant was seeking the improvements in PPE for his colleagues at the time.
184. Similarly, the information disclosed about the masks is capable of showing that the respondent was in breach of its duties under the Health and Safety at Work Act 1974. The information disclosed does not have to be correct the claimant merely has to reasonably believe it is. We consider that the claimant reasonably believed that the masks were unsuitable and explained why. If they were, this is information that would tend to show the respondent was in breach of its obligations under the Health and Safety at Work Act 1974.
185. This disclosure was made to his employer.
186. For the same reasons, for the purposes of s 100, the claimant did bring to his employer's attention through reasonable means circumstances which he reasonably believed were harmful or potentially harmful to health or safety.

187. Therefore, in respect only of complaints about masks, the claimant did make qualifying protected disclosures for the purposes of s 43B Employment Rights Act 1996 and he did bring to the employer's attention through reasonable means circumstances which he reasonably believed were harmful or potentially harmful to health or safety for the purposes of s 100 Employment Rights Act 1996. The issues about boots and overalls do not amount to protected disclosures or health and safety disclosures for the reasons set out above.
188. Although we have been unable to identify the dates of these disclosures, we conclude that they occurred before 30 July 2018 because thereafter the claimant was provided with an airconditioned mask.
189. **A complaint to Mr Tucker and Paul Nions that the Claimant was working in water using electrical equipment that was not properly checked;**
190. We have found that the claimant was not working in water at any point so that either he did not make that complaint or any complaint he did make about it was not on the basis of a reasonable belief. This allegation does not therefore amount to either a qualifying protected disclosure or bringing to the employer's attention through reasonable means circumstances which he reasonably believed were harmful or potentially harmful to health or safety
191. The claimant did report to Mr Tucker that the powder coating machine had an out of date PAT test. This was the disclosure of information. Mr Hoyle made submissions to us on the basis that the relevant regulations providing for portable appliance testing did not apply to the powder coating machine as it was not a portable appliance. This may or may not be the case, but it is clear that the claimant did believe that there was a requirement for the powder coating machine to be tested. We conclude from the claimant's evidence that he reasonably believed that a failure to have a recorded test of the machine since 2014 did tend to show that the health and safety of any individual was at risk or that the respondent was failing to comply with the legal obligation to which it was subject. His reasonableness of belief is confirmed by the fact that the respondent then did test the machine.
192. For similar reasons as applied to the previous disclosure we also find that the claimant believed he was making this disclosure in the public interest.
193. Consequently as this disclosure of information was made to his employer, we find that it was a qualifying protected disclosure.
194. We also consider that the claimant in giving this information to Mr Tucker was bringing to the employer's attention through reasonable means circumstances which he reasonably believed were harmful or potentially harmful to health or safety pursuant to section 100 of the Employment Rights Act 1996
195. **A complaint to Roy Groves that the claimant was [not] trained to use certain equipment;**

196. We have found that the claimant did not make any such complaint, and consequently this cannot amount to a qualifying protected disclosure under section 43B of the Employment Rights Act 1996 nor the bringing to the employer's attention through reasonable means circumstances which he reasonably believed were harmful or potentially harmful to health or safety pursuant to section 100 of the Employment Rights Act 1996.
197. **A complaint to Mr Groves about newly installed CCTV in the Claimant's area;**
198. We have found that the claimant did not make any such complaint, and consequently this cannot amount to a qualifying protected disclosure under section 43B of the Employment Rights Act 1996 nor the bringing to the employer's attention through reasonable means circumstances which he reasonably believed were harmful or potentially harmful to health or safety pursuant to section 100 of the Employment Rights Act 1996
199. **A complaint to Mr Groves that the claimant was not provided with COSHH;**
200. We have found that the claimant did disclose information to Mr Groves during his employment effect that COSHH information provided by the respondent was inadequate.
201. This is the disclosure of information and it tends to show that the respondent was failing to comply with the legal obligation to which it was subject namely provisions under the health and safety at work act 1974. We conclude that the claimant reasonably believed that the respondent was failing in its obligations because he went to the trouble of providing his own information. Similarly, we conclude that the claimant reasonably believed that he was making this disclosure in the public interest. Having identified what he perceived to be the missing information there was no need to then provide it for the benefit himself, it could only have been for the benefit of others.
202. In our judgement this is sufficient to conclude that the claimant reasonably believed he was making this disclosure in the public interest. This information was reported to the claimant's employer and therefore amounts to a qualifying protected disclosure under section 43B Employment Rights Act 1996
203. For similar reasons we find that in notifying Mr Groves of the claimant's belief in the inadequacy of the information supplied by the respondent, the claimant was bringing to the employer's attention through reasonable means circumstances which he reasonably believed were harmful or potentially harmful to health or safety pursuant to section 100 of the Employment Rights Act 1996
204. **A complaint to Mr Tucker that the claimant was not trained in fire hazards and had received no Health and Safety manual;**
205. We have found that the claimant did not make any such complaint, and consequently this cannot amount to a qualifying protected disclosure under

section 43B of the Employment Rights Act 1996 nor the bringing to the employer's attention through reasonable means circumstances which he reasonably believed were harmful or potentially harmful to health or safety pursuant to section 100 of the Employment Rights Act 1996

206. **A complaint to Mr Groves that the claimant was not provided with the Quality Control Procedure Manual;**

207. We have found that the claimant did not make any such complaint, and consequently this cannot amount to a qualifying protected disclosure under section 43B of the Employment Rights Act 1996 nor the bringing to the employer's attention through reasonable means circumstances which he reasonably believed were harmful or potentially harmful to health or safety pursuant to section 100 of the Employment Rights Act 1996

208. **A complaint to Mr Nions that there was no suitable place to change clothes;**

209. We have found that the claimant made a complaint to Mr Nions to the effect that there was no suitable place to change clothes. The claimant's complaint included concerns about sharing the changing rooms with the place where employees are required to eat as well as an absence of blocker spaces. On balance, and on basis of our findings, we think that the claimant merely asserted his opinion that the changing facilities were inadequate. Our findings do not reflect the disclosure of any information. Even considering the testing *Kilraine* set out above, we have not been able to find that there was sufficient factual information in this complaint for it amount to the disclosure of information which would tend to show one of the relevant matters.

210. For this reason, this incident does not amount to a protected disclosure under section 43B Employment Rights Act 1996.

211. We do consider, however, that by asserting that the changing facilities were inadequate the claimant was bringing to his employer's attention by reasonable means circumstances connected with his work. Having heard the claimant and the respondent's evidence about the dust and potential cross contamination between the changing area and eating area we consider it likely that the claimant did reasonably believe that those circumstances were harmful or potentially harmful to health and safety. Again, we reiterate that the claimant's belief does not have to be correct really reasonable.

212. For that reason, we find that this incident did fall within section 100 (1)(c) of the Employment Rights Act 1996

213. **A complaint to Mr Groves about bullying;**

214. We have found that the claimant did give information to Mr Groves before 30 October 2017 about things that were happening to the claimant work which it was agreed amounted to bullying.

215. The respondent eventually responded to this information and took action. We therefore conclude that the respondent did disclose information. Mr Tucker agreed in his witness statement that bullying is health and safety issue and we agree with that. We conclude therefore that the claimant did disclose information which tended to show that the health and safety of any person was at risk, namely the claimant.
216. We have not, in this instance, heard any evidence to suggest that the claimant was making this disclosure in the public interest. The evidence tends to show that the claimant was making the disclosure solely for his own benefit. The claimant is certainly not be criticised for this and he is perfectly entitled to raise a complaint with his employer about bullying at work.
217. However, because this information was not disclosed, in the reasonable belief of the claimant, in the public interest, it does not amount to a qualifying protected disclosure under section 43B of the Employment Rights Act 1996.
218. There is, however, no public interest requirement under section 100(1)(c) of the employment rights act in relation to bringing to the employer's attention through reasonable means circumstances which he reasonably believed were harmful or potentially harmful to health or safety. The claimant did bring to his employer circumstances which were harmful or safety and consequently this disclosure falls within section 100 of the Employment Rights Act 1996.
219. **On 30 July 2018 a complaint by the claimant that he did not have a suitable face mask for powder coating;**
220. In every material respect, although this allegation is the only one with a specific date, our conclusion reflects that set out in respect of previous complaints about masks under the first alleged disclosure above. Specifically, we found that on or around 30 July 2018 the claimant disclosed information to Mark Tucker which tended to show that health and safety of the claimant was potentially at risk and that the respondent was failing to comply with its obligations under the Health and Safety at Work act 1974 and this does amount to a qualifying protected disclosure.
221. Similarly and for the same reasons, for the purposes of s 100, the claimant did bring to his employer's attention through reasonable means circumstances which he reasonably believed were harmful or potentially harmful to health or safety.
222. **On other occasions the Claimant complained about not having a suitable face mask.**
223. This matter is covered under the first alleged disclosure set out above.

Unfair dismissal

224. Having considered the alleged disclosures, we consider now the claimant's dismissal.
225. In our view, the clear reason that the claimant was dismissed as set out in our findings above is that the respondent and particularly Mr Groves genuinely believed that the claimant was not adequately perform his role as powder coating manager and that the reason Mr Brandreth sent the letter dismissing the claimant was solely on the basis of Mr Groves recommendation.
226. The fact that the respondent responded to the claimant's complaints by addressing them, and particularly we refer to the provision of an expensive air cooled mask and the undertaking of PAT testing when potentially it was not necessary to do so, as further weight to our conclusion is that the claimant's protected disclosures or health and safety disclosures were not to any extent part of the reason for the decision to dismiss the claimant.
227. The only qualifying protected disclosures we have identified relate to the provisions of masks testing of the powder coating machine and the provision of COSHH information. These were all matters that the respondent took positive action to resolve, with the exception of the COSHH information but which the claimant had ready resolved himself. The respondent did not object to the provision of the additional COSHH information as it may well have been entitled to do.
228. It seems highly unlikely in our view that the respondent would go to the trouble particularly of acquiring a mask at the cost of several hundred pounds following the issue being raised by the claimant only to then subsequently dismiss him for raising that same issue.
229. In respect of the health and safety issues, the same matters for within section 100 as have been identified as qualifying protected disclosures, with the addition of the complaints about bullying and changing facilities.
230. Again, the respondent took action or allowed the claimant to take action to remedy these issues. There was an investigation into the bullying allegation which resulted in a disciplinary outcome. The respondent did not provide the lockers but did provide a separate changing facility for the claimant. It simply makes no sense for the respondent to willingly address the matters that the claimant has raised by way of his complaints only to then some months later dismiss the claimant for those same complaints.
231. We therefore find that the claimant was not dismissed under section 103A of the Employment Rights Act 1996 for the reason of making any protected disclosures and nor was he dismissed under section 100 of the Employment Rights Act 1996 because he brought to his employers attention by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety and the claimant's claims of unfair dismissal are not well founded and are dismissed.

232. In respect of the claim that the claimant was dismissed for asserting a statutory right, the statutory right on which the claimant seeks to rely that he was asserting is the right to a written statement of terms and conditions of employment under sections 1 and 4 of the Employment Rights Act 1996. The claimant has referred throughout to the failure to provide a contract and we take this to refer to the statutory statement.
233. Our findings in respect of the real reason for the claimant's dismissal continue to apply in respect of this claim. However, in any event, our findings are that the claimant did not raise the issue of not having a contract of employment prior to his dismissal meeting. It is clear to us that by this date the allegations had been formulated with the intention of putting them to the claimant. It simply lacks credibility to suggest that the claimant was dismissed instead for raising in the course of that disciplinary hearing the failure by the respondent to provide him with a contract.
234. For these reasons, the claimant's claim that he was unfairly dismissed for asserting a statutory right pursuant to section 104 of the Employment Rights Act 1996 is unsuccessful and is dismissed.

Whistleblowing detriment

235. The detriments on which the claimant seeks to rely are
- 235.1. being deceived by Mr Groves that he did not need a representative for the disciplinary hearing on 21 August 2018;
 - 235.2. being the subject of fabricated allegations about his performance on 30 August 2018;
 - 235.3. having his access to the office denied.
236. In respect of the first detriment, we have simply found that this did not happen. There was therefore no detriment.
237. In respect of the second detriment, we have found that the respondent had a genuine belief in the allegations that they put to the claimant. Furthermore, the claimant in the course of his disciplinary and appeal hearings did not deny the matters that the respondent put to him, he merely provided an explanation. This reinforces our conclusion that the respondent did have a reasonable belief in the matters they were challenging the claimant about.
238. It is likely to be a detriment for employee to have disciplinary allegations put to them. It is certainly unwanted. However, the precise allegation is that the allegations were fabricated. Our finding is that they were not and so again put simply, this detriment simply did not happen.
239. For the avoidance of doubt, the reason that the claimant was subject to the disciplinary proceedings was because the respondent has genuine and well-founded concerns about the claimant's performance.
240. In respect of the alleged detriment of having access to the office, in our view this cannot reasonably amount to a detriment. The claimant gave no evidence or explanation as to why he was prevented from going into the

office and in fact he said he needed the permission of Mark Tucker to go into the office. As we conclude that Mark Tucker was one of the people who worked in the office this does not seem unreasonable. Further, the claimant was a powder coated and he has not identified any circumstances in which he would reasonably need to access the office or any particular occasions when access was denied.

241. For these reasons we find that the claimant was not subject to detriments on the grounds that he made qualifying protected disclosures pursuant to section 47B Employment Rights Act 1996 and this claim is dismissed.
242. In respect of the remaining two issues, it was agreed that the claimant did not receive payslips for a period of 2 to 3 months at the beginning of his employment. This claim under section 11 employment rights act 1996 is therefore upheld.
243. S 12 Employment Rights Act 1996 provides that the tribunal shall make a declaration to the effect that the claimant has not received pay statements. The only financial remedy available is that the tribunal may order the employer to pay the worker a sum not exceeding the aggregate of the un-notified deductions but only where any unnotified deductions have been made from the claimant's pay during the period of 13 weeks immediately preceding the date of the application for reference.
244. The claimant's claim was presented on 22 December 2018. Although the claimant's evidence about when he did not receive payslips was unclear it was clear that by May 2018 he was regularly receiving payslips. The period of 13 weeks prior to 22 December 2018 ends on 22 September 2018. Consequently, the tribunal has no power to make any financial award in respect of this claim.
245. Finally, in respect of the claim that the respondent did not provide the claimant with a written statement of main terms and conditions of his employment, again this was agreed.
246. However, section 38 Employment Act 2002 provides that compensation must be paid to the claimant in respect of this only when the tribunal finds in favour of the claimant in respect of other proceedings listed in schedule 5 to that act. The only claim in respect of which the claimant has been successful in this case is the reference in respect of his payslips under section 11 Employment Rights Act 1996. That is not a claim listed in schedule 5 of the Employment Act 2002 and consequently the tribunal makes no award in respect of this claim.

Employment Judge **Miller**
21 July 2021

Appendix – issues

1) Unfair dismissal – s103A Employment Rights Act 1996 (ERA)

- a) Did the claimant make these verbal disclosures in 2018 to his employer as follows (the Claimant is unable to be more precise as to when these alleged disclosures were made):
 - i) A complaint to Mark Tucker that he did not get appropriate boots, overalls and a spraying mask;
 - ii) A complaint to Mr Tucker and Paul Nions that the Claimant was working in water using electrical equipment that was not properly checked;
 - iii) A complaint to Roy Groves that the claimant was [not] trained to use certain equipment;
 - iv) A complaint to Mr Groves about newly installed CCTV in the Claimant's area;
 - v) A complaint to Mr Groves that the claimant was not provided with COSHH;
 - vi) A complaint to Mr Tucker that the claimant was not trained in fire hazards and had received no Health and Safety manual;
 - vii) A complaint to Mr Groves that the claimant was not provided with the Quality Control Procedure Manual;
 - viii) A complaint to Mr Nions that there was no suitable place to change clothes;
 - ix) A complaint to Mr Groves about bullying;
 - x) On 30 July 2018 a complaint by the claimant that he did not have a suitable face mask for powder coating;
 - xi) On other occasions the Claimant complained about not having a suitable face mask.
- b) If those disclosures were made, were they (or any of them) qualifying disclosures pursuant to section 43B (1) (b) and/or (d).
- c) If those disclosures (or any of them) were qualifying disclosures were they (or any of them) the principal reason why the claimant was dismissed on 1 September 2018.

2) Unfair dismissal – s 100 (1) (c) ERA

The claimant asserts, as an alternative or in addition to the matters set out above, the principal reason for dismissal was that in the circumstances prescribed at s 100 (1) (c) he brought to his employer's attention by reasonable means circumstances connected with his work which he considered were harmful or potentially harmful to health or safety. The circumstances are set out at paragraphs 1 (i) to (xi) above.

3) Unfair dismissal – s 104 ERA

In the alternative the claimant asserts that the principal reason for his dismissal was that he asserted a statutory right to Mr Nions when he requested a contract of employment in January 2018 and again approximately three months later.

4) Whistleblowing detriment

The claimant asserts he was subjected to the following detriment for making the protected disclosures detailed at paragraph 1

- a) being deceived by Mr Groves that he did not need a representative for the disciplinary hearing on 21 August 2018;
 - b) being the subject of fabricated allegations about his performance on 30 August 2018;
 - c) having his access to the office denied.
- 5) The claimant asserted that he had not been given a contract of employment and sought between two and four weeks' pay for that default pursuant to section 38 of the Employment Act 2002.
- 6) The claimant further asserted that for a period of some three months he had not been provided with itemised pay slips pursuant to section 8 of ERA.