



Neutral Citation Number: [2024] EWHC 1381 (KB)

Case No QB-2021-003172

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date : 7 June 2024

Before :

GAVIN MANSFIELD KC

(sitting as a Deputy Judge of the High Court)

Between :

DARREN CAVANAUGH

Claimant

- and -

FOLSANA PRESSED SECTIONS LIMITED

Defendant

Mr Jeremy Hyam KC (instructed by Harbottle and Lewis) for the Claimant

Mr David Platt KC and Ms Juliet Stevens (instructed by Clyde & Co.) for the Defendant

Hearing dates: 11 -19 March 2024

APPROVED JUDGMENT

This judgment was handed down remotely at 2pm on 7 June 2024 by circulation to the parties or their representatives by email and by release to the National Archives.

Gavin Mansfield KC :

(Sitting as a Deputy High Court Judge)

INTRODUCTION

- 1 This is a claim for damages for personal injury brought by Mr Cavanaugh against his former employer (“**Folsana**”).
- 2 Mr Cavanaugh was summarily dismissed by Folsana on 21 November 2018. He claims that he was caused psychiatric injury by Folsana’s breaches of duty, contractual and tortious, in suspending him and subjecting him to disciplinary investigation.
- 3 The effect of the House of Lords decision in **Johnson v Unisys** [2003] 1 AC 518 is that in these proceedings Mr Cavanaugh cannot claim damages for personal injury arising out of his dismissal. However, a claim can be brought for personal injury caused by breaches which occurred prior to dismissal: **Eastwood and other v Magnox Plc, McCabe v Cornwall County Council** [2004] 3 All ER 991.

BACKGROUND FACTS

- 4 Folsana is a family owned metal fabrication business in Bolton, Lancashire. It was founded in 1979 by Robert Haslam. The Haslam family retain the majority of the shares in the company. Although Robert Haslam retired as a director and employee, he remained involved in the management of the business at the time of the events giving rise to this claim.
- 5 Mr Haslam’s son, Stephen Haslam, is a director and shareholder. He has been involved in the business since the late 1990s. He describes his role in the business as minimal – he keeps an eye on the business finances. He operates his own property business from the same office premises as Folsana.
- 6 Mr Cavanaugh started working for Folsana in 1982 at the age of 16. Apart from a short gap between 1985 and 1987 he worked there for his whole career until his dismissal in 2018. He worked his way up in the business and in 1995 he was made a company director and Operations Manager. In 2001 he purchased a 15% holding of non-voting shares.
- 7 At the same time as Mr Cavanaugh was made a director, Darren Marsden was also made a director. Mr Marsden had started working at Folsana age 17, a year or two before Mr Cavanaugh. Like Mr Cavanaugh, he worked his way up through the business. For around 10 years from 1995, Mr Cavanaugh and Mr Marsden ran the business together with Robert Haslam. When Mr Haslam stepped back, Mr Cavanaugh and Mr Marsden ran the business together. Broadly, Mr Marsden was responsible for sales and commercial matters and Mr Cavanaugh for production.
- 8 Bernard Donnelly started working for Folsana in 1984. He left in 1988 but returned in 1993. He has remained working for Folsana since then. In 2012 he was appointed Works Manager, reporting to Mr Cavanaugh.

- 9 The company is a relatively small one. In 2018 there were around 45 employees. There was no dedicated Human Resources (“HR”) function. Natalie Christie (nee Young), who was employed in an administrative role from 2016, also took care of HR. Mr Cavanaugh himself ultimately was responsible for HR.
- 10 The key events took place between September and December 2018. Although I will need to address the facts in some detail, in the following paragraphs I outline the key events, in order better to explain the issues to be determined.
- 11 On 17 September 2018, Mr Cavanaugh was suspended by Robert Haslam, pending disciplinary investigation. Folsana’s case is that the suspension arose because Mr Donnelly had tendered his resignation, claiming constructive dismissal, and had submitted a grievance. He said that Mr Cavanaugh’s treatment of him had become intolerable. The circumstances of Mr Donnelly’s complaints are hotly contested by Mr Cavanaugh.
- 12 Having suspended Mr Cavanaugh, Folsana carried out an investigation. That was done initially by Ms Christie but then by a third party - Neil Hutchings. Mr Hutchings was an acquaintance of Mr Marsden. He runs a home improvement business, but had extensive experience as a trade union representative.
- 13 During the course of the investigation, a number of other employees provided evidence of Mr Cavanaugh’s behaviour towards themselves and others. Mr Hutchings recommended that disciplinary proceedings be commenced against Mr Cavanaugh for gross misconduct.
- 14 Mr Cavanaugh raised a grievance against Folsana’s treatment of him on 19 September. The grievance was handled by Karen Pilkington, an independent HR consultant. Ms Pilkington rejected the grievance on 8 October. He appealed the grievance, but the appeal was subsequently rejected by Emma Fay, independent HR consultant.
- 15 Detailed disciplinary charges were provided to Mr Cavanaugh on 30 October. The disciplinary process was handled by Kerry Green, independent HR consultant. After a disciplinary hearing on 14 November, Ms Green decided that Mr Cavanaugh should be dismissed summarily for gross misconduct. Mr Cavanaugh appealed his dismissal. The appeal was heard by Jane Carroll, an independent HR consultant. She dismissed the appeal on 17 December.
- 16 In the meantime, Mr Cavanaugh started to experience symptoms of mental ill-health. He first attended his GP on 24 September, the week after his suspension. The GP recorded stress, poor concentration and poor sleep and placed him on anti-depressants. On 27 September, the GP referred Mr Cavanaugh to Greater Manchester Mental Health and Social Care Trust. Mr Cavanaugh’s first appointment with the Trust was on 29 October.
- 17 During the course of the investigation and disciplinary process Mr Cavanaugh made seven “**Mental Health Notifications**” (the phrase used in the Particulars of Claim) to Folsana, or to the HR consultants who were dealing with the process. These were occasions on which he made reference to his mental health condition.
- 18 After his dismissal Mr Cavanaugh obtained a job in Liverpool , starting at the beginning of January 2019. He resigned from that that job and moved to another job in Bolton in March 2019, where he worked until he resigned in June 2019. He attributes his inability to remain

in either job to his psychiatric condition. He has not worked in paid employment since June 2019. He has set up a handyman business, DBC Maintenance NW Ltd.

- 19 The parties each called expert evidence from a consultant psychiatrist: Dr Michael Isaacs for the Claimant and Professor Declan Murphy for the Defendant. There was a large amount of agreement between them. The agreed medical position is that Mr Cavanaugh has suffered a recognized psychiatric illness – an adjustment disorder with mixed anxiety and depressed mood, which evolved into a major depressive disorder, single episode. The experts agree that Mr Cavanaugh is not, at the date of trial, capable of working in a high pressure or highly skilled role similar to his old job, though it is likely that in the medium term he will be able to take on higher stress jobs and develop his new business.

OUTLINE OF THE ISSUES

- 20 I take the following outline largely from Mr Hyam KC's List of Issues produced at the end of the evidence, though I have expanded on and sub-divided some of the breach issues.

Breach of duty – suspension and its immediate aftermath

- 21 Mr Cavanaugh claims that Folsana suspended him without reasonable and proper cause. He puts this case in two ways:
- a. The whole disciplinary case was a premeditated plot or contrivance, by some or all of Robert Haslam, Stephen Haslam, Mr Marsden, Mr Donnelly and Mr Hutchings. He argues that Mr Donnelly never genuinely resigned and had no genuine grievance. He was put up to it by Folsana's management, who wanted to get rid of Mr Cavanaugh for other reasons. Mr Platt KC, for Folsana, referred to this as the "conspiracy" case. Although conspiracy is not a word used by Mr Cavanaugh, or Mr Hyam KC, his counsel, it is a fair synonym for a pre-meditated plot or contrivance by a number of people, and I will use it for ease of reference in this judgment.
 - b. In the alternative, even if Mr Donnelly genuinely resigned and raised a grievance, the matters he raised did not give reasonable and proper cause for suspension.
- 22 Even if there were grounds to suspend, Mr Cavanaugh claims that the manner in which the suspension was carried out and its aftermath was without reasonable and proper cause. He points to the following:
- a. The suspension was carried out without warning and in a public and humiliating manner.
 - b. An email was sent to Folsana on the day of suspension, essentially to all of its database, which he claims was defamatory.
 - c. The investigation was commenced without proper terms of reference.
 - d. Folsana refused or failed to provide proper details of the allegations against him.

- e. On the day of his suspension a junior employee was sent to remove his laptops and mobile phone, which amounted to a punishment.

Reasonable foreseeability and suspension

- 23 Was it reasonably foreseeable that Mr Cavanaugh would suffer psychiatric injury if suspended in the manner in which he was, and in the steps taken in the immediate aftermath?

Breach of Duty – Mental Health Notifications

- 24 Mr Cavanaugh further claims that the manner in which the disciplinary process was conducted, between his suspension and his dismissal, disregarded the Mental Health Notifications, and further caused him injury.
- 25 Was Folsana on notice of the risk of psychiatric injury, if Mr Cavanaugh was suspended in the way he was? Was Folsana under a duty to take steps to prevent or mitigate the extent of the injury. What steps should have been taken?

Causation and Remoteness

- 26 What psychiatric injury has Mr Cavanaugh sustained?
- 27 Did any breach of duty in respect of (a) suspension and its immediate aftermath or (b) any of the Mental Health Notifications cause or materially contribute to that psychiatric injury?
- 28 To what extent is injury divisible between that which would have occurred in any event by reason of a lawful process of dismissal/removal from post?
- 29 What is the loss flowing from the injury caused by Folsana’s breaches?

THE CONSPIRACY CASE AND THE PLEADINGS

- 30 Folsana argues that the allegation of a plot to oust Mr Cavanaugh is not pleaded.
- 31 Paragraph 49 of the Particulars of Claim puts the complaint about the suspension and investigation in this way:

“It is the Claimant’s case that the manner in which the Defendant instigated and implemented the disciplinary process of suspension, and investigation and hearings was done in so high-handed and disproportionate manner that it was reasonably foreseeable that the Claimant would have suffered psychiatric injury. Moreover, from 19 September 2018, the manner of the process of suspension and investigation was known by the Defendant to be having a seriously deleterious effect on the Claimant’s mental health such that it was reasonably foreseeable that if the continuance of the disciplinary investigation was not properly or fairly managed, it would result in an exacerbation of the Claimant’s deteriorated mental health.”

- 32 The pleading point was flagged in Folsana’s Skeleton Argument, and in opening, but I was not asked to make a preliminary ruling on the scope of the pleaded case. Nor was I asked to exclude evidence on the conspiracy issue, which is dealt with extensively in the witness statements filed on behalf of Mr Cavanaugh. The point was raised by Mr Platt KC several times during the course of the evidence, where he argued that it was unclear whether the conspiracy argument was being pursued or not.
- 33 Mr Hyam KC made clear that the conspiracy claim was being pursued and he argued that the conspiracy case fell within the scope of the original pleading. However, in his written Closing Submissions he proposed an amendment to paragraph 49 of the Particulars of Claim to insert, in the third line of the paragraph as quoted above, after “*disproportionate manner*” the following text: “*and/or was deliberately contrived by Robert Haslam, Darren Marsden, Bernard Donnelly, Neil Hutchings and/or Steven Haslam, that it was not for reasonable and proper cause and*”.
- 34 The “conspiracy” claim, as captured by this amendment does seem to me to be a different kind of complaint to the pleaded “no reasonable cause” claim and does not arise on from the unamended Particulars of Claim. However, Mr Platt KC did not seek to rely on a technical pleading point. He was content to address the conspiracy claim on its merits. He relied on what he characterised as a change in case, and a lack of clarity in the case, as forensic points relevant to the assessment of the merits. He also took the point that some of the criticisms by Mr Cavanaugh of Folsana’s evidence could be explained by the late change in the nature of the case it had to meet. I will address these points later in this judgment to the extent necessary.
- 35 I permitted the Claimant to argue the case as he wished to, on the basis of the “conspiracy” claim. There was no prejudice to Folsana in allowing the case to be put this way, and none was identified by Mr Platt KC. I considered the whole of the claim advanced by Mr Cavanaugh on its merits, rather than ruling any part of it out on a pleading point.

THE DUTIES OWED BY THE CLAIMANT TO THE DEFENDANT

- 36 Mr Cavanaugh had no written contract of employment with Folsana. It is common ground that each party owed the other an implied contractual duty of mutual trust and confidence. That is to say, a duty implied into the employment contract as a matter of law that neither would, without reasonable cause, act in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee. This is often referred to as the *Malik* term, after the case in which the House of Lords gave a definitive decision as to its existence and formulation.
- 37 Folsana’s standard conditions of employment included a disciplinary policy, which applied in all cases of disciplinary action except gross misconduct. The disciplinary policy provided that, if appropriate, Folsana may, by written notice, suspend an employee while an investigation takes place. There is no dispute that Folsana had the power to suspend pending investigation; the dispute is around the proper exercise of that power.
- 38 The Particulars of Claim plead a number of more specific contractual duties, put either as stand-alone implied contractual terms, or as aspects of the *Malik* term. Those are, in part at least, disputed by Folsana. It is not necessary for me to resolve the issues as to the exact scope of the contractual duties. By the time of closing arguments, it appeared common

ground that Mr Cavanaugh’s claim could be based either on the *Malik* term, or on Folsana’s duty of care in tort.

39 It is common ground that Folsana owed duty of care, at common law and in contract, to Mr Cavanaugh to take reasonable care for his safety and in particular to operate a safe system of work. The approach in cases of psychiatric injury is addressed in the well-known principles set out by Hale LJ in *Hatton v Sutherland* [2002] ICR 613. The application of those principles to a case of a “one-off” act such as a suspension or disciplinary action was confirmed in *Yapp v Foreign and Commonwealth Office* [2014] EWCA Civ 1512.

40 In principle, a disciplinary process could be operated in such a way as to amount to a breach of the *Malik* term or a breach of a common law duty of care, so as to give rise to claim for damages for personal injury – see *Yapp* at paragraph 61, and *Coventry University v Mian* [2014] EWCA Civ 1275. Cases in which the imposition of a suspension without reasonable and proper cause has given rise to a successful claim for damages for personal injury include *Watson v Durham University* [2008] EWCA Civ 1266, *Gogay v Hertfordshire County Council* [2000] IRLR 703 and *London Borough of Lambeth v Agoreyo* [2019] ICR 1572.

41 Whether the claim is put in contract or tort, the question is whether there was reasonable and proper cause for the action taken by the employer. In *Mian*, Sharp LJ outlined two material features of the test for breach of duty (paragraph 23):

- a. The question is whether the employer’s action was “unreasonable” in the sense that it was outside the range of reasonable decisions open to an employer in the circumstances.
- b. This requires an objective assessment in the light of the circumstances known to the employer at the time of the relevant decision and not one made with the benefit of hindsight.

42 As Singh LJ said in *Agoreyo* (paragraph 93), whether there was reasonable and proper cause for the employer’s decision is a highly fact specific question.

43 In each case, in order for the Claimant to succeed, it must be necessary for the personal injury to be caused by a breach prior to and separate from the dismissal that was the result of the investigatory and disciplinary process. Any claim for personal injury damages caused by the dismissal is precluded by the House of Lords decision in *Johnson v Unisys*.

Foreseeability

44 The principles relating to reasonable foreseeability in occupational psychiatric injury cases are set out in *Hatton v Sutherland* [2002] EWCA Civ 76 per Hale LJ at paragraph 43, where she summarised 16 principles. These principles apply whether the claim is framed in contract or tort. In *Yapp*, Underhill LJ summarised the principles of foreseeability and remoteness as they apply in the context of a suspension/disciplinary process case.

“119. With regard to the issues of foreseeability and remoteness the following propositions can be established from that review of the cases:

(1) In considering, in the context of the common law duty of care, whether it is reasonably foreseeable that the acts or omissions of the employer may cause an employee to suffer a psychiatric injury, such an injury will not usually be foreseeable unless there were indications, of which the employer was or should have been aware, of some problem or psychological vulnerability on the part of the employee – Hatton.

(2) That approach is not limited to cases of the Hatton type but extends to cases where the employer has committed a one-off act of unfairness such as the imposition of a disciplinary sanction – Croft and Deadman (also Grieves).

(3) However, in neither kind of case should that be regarded as an absolute rule: Hatton contains no more than guidance, and each case must turn on its own facts – Hatton itself, but reinforced by Barber and Hartman.

(4) In claims for breach of the common law duty of care it is immaterial that the duty arises in contract as well as tort: they are in substance treated as covered by tortious rules – Walker, Hatton. In order to establish whether the duty is broken it will be necessary to establish, as above, whether psychiatric injury was reasonably foreseeable; and if that is established no issue as to remoteness can arise when such injury eventuates.

(5) In claims for breach of the Malik duty, or of any other express contractual term, the contractual test of remoteness will be applicable – Deadman.

120. As appears from Croft, and indeed from the present case, it will often be possible for the same conduct on the part of an employer to constitute both a breach of the common law duty of care and a breach of another contractual duty – most obviously the Malik term but perhaps also an express term. This overlap can lead to a regrettable complexity in the formal analysis. It may be that further thought needs to be given to whether the Malik term really has any separate role to play in this area: the Court in Croft seemed to think not. But it may be that the problem does not matter much in practice. Where a breach of the common law duty of care can be established it is not clear what the employee gains by formulating a distinct contractual claim.”

45 At paragraph 104, Underhill LJ considered *Croft v Broadstairs Town Council* [2003] EWCA Civ 676 and agreed with the approach in that case that the principles in *Hatton* applied not just to cases of psychiatric injury caused by “the normal pressures of the job”, but applied also to cases where injury flowed from a one off instance of unfair treatment. Underhill LJ said this:

“It is a normal characteristic of the employment relationship that employees may be criticised by their employer and sometimes face disciplinary action or other such procedures. And in an imperfect world it is not uncommon for such criticism or disciplinary process to be flawed to some extent: there will be a spectrum from minor procedural flaws to gross unfairness. The message of Croft is that it is not usually foreseeable that even disciplinary action which is quite seriously unfair will lead the employee to develop a psychiatric illness unless there are signs of pre-existing vulnerability.”

46 In reaching his conclusion on the facts of the case, Underhill LJ said that it will be exceptional that an apparently robust employee, with no history of any psychiatric ill-health, will develop a depressive illness even as a result of a very serious set back at work (paragraph 124).

FACTS

47 Mr Cavanaugh’s case is Mr Donnelly’s resignation and grievance were not genuine, so it is necessary to look at the events leading up to the suspension in some detail. Further, because the “conspiracy” claim arises largely as a matter of inference, it is necessary to look at the whole sequence of events before setting out my conclusions. Where appropriate, I will set out some findings in the following narrative, before drawing the strands together in later sections. Where I set out findings in this narrative section, I have done so for clarity of exposition - I have reached my findings on the basis of my consideration of all of the evidence in the round.

September 2018 – Events leading to suspension

48 Mr Cavanaugh was suspended from work, pending investigation, on 17 September 2018. Folsana’s evidence is that the suspension came about because of the resignation and subsequent grievance of Mr Donnelly.

49 Mr Donnelly, as I have already explained, was the Works Manager. In that role, he spent around 70% of his time in his office and the remainder on the shop floor. Either side of the August Bank Holiday weekend of 2018 there was a two week factory shut down. Mr Donnelly returned to work on Monday 3 September. Mr Cavanaugh was at work that day. Mr Marsden was on holiday until Tuesday 11 September.

50 According to Mr Donnelly, there were two things that concerned him on 3 September. First, prior to going on holiday he had been told to remove all of his belongings from his office, which he understood to be due to the offices being redecorated. When he returned to work on 3 September decoration to his office had been finished, but he had no access to his computer, nor could he return his possessions to his office. Second, he was asked by Mr Cavanaugh to work on the shop floor on a particular machine, the Trumpf machine. That was not part of his normal job description. Although the normal operator was away on holiday there were others who could operate the machine in his absence. It was not made clear to him why he was asked to operate the machine, or how long he would have to do it for.

51 Mr Donnelly’s evidence was that he was not able to return to his office, and continued to work on the shop floor, until 17 September. He was given no explanation for these changes.

52 Mr Donnelly’s evidence was that his treatment on 3 September did not stand alone, but was the culmination of a course of treatment by Mr Cavanaugh. He gave specific examples of treatment that he was unhappy about, some of which were many years old. He said that Mr Cavanaugh’s domineering behaviour made people scared of losing their jobs and that for a long time his own experience at work was horrible. He described that he would physically shake some mornings. He was fearful of reprisals and felt that he could do nothing right. Mr Donnelly said in his witness statement (paragraph 30):

“Working with the Claimant was horrible. He made me fearful to come to work. I was not fearful of him physically but the way he treated me got to me so much that I would not want to come into work. It was not so much that he would swear or lose his temper but there was constant put downs and mocking and he would do this publicly in front of whoever happened to be there. He seemed to take delight in belittling people in public and would do it to all the shopfloor workers, not just me.”

53 Mr Cavanaugh denied that account of his behaviour. On his evidence, he had tried to assist Mr Donnelly, who was struggling with his job. Earlier, in late 2017, Mr Donnelly had wanted to resign but Mr Cavanaugh had persuaded him to stay and removed some responsibilities in order to help him cope. After that he had monitored Mr Donnelly to try to assist him.

54 Mr Donnelly gave evidence that on the evening of Monday 3 September he decided to resign. On the morning of 4 September he hand delivered a letter of resignation to Robert Haslam's home address. He drove to Robert Haslam's home at around 6am before going into work. The letter, signed by Mr Donnelly said:

"It is with deep regret that I feel I have no choice but to hand you my resignation. Of course I will work my 12 week notice period as set out in the Company Handbook. I can no longer work alongside Darren Cavanaugh. I will consider this as constructive dismissal."

55 It was put to Mr Donnelly that his story had changed - he had said during the course of the investigation that he had given his resignation to Mr Marsden on Tuesday 4 September. Mr Donnelly said that was a mistake, which he had not picked up on when he signed the minutes of his interview.

56 Robert Haslam's evidence was that he received the letter, at home, on 4 September.

57 Mr Cavanaugh's case is that Mr Donnelly's account that he submitted the resignation letter on 4 September is unlikely to be true, and that Mr Donnelly and Robert Haslam were not telling the truth about this. I will set out my conclusions on the sequence of events later in this judgment, but at this stage I note that there is nothing inherently implausible or unlikely about Mr Donnelly's account of hand delivering his resignation. It was a small detour on his journey to work, and ensured that the letter was delivered promptly and privately.

58 It is common ground that Mr Donnelly continued to work throughout the week commencing 3 September, and said nothing about his resignation letter to Mr Cavanaugh.

Meeting between Mr Donnelly and Robert Haslam on 6 September

59 Robert Haslam said that he visited Mr Donnelly at home after work on 6 September. Robert Haslam said that Mr Donnelly was virtually in tears. He did not want to leave Folsana, but felt that he could not do anything right. He said that the final straw had been that Mr Cavanaugh set him the task of operating a machine on the shop floor. Robert Haslam asked Mr Donnelly to stay calm and said he would discuss the situation with Mr Marsden when he returned from holiday.

60 Mr Donnelly gave oral evidence about this meeting in cross-examination. He had not referred to it in his witness statements. His evidence was consistent with that of Robert Haslam. Mr Donnelly also said that Robert Haslam asked him to hold off on his resignation until after he had spoken to Mr Marsden.

- 61 Mr Cavanaugh's case is that the evidence as to the meeting on 6 September is unreliable and should be rejected. He argues that there was no reason for Robert Haslam to visit Mr Donnelly at home. If it was true that Mr Haslam told Mr Donnelly he would need to raise a grievance, then why was it not submitted until 14 September.
- 62 He points out that Mr Donnelly did not mention the point in his statement. Mr Cavanaugh cannot, of course, know whether a meeting occurred between two individuals which, on any view, he did not attend. I heard both Robert Haslam and Mr Donnelly's accounts of the meeting. Their accounts were clear and straightforward. While there were some lapses in memory and inconsistencies, they were talking about a meeting that took place six years ago. Further, until Mr Cavanaugh raised the conspiracy argument, they had no reason to have revisited the events running up to 17 September in such minute detail. Mr Cavanaugh's pleaded case was that Folsana's behaviour was a high-handed and disproportionate reaction to Mr Donnelly's resignation not that the resignation itself was a contrivance. There was nothing implausible or unlikely about their accounts, nor was it contradicted by any other evidence.
- 63 Mr Cavanaugh further points out that, even on the accounts given by Folsana of the 6 September meeting, no names of other people who had been treated badly by Mr Cavanaugh were mentioned. Mr Donnelly was unclear as to whether he accepted no names were mentioned, he said so in cross examination, but in re-examination said he could not remember.

Sunday 9 September – Haslam family meeting

- 64 Robert Haslam said that Mr Donnelly's resignation made him realise that Folsana needed to face the issues regarding Mr Cavanaugh's management style and deal with them. On Sunday 9 September Robert Haslam met with his children (including Stephen Haslam), who were shareholders in Folsana. Robert Haslam said he told his children about Mr Donnelly's resignation and said that it was likely that Mr Cavanaugh would need to be suspended.
- 65 Mr Cavanaugh's case is that there was insufficient information available to Robert Haslam to decide to suspend him on 9 September. Mr Donnelly had not submitted a grievance and had not named other people who had been mistreated; according to Robert Haslam's evidence, the only other instances he himself was aware of were old, relating to employees who left in 2010.
- 66 Robert Haslam said that he regarded the resignation letter as raising Mr Donnelly's grievance. Although it did not contain details, he was aware of frictions, and aware that Mr Donnelly was being persecuted by Mr Cavanaugh. When challenged as to why, if that were so, he had done nothing about it before, he said that probably he should have, and had probably been a bit spineless.
- 67 I found this evidence compelling. There is no doubt that Mr Cavanaugh was a strong character and a force within the business. There is no doubt that he was a hard worker focussed on results. I accept that Robert Haslam had been, as a matter of fact, aware of some difficulties in Mr Cavanaugh's treatment of Mr Donnelly and others but had failed to address matters until the situation could no longer be ignored in September 2018.

Week of 10 September

68 Mr Donnelly continued to attend work as normal in the week commencing 10 September. Mr Marsden did not say anything to Mr Cavanaugh, nor Mr Donnelly, about the fact that Mr Donnelly was working on the shopfloor. I accept Mr Cavanaugh's point that it would have been obvious to Mr Marsden that he was doing so, yet nothing was done at that time to protect Mr Donnelly.

11 September

69 Mr Marsden returned to work after his holiday on 11 September. Mr Marsden and Robert Haslam say they spoke on the evening of 11 September about Mr Donnelly's resignation.

70 Mr Marsden said that he knew someone who might be able to help, as he had experience of dealing with employment disputes. That person was Mr Hutchings. Robert Haslam's evidence was that Mr Marsden made contact with Mr Hutchings, and simultaneously with Folsana's solicitors.

71 Text messages provided by Mr Hutchings during the course of the trial show that Mr Marsden and Mr Hutchings texted, on personal matters, on 11 September, after Mr Marsden's return from holiday. It appears from the messages that Mr Hutchings visited Mr Marsden's home on 12 September. It is likely that there was discussion about the situation at Folsana on that date.

72 Mr Marsden said that he was advised that an investigation would need to be conducted, and that Mr Donnelly would need to submit a grievance if he wanted his complaints about Mr Cavanaugh to be investigated. He could not remember whether that advice came from Mr Hutchings or Folsana's solicitors.

73 Mr Cavanaugh suggests that Robert Haslam and Mr Marsden discussed how they were going to remove Mr Cavanaugh, and Mr Marsden recommended his friend, Mr Hutchings. They also, he suggests would have had a conversation that if people were going to come forward without fear of reprisals, they would need to know that Mr Cavanaugh was not coming back. Both Mr Marsden and Mr Hutchings denied that.

14 September grievance

74 There is a second handwritten letter signed by Mr Donnelly, dated "14/9/18". The evidence of Folsana's witnesses is that he hand delivered it to Robert Haslam on Friday 14 September. It is headed "Grievance Complaint". It reads as follows:

*"I feel I can no longer work alongside Mr D Cavanaugh.
I truly believe his actions are the reason for my resignation.
The way he speaks/shouts at me sometimes in front of other people is wrong.
2 weeks ago I was asked to remove my personal belongings from my office and since then
have been excluded from all production issues.
other employees have also been subject to this kind of treatment.*

If you need to speak to me about this I will go into further detail.”

- 75 As can be seen, Mr Donnelly referred to other employees in the grievance, but did not provide names.

16 September - Mr Marsden’s communications with Mr Hutchings

- 76 It is apparent from text messages between Mr Marsden and Mr Hutchings that they had a conversation on Sunday 16 September. Afterwards, Mr Marsden said “*Neil, thank you so much for your helping hand tonight it’s greatly appreciated my friend*”. Mr Hutchings replied “*Anytime buddy. Don’t like people losing their employment, but what matters is the wider workforce. Also, I don’t think Darren will be needing to go to a food bank anytime soon.*” Mr Marsden replied “*Nope he doesn’t – I agree with your values – however there are 40 people involved other than him and that’s the dilemma.*”

- 77 Mr Hutchings’s evidence was that Mr Marsden spoke to him about the situation at work, which he was struggling with. Mr Hutchings gave some guidance, saying that he should be guided by the evidence. Both Mr Hutchings and Mr Marsden denied that the gist of their conversation was that it was clear that Folsana had already decided that Mr Cavanaugh was going to be dismissed. Mr Hutchings said at this stage, he was giving the benefit of his experience, and was not thinking that he would be involved any subsequent investigation. That came a few days later.

- 78 It is apparent from the text messages produced by Mr Hutchings that Mr Hutchings had been doing some work for Mr Marsden at his house, and that they were on friendly terms.

17 September - suspension

- 79 Mr Cavanaugh was suspended by Robert Haslam on 17 September. I will return below to the grounds for suspension and Folsana’s reasons for the decision. Here, I address the facts of the way in which the suspension was carried out, and its immediate aftermath.

- 80 Mr Cavanaugh’s pleaded case (Particulars of Claim paragraph 14) is that he was escorted off the premises by Mr Robert Haslam in full view of other employees in a way that was shaming.

- 81 In cross-examination, Mr Cavanaugh accepted that Robert Haslam came to him in his office and asked him to go outside with him. He suggested that Mr Cavanaugh bring his coat with him. Mr Haslam and Mr Cavanaugh had to walk through other parts of the office building to go outside. Mr Cavanaugh accepted that to anyone who saw them, it would appear that the two men were just walking outside together.

- 82 A conversation took place outside the front of the office building. Nobody else was outside at the time.

- 83 Mr Cavanaugh said in evidence that the conversation would have been in view of the CCTV cameras. At one point he said that the conversation would have been in display of anyone looking at the CCTV monitors in the office, or of managers looking at it on their phones. There was no evidence that anyone was watching the CCTV. If they had done so, all that

they would have seen would have been the two men talking. The CCTV carried no sound. I reject the suggestion, made at one point in Mr Cavanaugh's evidence, that the conversation was set up so that people would watch it on CCTV. There is no evidence to support that.

84 Once outside, Robert Haslam told Mr Cavanaugh that he was being suspended and gave him the suspension letter. Mr Cavanaugh says he begged for an explanation, but Mr Haslam did not give him one.

85 The suspension letter reads:

"This letter is to confirm your suspension from your employment pending an investigation into alleged bullying and intimidation, by yourself towards employees of Folsana Pressed Sections Ltd.

At this time your suspension does not assume any guilt, and you will be fully paid until further notice. We do however, feel the investigation would be more efficient if you remain at home."

86 The letter went on to address the investigation, and the rules that would apply to Mr Cavanaugh while he was suspended. Among other things, he was instructed to hand over his laptops, mobile phone and keys.

87 After the conversation, Mr Cavanaugh had to return to his office to collect his keys, which had not been in his coat. He says that staff saw that he was upset. That may be right, but if so, that is not the fault of Robert Haslam. He had told Mr Cavanaugh to bring his coat with him. He was not to know that Mr Cavanaugh would need to go back inside to collect his keys. Mr Cavanaugh accepted that he was not marched back in by Robert Haslam to collect his keys, though he maintained that Robert hovered around while he fetched them. Even on Mr Cavanaugh's account, there was nothing unreasonable or heavy handed in Robert Haslam's behaviour.

88 There was nothing whatsoever that was unusual or inappropriate about the way in which the suspension was carried out. On the contrary, Robert Haslam took steps to ensure that the conversation was handled privately, and in way that allowed Mr Cavanaugh to leave immediately. I reject the allegation that he was escorted off the premises or treated in front of others in a way that was shameful.

89 A further criticism is made that the suspension came without warning, and that Robert Haslam did not give a proper or sufficient explanation of the reasons for suspension. I reject those criticisms.

90 There is no obligation on an employer to give prior warning of suspension, and in my experience of dealing with employment disputes I would not regard it as the norm to do so. This was a suspension pending a disciplinary investigation. Such a suspension typically happens at the beginning of a disciplinary process, for obvious reasons. One of the rationales for suspension is to allow an investigation to take place without the disruption (whether intentional or otherwise) that might be caused by having the subject of the investigation present in the workplace. If the employee is warned of a future suspension, that may defeat the purpose. What will the employee be told about the investigation? What regard will be had to what he says in response? Is the "warning" conversation part of the investigation process or not?

- 91 Experience shows that there is no easy way to carry out a suspension. To the suspended employee, the news will likely come as a shock. For the person carrying out the suspension, particularly where that person is not experienced in these matters and where the employee is well known to them, it is likely to be a difficult interaction. There are various grounds on which a suspension may later come to be criticised. Here, Robert Haslam is criticised for saying too little. Often, if more is said beyond what is put in the suspension letter, that can lead to misunderstanding and dispute down the line. It can lead to the employee hearing mixed messages. Having decided on a form of words for the suspension letter it was prudent, in my judgment, for Robert Haslam to say as little as possible in addition to that letter. The letter itself said little, but the suspension was taking place at the very beginning of the investigation, so it was prudent not to have gone into details.
- 92 When cross-examined as to why he suspended Mr Cavanaugh without speaking to him first, Robert Haslam said that Mr Cavanaugh was an intimidating presence in Folsana, that it would have made things difficult for Mr Donnelly if he had brought the resignation to Mr Cavanaugh's attention and that he wanted things done at arm's length. I accept these as Robert Haslam's genuine reason for acting as he did, and also as good reason for acting as he did.
- 93 It was put to Robert Haslam that faced with Mr Donnelly's resignation, the normal reaction would have been to go and see Mr Cavanaugh and ask him about what was going on. There may be some situations in which that might be done, but I do not accept that would be the normal thing to do, or a wise thing to do in this situation. Where a more junior employee resigns claiming constructive dismissal as a result of bullying treatment by a more senior manager, it can be risky and potentially unfair to the junior employee for the senior employee to be asked informally about it. That could lead to retaliation against the junior employee. The situation could develop in a way that may later be argued to be a "stitch-up" by the complaining junior employee. It was prudent to suspend Mr Cavanaugh prior to commencing investigation, rather than after some sort of informal initial investigatory conversation.

17 September – collection of mobile phone and laptops

- 94 Later in the day, a junior employee attended Mr Cavanaugh's home to collect his laptops, phone and keys. Mr Cavanaugh found that humiliating, and I can understand that. However, the step was a reasonable one, and one that it was permissible for Folsana to take to prevent any risk of misuse during suspension. Mr Cavanaugh was told of the requirement to deliver up these items in the suspension letter. I find nothing unusual, nor inappropriate, either in the fact that he was asked to do so, or in the fact that the items were collected by a junior employee.

The email on 17 September

- 95 Later on the 17 September Mr Marsden instructed the following email to be sent:

"Subject: Important Notice

*Please be advised that until further notice no instructions from DARREN CAVANAUGH must be taken on behalf of Folsana Pressed Sections Ltd. – if you have taken any instructions today they should be cancelled immediately.
Any requests processed on DARREN CAVANAUGH’S instruction will NOT be honoured by Folsana Pressed Sections Ltd.”*

- 96 There is some dispute as to the recipients of the email. Mr Cavanaugh says that it was sent to the whole Folsana database, including customers, suppliers and people who did not trade with the company, save (as far as he was aware) Mr Howells and Mr Larcomb, who were friends of his. It does appear to have been sent widely to Folsana’s database including not only current customers and suppliers but also those who were not at the time trading with Folsana.
- 97 In my judgment, to send this email, particularly to so wide an audience, was heavy handed and misjudged. Although it did not make an allegation of wrongdoing, it is easy to see how it would raise questions in the minds of recipients. More thought should have been put into the wording, and the distribution of the email.
- 98 However, I accept Mr Marsden’s evidence that he did it for the purpose of protecting Folsana’s business. I also accept the evidence of the HR Professionals who later looked at this in the context of the disciplinary process that it was not unusual to send such an email. I reject Mr Cavanaugh’s contention that the email was sent with the intention of damaging his reputation in the market. I also reject the argument that sending the email (for whatever purpose) amounted to a breach of contract on the part of Folsana.

Ms Christie’s initial interviews

- 99 Shortly after Mr Cavanaugh was suspended, Ms Christie was asked to draw up an investigation plan and to speak to employees as part of the investigation into Mr Donnelly’s grievance. A questionnaire was drafted.
- 100 The questionnaire was drafted by Mr Marsden with Ms Christie’s input. Mr Marsden was challenged on the basis that he had lied about this at an earlier stage of the case. In a witness statement dated 22 February 2023, in response to Mr Cavanaugh’s specific disclosure request, Mr Marsden said that Ms Christie told him that she had drafted the questionnaire after a google search for a template and ideas. He said she told him the template came from the ACAS website. The file properties of the questionnaire in fact showed that it was created by Mr Marsden. A further statement was filed by Folsana’s solicitors on 7 March 2023 stating that Mr Marsden had made an error, that a different document, an investigation plan, had been obtained from the ACAS website, and that Mr Marsden did draft the questionnaire with Ms Christie. Mr Marsden said in cross-examination that he had made a mistake. I accept that this was a mistake, in a statement dealing with the creation of documents some five years earlier. I do not accept the case, put to Mr Marsden, that he had been caught out in a lie. I do not regard the error as having any significant impact on the credibility of Mr Marsden’s evidence. Nothing turns on the issue of whether Mr Marsden or Ms Christie drafted the questionnaire, so I can see no reason for anyone to deliberately lie about it.

- 101 Using the questionnaire, Ms Christie spoke to members of staff, with another employee, Geoff Ramsden, present as a witness. She said a few employees declined to give statements, as they were scared of repercussions. That was fine with her, as they did not have to give statements. Ms Christie gathered statements from employees, which were in due course handed to Mr Hutchings.
- 102 Mr Cavanaugh's case was that Folsana encouraged staff to come forward; that they were told that there would be no reprisals for doing so, which meant that it had been decided that Mr Cavanaugh was not coming back; and that staff were pressured to participate. He gave evidence that employees colluded to give statement, and that things were taken out of context or misconstrued.
- 103 Having decided to commence an investigation into Mr Cavanaugh's treatment of staff, there is nothing inappropriate about staff being invited to come forward with relevant evidence. It does not suggest that a pre-determined outcome was sought. Nor does it undermine the evidence given by those who did come forward.
- 104 The desire to reassure witnesses that there would be no repercussions from coming forward is an understandable one. Indeed, were any of the complaints to be an assertion of a statutory employment law right such as discrimination or whistleblowing, those who came forward would be protected by law from victimisation. It is difficult to see how Folsana could have done other than try to reassure employees that their evidence would not lead to retaliation. I do not find that their doing so amounted to saying that Mr Cavanaugh would not be coming back.
- 105 The allegation that staff were put under pressure to come forward came from Mr Pilling, a former employee who gave evidence on behalf of Mr Cavanaugh. He had retired from Folsana in June 2018. He said in his witness statement that staff had no real alternative but to get involved and say something negative about Mr Cavanaugh. He said *"It was made known to the employees, who were easily manipulated, that unless they answered the Questionnaire that was sent around about the Claimant, that their jobs were in jeopardy. Whilst the employees were not actually directed to say something negative about the Claimant, it was made known to them that "if didn't do the questionnaire then they would "not be helping themselves to stay employees at that time."* He says he was aware of this through speaking to a number of employees. The only one he named specifically was Ian Morris, who he claimed to have bumped into the supermarket.
- 106 I do not accept that staff were placed under pressure as alleged by Mr Pilling. Mr Pilling's evidence was unsatisfactory in a number of respects. I set out later in this judgment my analysis of his evidence relating to the "scrap metal" issue. Mr Pilling had firm views that employees were manipulated into giving evidence, and that they did so for fear of losing their jobs, or because they had an axe to grind against Mr Cavanaugh. He had no basis for that view. He had not been involved in the investigation, nor had he seen the statements that were provided. The evidence of what he had been told by others was vague. Despite a significant lack of knowledge of the facts or the evidence, he nonetheless stuck to his views when challenged in cross-examination. It was unclear to me whether his position, which I would describe as obdurate, derived from a desire to help Mr Cavanaugh, or more from a mindset that he knew best. His willingness to express strong views in the absence of relevant knowledge undermined his evidence.

107 I was not taken to anything in the course of the investigation or disciplinary process that showed that staff were pressured to participate. I heard evidence from a number of witnesses who had provided statements. They did not support the allegation. Nor is there evidence that the statements were the product of collusion between staff.

Mr Hutchings investigation

108 Following the suspension, Mr Marsden asked Mr Hutchings to carry out an investigation into the allegations against Mr Cavanaugh. He did so with the assistance of Ms Christie. He interviewed employees. His investigation ran over the following weeks, concluding in an investigation report dated 26 October.

109 Mr Hutchings said that from the time he was appointed to conduct the investigation he did not have any direct contact with the Folsana's directors. He did speak to Mr Marsden, but they did not discuss the investigation. Mr Marsden said in his witness statement that he took no part in the formal investigation by Mr Hutchings. Text messages between Mr Marsden and Mr Hutchings were disclosed only part way through the trial which showed a different picture.

- a. It appears that they met on 19 September, which is the date when Mr Hutchings was formally instructed to carry out an investigation.
- b. They met again on 20 September. On that evening, presumably after the meeting Mr Marsden texted "*Thanks again Neil your a champion*". Mr Hutchings replied "*Not a problem mate I have no axe to grind nor do I want to benefit from someone else's demise. I just like to see people treated fairly, and that goes for Darren too. Unfortunately for him, he is responsible for him being in the position.*"
- c. On the night of Thursday 20 September Mr Hutchings wrote to Mr Marsden "*Hi Pal, Just off to bed after spending a couple of hours looking over statements etc. If you haven't already it [sic], please speak to me before sending the Disciplinary letter to Darren.*"
- d. On Friday 21 September, they had an exchange about Mr Marsden and Mr Hutchings shareholdings in Folsana. It appears from text messages that Mr Hutchings visited Mr Marsden at home on that day.
- e. On 22 September Mr Hutchings texted Mr Marsden about the availability of ACAS training for Ms Christie.
- f. On 23 September, Mr Hutchings asked for the company handbook and Mr Donnelly's contract.
- g. On the same day Mr Hutchings said "*Also we will need to get Bernard to amend his resignation letter. That can be done tomorrow*".
- h. Messages continued between Mr Hutchings and Mr Marsden through to 26 October. It is apparent that they met a number of times over that period. In some of the messages,

Mr Hutchings asked for documents or information. In some, views about Mr Cavanaugh's position were exchanged.

- i. On the evening of 28 September Mr Marsden criticised a letter from Mr Cavanaugh in which he had commended on health and safety but said he did not know what he had been suspended for. He thanked Mr Hutchings "*for all your doing*".
- j. On the following morning Mr Hutchings replied "*Your welcome. As guilty as he appears to be, I am only interested in the truth. So if he does have mitigating reasons for his actions I am ready to listen.*"
- k. On 30 September, the day before Mr Hutchings first investigatory interview with Mr Cavanaugh, Mr Marsden said "*Darren normally plays on any chinks in the armour so if he asks about the time to prepare perhaps it was time to prepare mentally that's all.*" Mr Hutchings closed down the conversation "*Perhaps. Tomorrow will tell.*".

110 The following questions are raised by these text messages, and their late disclosure:

- a. What, if any, light is shed on the credibility of Folsana's case from the fact that these documents were not disclosed until part way through the trial?
- b. What, if any, light is shed on the credibility of Folsana's case by the fact that Mr Hutchings claimed, in paragraph 11 of his statement, that after he was appointed to conduct the investigation although he spoke to Mr Marsden they "*never discussed anything about the investigation or the events surrounding it*". He also said that "*I did not have any conversations with Darren Marsden off premises either in person or on the telephone during the investigation.*"
- c. What is the impact of the content of the communications themselves?

111 There is no doubt that paragraph 11 of Mr Hutchings statement is incorrect, in the light of the picture that emerges from the text messages. His evidence was that he made his statement on his phone when he was called by Folsana's solicitors in 2023. He did it from memory, without the investigation file. He did not think to check his texts at the time. He was summonsed to appear at trial and when he recognised, during the course of the trial, that dates of events were important he looked for text messages to clarify the timing. I can understand that when he made his statement in 2023, Mr Hutchings may not have had recall of all of his interactions with Mr Marsden in 2018. However, he goes to some length in paragraph 11 to deny communications with Mr Marsden, something that he need not have done if he did not have a clear recollection of events. The fact that he did so undermines the reliability of his evidence, which I have treated with some caution.

112 As to the late disclosure of the text messages themselves, Mr Hutchings is not a party to the proceedings, and was not himself subject of Mr Cavanaugh's specific disclosure application. He did not remember being asked by Folsana's lawyers to provide his text messages. I bear in mind that the text messages came to light during the course of trial because Mr Hutchings volunteered them, which is not the act of someone trying to conceal the evidence. As to Mr Marsden's end of the text exchanges, Mr Marsden's evidence was that he searched for messages from the period but they had not been saved after his phone had been renewed. There was insufficient evidence to suggest that was not truthful, and insufficient to find that he had deliberately withheld them.

- 113 However, although I have reservations about the reliability of Mr Hutchings and Mr Marsden's evidence, I am not led to reject his evidence altogether. Apart from some specific messages which I will deal with in the following paragraphs, the messages themselves are not significant. I see no harm in Mr Hutchings asking Mr Marsden for information or documents, nor in him keeping Mr Marsden updated as to the progress of the investigation.
- 114 The message that causes the most concern is the message on Sunday 23 September relating to changing Mr Donnelly's resignation letter. Mr Hutchings explanation in his evidence was that he had seen the resignation letter, but not the grievance letter. He had understood Mr Donnelly to have retracted a pending grievance. When he looked at the resignation letter, there was no reference to a grievance. Later in cross-examination he clarified that he was concerned that by asking Mr Donnelly to retract his resignation and put in a grievance Folsana may have disadvantaged Mr Donnelly in any subsequent constructive dismissal claim he may wish to bring in the Tribunal. The change he had in mind was to put Mr Donnelly in the position he would have been in at the time he resigned.
- 115 The suggestion that the resignation letter be changed is an unusual one, and would not have been the right way to proceed. However, I understood and accept Mr Hutchings' intentions in suggesting it. There is no evidence that the letter was changed, or that the suggestion went any further than Mr Marsden.
- 116 There are some messages that could indicate a predisposition to believe the truth of the allegations. On the other hand, there are messages in which Mr Hutchings points out that he wishes to be fair to all, including Mr Cavanaugh. In any event, this is not a claim for unfair dismissal, so whether Mr Hutchings took an early view on the merits is not in itself material. Mr Cavanaugh relies on these messages to show that the allegations against him were concocted, and that Mr Hutchings was part of a pre-determined and unjustified outcome. The messages do not go so far as to demonstrate that.

Mr Cavanaugh's Grievance

- 117 In the meantime, on 19 September Mr Cavanaugh submitted a written grievance. He stated that he had taken legal advice. His complaints can be summarised as follows:
- a. "To date" there had not been a fair procedure when considering the allegations, of which he still did not know the details.
 - b. The requirement to return his company laptops and mobile phone was a punishment, as it prevented him from accessing personal contacts, banking and other "personal affects".
 - c. The email sent on 17 September put Mr Cavanaugh in an untenable position as it questioned his professional and moral integrity in the marketplace. The shop floor, suppliers and customers were discussing the matter, preventing a fair investigation.
 - d. Mr Marsden had been making contact with ex-employees in an attempt to rally support, which he considered a witch hunt.

- e. At this point, the grievance includes the following statement “*All of the above actions have put a strain on both my physical and mental health, only intensified by the fact that I still know very little of the allegations against me.*”
 - f. Mr Marsden had exhibited confrontational behaviour towards Mr Cavanaugh on numerous occasions. He gave an account of one incident, without stating when it had occurred.
- 118 The reference to the strain on Mr Cavanaugh’s physical and mental health is the “**First Mental Health Notification**”.
- 119 On 24 September Folsana acknowledge the grievance. Arrangements were put in place for Mr Cavanaugh to access his personal information on the laptops and mobile phone which took place on 26 September.
- 120 Karen Pilkington was appointed to consider Mr Cavanaugh’s grievance. She was an independent HR consultant. The grievance ran in parallel to the investigation and disciplinary procedure. It is convenient to summarise the events relating to the grievance here, before returning to Mr Hutchings investigation.
- 121 Ms Pilkington met with Mr Cavanaugh to discuss his grievance on 3 October. That was two days after the first investigatory interview between Mr Hutchings and Mr Cavanaugh, which I address below. Ms Pilkington was aware that Mr Cavanaugh had prepared several documents for the grievance. He read out his opening statement. He relied on a document that contained 14 points that he wanted to discuss. He explained that he did not wish to pursue the grievance of bullying against Mr Marsden at that time.
- 122 In his opening statement, Mr Cavanaugh said “*I am really not in a good place at the moment, physically and emotionally. I have prepared statements if you don’t mind to have a read.*” This is the “**Third Mental Health Notification**”.
- 123 Ms Pilkington’s evidence was that although Mr Cavanaugh was concerned about losing his job, nothing in his presentation at the grievance caused her alarm as to his mental health.
- 124 Ms Pilkington did not uphold Mr Cavanaugh’s grievance. She found that both the removal of IT equipment and the email to external contacts to be a normal step to take in the circumstances. She communicated her decision on 3 October.
- 125 Mr Cavanaugh appealed the grievance decision, by letter dated 12 October. His appeal concerned a mixture of points in the decision he disagreed with, and points that he complained had not been addressed. The grievance appeal was handled by Emma Fay, another independent HR professional. An appeal meeting took place on 18 October. Ms Fay rejected the appeal (save in one small immaterial respect) on 29 October.
- 126 Mr Cavanaugh relies on the following statement in the grievance appeal meeting on 19 October as the “**Fifth Mental Health Notification.**”: “*I handed in a notice about being under a doctor’s investigation for all the stress and what have you*”.

Mr Hutchings interviews with Mr Cavanaugh and his investigation report

127 Mr Hutchings wrote to Mr Cavanaugh on 26 September to invite him to an investigatory meeting on 1 October. In fact, Mr Hutchings had two meetings to interview Mr Cavanaugh at Folsana's solicitors' offices.

128 Mr Cavanaugh attended a first investigatory meeting with Mr Hutchings on 1 October. Mr Cavanaugh attended with a prepared statement, which he read out. That included the following statement:

"I would like to start by saying, I am currently under my doctor for stress and anxiety and I am taking medication for that. I am suffering side effects of the medication, I will attempt to answer any questions you need, but I may need sorry, to come back with as response as per my email dated 26 September where I cannot answer your questions."

129 This is the "**Second Mental Health Notification**."

130 A second investigatory meeting was planned for 9 October. On 8 October, Mr Cavanaugh wrote to Mr Hutchings saying:

"With reference to our meeting arranged for tomorrow at 2pm. As previously advised I am under the care of my GP. Following a further report with my GP on Friday 5th October, it has been necessary for him to add to my medications. This new medication has unfortunately knocked me sideways and I am unable to function and think straight. My GP did say that I may feel worse before I feel any better. I am therefore unable to attend the meeting tomorrow. Apologies for the short notice as I did want to get this resolved to enable me to return to work. Please can we re-arrange the meeting for the same time next week where hopefully I will be functioning at a better level than I am currently."

131 This is the "**Fourth Mental Health Notification**".

132 As requested, the meeting was postponed. It took place on 16 October. The meeting lasted nearly two hours. It does not appear that Mr Cavanaugh raised any issues about his health in that meeting, and it appears that he was able to participate fully in the meeting.

133 Mr Hutchings produced an investigation report on 26 October. In the section headed "Conclusion of Investigation" I note the following paragraphs:

"From the evidence collated in the process of the investigation, I believe Darren Cavanaugh has frequently abused his position as a company director. The majority of employees have either witnessed or been subjected to inappropriate behaviour from Darren Cavanaugh".

And later in the same section:

"It is clear from my investigations that there are serious issues with regards to Darren Cavanaugh's management style. It has been witnessed that he has often acted with impunity and with a high level of disregard for the welfare of the individuals he has managed. I conclude that disciplinary action ought to be considered to address the issues highlighted in the report."

- 134 Mr Hutchings made a recommendation that Mr Donnelly’s grievance be upheld, and made further specific recommendations that I need not set out here.

The Disciplinary Hearing

- 135 After Mr Hutchings Investigation Report, the disciplinary process was handed to Kerry Green, an independent HR consultant of “Solutions for HR”.

- 136 Ms Green wrote to Mr Cavanaugh on 30 October. She invited him to a disciplinary meeting to discuss allegations which she set out under six headings. Those headings were:

- a. Bullying & Harassment behaviour towards Bernard Donnelly.
- b. Bullying & Harassment behaviour towards various other employees (specific examples included Ian Morris, Alan Worthington, Marcus Steadman and Andrew Shields).
- c. Making inappropriate comments of a racial nature to employees.
- d. Inappropriate unprofessional conduct and behaviour as a Senior Member of the Management team.
- e. Seeking payment from employees for the issue of PPE.
- f. As a result of the above, there has been a potential breakdown of trust and confidence in you as a Director/employee of the Company.

- 137 Mr Cavanaugh was sent a supporting pack of documentation running to some 200 pages, including statements and interview notes from employees and other documents.

- 138 On 1 November, after receiving the letter of 30 October but prior to receiving the supporting documents, Mr Cavanaugh wrote to Ms Green asking for access to further information in order to prepare his defence. He requested enough time to be able to use the information and prepare a proper defence.

- 139 In the context of that request, Mr Cavanaugh’s letter said as follows:

“Folsana and their representatives have been made aware, on multiple occasions of my current mental health issues. I am currently suffering from stress, anxiety and depression and I am taking medication for this. I am suffering effects of both my conditions and side effects of the medications which are making it difficult for me to carry out every day normal activities and to concentrate for any length of time. I am under the care of Manchester Mental Health NHS Foundation Trust and am currently undergoing Psychological therapy. Due to my state of mind I wish to provide my defence at the meeting as written statements, as I am unable to articulate what I need to say or concentrate on questions put to me at this moment in time. Due to the defence I will have to prepare, and my current health related conditions and side effects can I request that the scheduled meeting is postponed.”

- 140 This is the “**Sixth Mental Health Notification.**” Mr Cavanaugh asked for a postponement of five working days after receipt of the further information he requested.

141 After some further correspondence, the disciplinary hearing was postponed to 14 November. Mr Cavanaugh attended the disciplinary hearing with Mrs Cavanaugh as his companion. Ms Green had refused to allow Mr Pilling to accompany him, principally as he was a potential witness. At the disciplinary hearing Mr Cavanaugh presented a suite of documents, commencing with a 2 page opening statement and followed by a series of notes and appendices, amounting to over 80 pages. The documents analysed the evidence in great forensic detail.

142 In his opening statement, Mr Cavanaugh said:

“I have made you aware of my mental health and that I am currently suffering from anxiety and depression and am in the early stages of psychological intervention. I am struggling to concentrate, I’m forgetful and my attention span is extremely short all symptoms of anxiety and depression. Therefore, I am unable to function to my normal level of functioning.”

143 This is the **“Seventh Mental Health Notification”**.

144 The disciplinary meeting ran from 10.30 to 17.31, with a break for lunch. The pre-prepared statements were read, but there was extensive additional questioning and answers to those questions. Both Mr and Mrs Cavanaugh contributed. Having reviewed the minutes of the hearing, it is clear to me that Mr Cavanaugh contributed actively to the hearing. He was able to put forward his defence and address many points of detail.

145 Following the meeting Ms Green carried out some further investigations, including obtaining further statements from Mr Donnelly and from David Green.

146 Ms Green set out her decision in a detailed letter dated 21 November. Apart from allegations 2(c) and 5 she upheld the allegations. Her ultimate conclusion was that Mr Cavanaugh’s actions had amounted to gross misconduct, and that his employment was to be summarily terminated with effect from 21 November.

The Appeal against Dismissal

147 Mr Cavanaugh appealed the decision to dismiss him by letter dated 24 November, which set out detailed grounds of appeal.

148 The appeal was handled by Jane Carroll, also of Solutions for HR. A disciplinary appeal hearing was held on 6 December. Mr Cavanaugh attended with Mrs Cavanaugh. Mrs Carroll, who is a mental health first aider, did not detect signs of distress or mental health symptoms during the course of the appeal hearing.

149 Mrs Carroll communicated her decision in a detailed letter dated 17 December. She dismissed the appeal. In her conclusion, she stated that she was unable to uphold the appeal *“as I believe that your conduct has amounted to intimidating, offensive and bullying behaviour towards a number of employees at Folsana.”* Mrs Carroll’s evidence was that her impression was that Mr Cavanaugh was convinced that he was in the right and did not understand the impact of his behaviour. He had a particular management style that is not acceptable these days, which had caused wide and significant impact on employees.

THE “CONSPIRACY CASE”: DISCUSSION AND CONCLUSIONS

Mr Cavanaugh’s case as to the events leading up to 17 September

- 150 Mr Cavanaugh challenges the evidence of the Folsana witnesses leading up to 17 September. He submits:
- a. Mr Donnelly’s account of resigning on 4 September is unlikely to be true. Even if it is true, the resignation letter itself was an insufficient basis to justify suspension from work.
 - b. Mr Donnelly and Robert Haslam’s account of the meeting on 6 September is untrue, and the meeting is unlikely to have taken place as related.
 - c. A decision was taken to remove Mr Cavanaugh on or around 9 September.
 - d. Mr Marsden contacted Mr Hutchings as part of a plan to remove Mr Cavanaugh from his job.
 - e. Robert Haslam and Mr Marsden discussed that in order to get other people to come forward without fear of reprisals, they would need to know that Mr Cavanaugh was not coming back.
 - f. It is not true that Mr Marsden was advised that Mr Donnelly would need to submit a grievance if the matter was to be investigated.
 - g. The grievance letter was written at Mr Marsden’s insistence, either during Friday 14 September or over the following weekend.
 - h. The resignation letter was probably written at the same time. Both were done to lead to a decision that had already been made – that Mr Cavanaugh would be suspended and in due course dismissed.
- 151 Mr Cavanaugh’s case was that the reason for his dismissal was not his treatment of Mr Donnelly, nor of other employees, but was for other reasons of Folsana’s:
- a. Mr Cavanaugh was blocking expansion of the business;
 - b. Mr Cavanaugh had made a “whistleblowing” disclosure about Stephen Haslam’s involvement in the sale of scrap metal.
 - c. Mr Cavanaugh had made a complaint to Robert Haslam in late August 2018 that he was subject to a campaign of inappropriate and bullying behaviour at the hands of Mr Marsden.
- 152 Mr Cavanaugh also said that Folsana wanted to destroy his job and his reputation. They intended to crush his reputation to prevent him from trading. They knew from 2015 that he intended to set up his own laser cutting business, from when he resigned in 2015.
- 153 Having made the decision to remove Mr Cavanaugh, Mr Donnelly was identified as an unhappy worker who would put in a grievance when he was told to do so.

- 154 Mr Cavanaugh, understandably, has no direct evidence of the plan he alleges. Nobody told him that there was such a plan. He did not witness any discussion of it. That is not in itself surprising, one would not expect such a conspiracy to be planned in the presence of the victim, or discussed openly. That means the existence of the plan has to be inferred from the circumstances. The inference is said to arise from the inherent implausibility of Folsana's account, inconsistencies in the account, the lack of substance in the allegations, and from clues in the contemporaneous documents. The inference is also said to arise from the evidence that Folsana had other reasons for wishing to get rid of Mr Cavanaugh.
- 155 All of those alleged to be involved in the plot gave evidence at trial and denied its existence: Robert Haslam, Stephen Haslam, Mr Marsden, Mr Donnelly and Mr Hutchings. If there were such a plot, it would follow that each of those individuals involved in it had lied on oath at trial.
- 156 I will consider in turn the various building blocks said to give rise to the conspiracy claim. I have already set some findings relevant to the claim earlier in this judgment.

Mr Cavanaugh's challenge to the authenticity of Mr Donnelly's letters

- 157 Mr Cavanaugh gave evidence that he did not believe the resignation letter and grievance letters were written on 4 September and 14 September respectively. He did not believe that Mr Donnelly wrote the resignation letter and delivered it to Mr Haslam's house. He believed that the resignation was possibly written on 14 September.
- 158 This is not a new belief of Mr Cavanaugh's. He has doubted the authenticity of the documents since the time of the disciplinary process. In his response to Mr Donnelly's evidence, prepared for the disciplinary hearing he said: "*I have taken preliminary expert opinion in relation to both the letter of resignation and BD grievance letter along with other samples. I don't believe their authenticity or sequence of events.*" He asked that Mr Donnelly confirm that both documents were completed by him in their entirety. In the disciplinary appeal hearing he said "*We have the grievance and his resignation examined by a handwriting specialist and a preliminary came back saying that it has not been written by the same person.*"
- 159 Mr Cavanaugh's position on this is telling. He has had an unshaken belief, since 2018, that Mr Donnelly's letters are not genuine. However, the basis for challenge to the documents, either as to their authenticity or the time of their creation is, and always has been, flimsy in the extreme.
- a. Nothing sinister arises from the fact that both were written on the same pad of paper. That is entirely unremarkable.
 - b. Although there is a slight mark to left of the 4 on the date of the resignation letter, that does not suggest that it was written on 14 September.
 - c. While it is true that Mr Cavanaugh had sought handwriting expert opinion in 2018, the expert did not give the opinion that the two letters had not been written by the same person. In an email exchange with Mr Cavanaugh on 6 November 2018, the expert said that the handwriting in the grievance document "*is very variable and does not look entirely natural*". However she asked for more specimens and said that any conclusion

expressed would be likely to be at the lower end of their conclusion scale (the scale ranged through 8 grades from inconclusive to conclusive). It is clear that Mr Cavanaugh significantly overstated this evidence in the course of the disciplinary process.

- d. Mr Cavanaugh was adamant in his position during cross examination that something was not right with the two letters, though he was unable to identify any substantial reason as to what was wrong with them, or to support his theory that they were written at the same time. He was entirely unclear as to whether his position was that neither document was written by Mr Donnelly, or that one was but the other was not, or that both were written by him but not on the dates alleged. Ultimately, his case appears to be advanced on the basis that Mr Donnelly wrote the grievance on 14 September, and also wrote the resignation on that date, backdating it to 4 September.

160 I can see no sense in the case theory alleged by Mr Cavanaugh. On his case, the resignation letter was written on the same day as the grievance and backdated to 4 September. He can give no explanation as to how that would assist the conspirators. They could just as well have created the resignation and grievance on the same date.

161 Taken together, these points lead me to reject Mr Cavanaugh's allegation that Mr Donnelly's letters were not genuine. I can see no basis for him to have challenged the documents in the first place, beyond his adamant belief that the allegation against him cannot have been true. Further, the fact that he has persisted in this groundless allegation casts serious doubt on the reliability of his evidence as a whole.

The Sequence of events from 3 September to 14 September

162 Mr Cavanaugh's case is that Mr Donnelly's behaviour in the period 3 September to 14 September was not consistent with the idea that he was feeling bullied or had decided to resign at that time. The events of 3 September were insufficient to cause him to resign. The gap between 4 September and 14 September suggests that Folsana did not regard the resignation as serious. It was also suggested that the account of the hand delivery of the resignation on 4 September and the meeting on 6 September were all implausible and not true.

163 I do not accept any of these arguments. There is nothing inherently implausible about the evidence given by Mr Donnelly and Robert Haslam as to the events.

164 I accept the evidence of Mr Donnelly and Robert Haslam as to the sequence of events. Mr Donnelly was clearly extremely nervous in giving evidence. He explained, and I accept, that outside of the court he had a significant family health issue developing during the week of the trial. I have no doubt that played on his mind. He gave his evidence in a straightforward manner. The evidence he gave was clear and consistent, and not undermined in any significant way. He made appropriate concessions in cross-examination. He was frank where his recollection was poor. Similarly, I found Robert Haslam's evidence to be straightforward and credible. I accept the evidence of both of them as to the events in the period from 3 September, when Mr Donnelly returned to work, to 14 September, when he submitted his grievance.

165 Mr Donnelly's evidence was that the events of 3 September was the final straw in a course of treatment and it led him to resign. I have no hesitation in accepting that was his genuine belief at the time. There is nothing in the timing of the resignation that leads me to doubt

its genuineness. There was nothing implausible or unlikely about Mr Donnelly's account of hand delivering the resignation letter. Nor was there anything implausible about the account given as to the meeting on 6 September. I accept Mr Donnelly's account of his treatment by Mr Cavanaugh as a truthful account of his treatment and how he felt about it.

166 Similarly, as I have already indicated, I accept Robert Haslam's evidence that Mr Donnelly's resignation led him to take action about behaviours of Mr Cavanaugh of which he had been aware, but about which he had been spineless in not taking action.

167 I do not find it significant that Mr Donnelly's grievance was not submitted until 14 September, nor that he carried on working in the meantime. He was in a difficult situation, but he had been asked to wait until Mr Marsden returned from holiday. My impression is that he did the best he could to carry on. I have no doubt that he would have taken some reassurance from the fact that Mr Haslam had visited him to discuss the issue.

Mr Cavanaugh's case as to alternative reasons for his dismissal

168 I have considered carefully Mr Cavanaugh's explanation of what he says were the reasons for his dismissal. All of Folsana's witnesses denied those reasons, and maintained their position that Mr Cavanaugh's treatment of staff was the reason, and Mr Donnelly's resignation was the trigger for the disciplinary investigation.

169 I am satisfied that the account of the Folsana witnesses is true as to their reasons for initiating and continuing disciplinary action. I am not at all persuaded by Mr Cavanaugh's evidence as to the alternative reasons.

170 I deal first with the "scrap metal" issue. Mr Cavanaugh's evidence was that the reason that he was removed was because he had told Robert Haslam, in August 2018, that Stephen Haslam had been involved in a fraud relating to the sale of scrap metal.

171 Robert Haslam denied that any such conversation took place. I accept his evidence. I reject Mr Cavanaugh's account that he said anything to Robert Haslam about it.

- a. The nature of the alleged scrap metal fraud itself was opaque. The evidence of it, even on Mr Cavanaugh's case, was limited. It amounted to little more than hearsay. I do not need to address the underlying facts in any detail. I was taken through a spreadsheet that according to Mr Cavanaugh demonstrated that cash had been paid for scrap metal that had not passed through Folsana's books. In my judgment, the spreadsheet showed nothing of the sort. Having considered the spreadsheet in question, I cannot see how it could lead any reader to jump to the conclusion that a fraud had been perpetrated.
- b. More importantly, if there was evidence of fraud, it appears to have been one that was perpetrated in the period 2011 to 2014. It is difficult to see why Mr Cavanaugh would raise it in August 2018. I was not persuaded by his evidence that the spreadsheet came to light when he was seeking to locate certain files following the installation of a new PC for Folsana's bookkeeper.
- c. In addition to the evidence about the spreadsheet, the other piece of evidence relating to the scrap metal issue was that Mr Pilling said that he had a discussion "in 2018" in which he told Mr Cavanaugh that Stephen Haslam had been in the office with a Tesco bag full of cash. Mr Pilling said that Bernard Donnelly had told him that the cash would

have been cash from scraps people so they did not pay tax. Mr Pilling's evidence was vague as to when he had this conversation in 2018 with Mr Cavanaugh, and ever vaguer as to the underlying conversation with Mr Donnelly regarding the bag of cash. In cross examination, he said he had seen Stephen Haslam with a Tesco bag, but had never himself seen that it had cash in it. Nor had he ever said anything about the amount of cash in the bag. It was Mr Donnelly, he said, who had described it as being for cash from the scrap people. He was unable to recall whether this happened in 2013, 2015 or 2018.

- d. Mr Cavanaugh did not give evidence in his witness statement for this trial as to the conversation about the "bag of cash". He did refer to the conversation in cross-examination. He also raised it in the course of his employment tribunal claim for unfair dismissal. In a witness statement in those proceedings, made on 30th October 2020, he stated that Mr Pilling told him that he heard that Stephen Haslam had been seen with a bag containing £30,000 cash in 2013. That was not what Mr Pilling said himself.
- e. The evidence on this issue was highly unsatisfactory. The account given by Mr Cavanaugh in his statement in earlier proceedings was at odds with that given by Mr Pilling. Mr Cavanaugh gave no explanation for that. Neither he, nor Mr Pilling, were able to give any sensible explanation as to why a conversation as to a bag of cash seen or spoken about in 2013 would be something that Mr Pilling and Mr Cavanaugh would have any reason to discuss in 2018, or specifically in August 2018. Mr Pilling's evidence was that he retired from Folsana in June 2018, so the issue would have had to come up on an occasion when he met Mr Cavanaugh for coffee after he retired. Neither Mr Cavanaugh nor Mr Pilling said that Mr Cavanaugh told Mr Pilling about his concerns about the scrap metal spreadsheet, so it is very difficult to see how a conversation some five years earlier about cash for scrap would have been raised by Mr Pilling.
- f. Mr Donnelly did not accept that he had any such conversation with Mr Pilling.
- g. Stephen Haslam gave evidence as to the handling of scrap metal sales and as to the changes in arrangements between 2011 and 2014. His evidence was clear and comprehensive as to the changes in figures for scrap in the spreadsheet that recorded scrap sales. The "bag of cash" allegation was not put to him.
- h. Robert Haslam, in his evidence, denied that Mr Cavanaugh had raised either the scrap metal issue or Mr Marsden's bullying in a conversation in August 2020. His evidence was clear and straightforward on this issue.
- i. During the course of the disciplinary process, and his grievance, Mr Cavanaugh did not say that Folsana's action against him was being done because he raised the scrap metal issue. He was willing to make other serious allegations – including that one at least of Mr Donnelly's letters were not written by him. He submitted lengthy written responses to the disciplinary process and spent many hours challenging the case in meetings. He did not mention the scrap metal issue, and did not say that he had spoken to Robert Haslam about it.
- j. The most that Mr Cavanaugh could point to was a comment in the disciplinary appeal hearing. During the course of that hearing, Mr Cavanaugh was making a point about what he described as "the footwork issue", which he described as an allegation that was

made against him, but when it was looked into it was dropped. He said that the approach had been to throw mud and see what sticks. The note records him as saying “*well the investigator should not be bringing claims that are false. They will have a go at me for selling scrap next when it has nothing to do with me.*” I do not accept that this was a reference, oblique or otherwise, to the scrap metal issue.

172 For these reasons, I reject the claim that Folsana decided to remove Mr Cavanaugh because he had raised the issue of scrap metal fraud. He did not. It was not in the mind of Robert Haslam, or anybody else at Folsana. It is not strictly necessary for me to make findings about the scrap metal issue itself. However, given that the serious allegation was raised, I make clear that having considered the available evidence, I could see no basis whatsoever for an allegation that Stephen Haslam, or anyone else at Folsana, had been involved in any kind of fraud. It is regrettable that the allegation was raised.

173 Mr Cavanaugh’s further argument was that the reason for his dismissal was that he had been bullied by Mr Marsden and that he raised the issue about Mr Marsden’s bullying behaviour at the same time that he raised the scrap metal issue with Robert Haslam, he believes in the week commencing 20 August 2018. His evidence was that Robert Haslam said that he would speak to Mr Marsden, but Robert Haslam’s demeanour was such that it was clear that he thought Mr Cavanaugh had overstepped the line by bringing his son into dispute.

174 Mr Cavanaugh gave evidence as to Mr Marsden’s hatred of him, and his belief that Mr Marsden had been looking for an opportunity to get him out of the business. It is clear that there were tensions between Mr Marsden and Mr Cavanaugh and problems from time to time. However, I found Mr Cavanaugh’s account of the course of bullying by Mr Marsden to be unpersuasive. It was telling that Mr Cavanaugh said that Mr Marsden’s bullying was the reason he resigned in May 2015. However, his resignation letter of 26 May 2015 makes no mention of Mr Marsden’s treatment of him. Mr Cavanaugh’s explanation was that the letter did make oblique reference to the issue, but he did not make direct reference to it as he was aware how vindictive Mr Marsden could be. I was not persuaded by that explanation. As with the scrap metal issue addressed above, the “oblique reference” explanation is implausible. Mr Cavanaugh is a forthright man of strong personality. If he had felt that he was being bullied, he would have made his position clear.

175 I reject Mr Cavanaugh’s evidence that he spoke to Robert Haslam about Mr Marsden’s bullying behaviour in August 2018. I accept Robert Haslam’s evidence that this was not raised, and was not a reason for Robert Haslam’s decision to suspend Mr Cavanaugh and commence a disciplinary investigation.

176 Further, I was not persuaded that Mr Cavanaugh was dismissed because he was intending to leave to set up a competing laser cutting business. There is no evidence to suggest that was in the mind of Robert Haslam or Mr Marsden. There was scant, if any, evidence that Mr Cavanaugh had expressed any intention to do so; still less that it was something that Robert Haslam or Mr Marsden were concerned about.

177 There is no evidence that he had expressed any intention to set up a rival business in the following three year period. Even if Robert Haslam and Mr Marsden had thought there was a competitive threat in 2015 (and there is no evidence that they did), there was no reason to think that there was such a threat three years later.

178 There was some evidence to support Mr Cavanaugh's evidence that he was regarded as a brake on expansion of the business into new areas of work. In many businesses there are differences of view as to future strategy. However, there is no evidence that this issue ever came to a head, or led Robert Haslam or Mr Marsden to think that Mr Cavanaugh would need to be removed because of this.

179 In summary, I am not persuaded that Folsana had reasons to want to oust Mr Cavanaugh other than those raised by Mr Donnelly's resignation and grievance.

Mr Cavanaugh's challenges to the investigation and disciplinary process

180 In setting out the narrative of events from the date of suspension through to termination, I have made some findings as to Mr Cavanaugh's challenges to the investigation and disciplinary processes. I now consider whether the events that happened after the suspension lend any support to Mr Cavanaugh's contention that there was a pre-determined plan to oust him.

181 In doing so, I bear in mind that it is Mr Cavanaugh's case that, even if there was no collusion in Mr Donnelly's resignation and grievance, he suggests that once Mr Donnelly had come forward, there was a predetermined plan to get rid of Mr Cavanaugh, and that everything was designed to achieve that end.

182 As I have already indicated, this is not an unfair dismissal case. The question for me is not whether the process was unfair, but whether things were done in a manner so unfair as to suggest that the process was pre-determined, or not genuine. Although I have indicated some reservations about the evidence of Mr Hutchings and Mr Marsden about the communications between them, I do not find that their evidence as a whole was undermined. In particular, I accept their denials that neither of them was involved in a pre-determined plan to get rid of Mr Cavanaugh. I also accept Robert Haslam's evidence that he did not start the process with a pre-determined outcome in mind.

183 For the purpose of the "conspiracy" claim, it is a striking feature that all of the decision making was essentially outsourced to decision makers outside the company: Mr Hutchings, Ms Green, Ms Carroll, Ms Pilkington, Ms Fay. Even were I to accept that Mr Hutchings was brought on board to do the company's bidding as a friend of Mr Marsden - and I do not accept that - that does not account for the four independent HR professionals who dealt with the disciplinary decision and its appeal and the grievance and its appeal. No suggestion was made that they were involved in a conspiracy, or that their conclusions had been determined for them. If Folsana had a desired, pre-determined outcome they could have had no way of knowing whether those independent persons would reach their desired decisions. Folsana was under no legal obligation to outsource internal grievance and disciplinary processes to external HR consultants. The fact that they chose to proceed in this way is far more suggestive of a company seeking to do the right thing, rather than one seeking to achieve a pre-determined outcome.

Evidence of Mr Cavanaugh's treatment of staff

- 184 I heard evidence about a number of past incidents of Mr Cavanaugh’s treatment of employees. On Folsana’s side, this came from “management” (Mr Donnelly, Mr Marsden Robert and Stephen Haslam) and also from a number of other employees: Mr Brimble, Mr Worthington and Mr Stedman.
- 185 I do not need to make findings as to the underlying factual allegations. The issue is whether, in the circumstances known to Folsana at the time, Folsana had reasonable and proper cause to suspend him and conduct an investigation. That does not depend on whether the allegations are true or not. However, there may be cases where the evidence on which an employer claims it relied as the reason for its actions is so weak that it casts doubt on the genuineness of the stated reason. I have considered whether any inference can be drawn from the quality of the evidence. Was the evidence so weak that it may support the inference that the disciplinary process was sham, to support a pre-determined decision taken for other reasons?
- 186 Having considered the investigation and disciplinary process carefully, it seems to me that it followed the evidence that was produced, rather than being designed to achieve an outcome. Although Mr Cavanaugh is unable to accept it, there was a substantial body of evidence against him. That body of evidence led to the independent HR professionals determining, in well-reasoned decisions, that Mr Cavanaugh had committed acts of gross-misconduct.
- 187 I reject the argument that the evidence was fabricated or produced as a result of pressure. I have already set out some findings as to this at paragraphs 102 to 107 above.
- 188 There is nothing suspicious or implausible about the evidence that was produced that would lead to the conclusion that it was concocted. I have already indicated that I found Mr Donnelly to be a credible witness, and I accept his evidence as to his treatment by Mr Cavanaugh, and how it made him feel. The evidence of Mr Brimble, Mr Worthington and Mr Stedman was credible and I accept it. Although some of the matters they raised were old, I do not doubt their genuineness.
- 189 It is clear to me that there was a credible body of evidence, deriving from genuinely held concerns by employees.

Mr Cavanaugh’s Credibility as a witness

- 190 Mr Cavanaugh’s statement contains much that is argument, and is written in a lawyerly way. When asked about this, he said that he was helped by his wife and his son. Also, he had previously made several previous statements from for other hearings in these proceedings, and for other proceedings. He accepted that there was quite a bit of legal phraseology from previous statements from his lawyers in this claim.
- 191 It is understandable how that could have happened. By 2024, it must have felt to Mr Cavanaugh that he had been recounting the events of this case repeatedly in a range of situations. I can understand why he has used material previously created, and I can I understand the sense he feels that he needs to argue his case. The fact that he has chosen to do so does not, in my view, mean that he is not seeking to be a truthful witness. Sometimes

the court sees a witness who used legal language and argument in a deliberate attempt to be evasive or obfuscatory, or otherwise to mislead. I do not believe that Mr Cavanaugh is such a witness. However, that is not to say that his approach is irrelevant to his credibility. Where there are issues of fact, I bear in mind that Mr Cavanaugh's account of events will have been shaped by the fact that he and his lawyers have crafted it and recounted it repeatedly over the years, in various contexts, to advance his case. It is very difficult to avoid a version of events being cemented in the mind in such circumstances. Further, in his statement, and more in so in his oral evidence, Mr Cavanaugh came across as having an unshakeable belief in the correctness of his position. To a large extent, I think that likely to be a product of his character but I have no doubt that his certainty has been entrenched by the continuation of this litigation.

192 However, a witness's certainty in his account is not a reliable indicator of its accuracy. Mr Cavanaugh's certainty that he was mistreated by Folsana, and that he himself did not wrong, led him to make, in his evidence and through his counsel, some allegations which are, to my mind, far-fetched and without credible basis. In particular, Mr Cavanaugh's position on Mr Donnelly's letters and on the scrap metal issue was without any proper basis. His case as to the shaming way in which he was suspended on 17 September was not supported by the evidence – not even by his own account of events. In cross-examination Mr Cavanaugh remained keen to argue his case, to make points about the quality of Folsana's evidence, and to advance his analysis of the documents.

193 These matters are relevant not only to the credibility of his evidence, but potentially also to the issues in the case. Folsana portray Mr Cavanaugh as argumentative, domineering and controlling; as unwilling to concede a point or let a point go. As Mr Platt KC put it, Mr Cavanaugh was a man for whom it was "my way or the highway". I am mindful that litigating in general, and giving evidence in court in particular, are artificial and highly stressful situations. Demeanour in court is not necessarily reflective of behaviour at the time of events some years ago. I can well understand that Mr Cavanaugh wishes to advance and win his case. However, even making allowances for those factors, I formed the impression that there was considerable truth in Folsana's description of Mr Cavanaugh's character, as set out by Robert Haslam in his witness statement at paragraph 8 subparagraphs (a) to (g), in particular (b) that he always insisted on his own way, (c) he was always convinced of his own opinions to the point of delusion on some occasions and (g) he had a natural tendency to try and control and take ownership. Having seen those particular traits accurately described by Robert Haslam, it lends credence to the remainder of the traits described by Robert Haslam. I accept Mr Haslam's characterisation at paragraph 8, including that Mr Cavanaugh could only function as the dominant party in a relationship (a), and that he thrived on conflict which provided him with an opportunity to demonstrate his domination (f). Those character traits are supported by the evidence of the shop floor witnesses as to his behaviour towards staff.

194 Mr Pilling's evidence on behalf of Mr Cavanaugh gave some glimpses of the domineering nature of Mr Cavanaugh's character. He confirmed that Mr Cavanaugh would say things along the lines of "you better do your work or may need to find another job". He regarded that sort of threat of the sack as normal. He said that Mr Cavanaugh had to be firm and direct or staff would take advantage of him. That if people were not doing what they should,

it was appropriate to make an example of a person. He agreed with Mr Cavanaugh's attitude, which was that if people did not want to do a particular job they could leave. Mr Pilling endorsed, and described Mr Cavanaugh as endorsing, an old fashioned form of management driven by threat and fear. In many industries that is no longer regarded as an appropriate or effective manner of getting the best out of employees. Folsana's evidence was that such management was neither necessary or appropriate, as evidenced by the company's growth and more contented workforce since Mr Cavanaugh left.

195 These observations as to Mr Cavanaugh's character support the view I have formed from the rest of the evidence that there were genuine issues with Mr Cavanaugh's treatment of staff that Folsana was right to address by way of disciplinary investigation. The fact that Mr Cavanaugh refused, then or now, to accept that there was an issue of substance, is something I will return to in relation to the question of causation.

196 It is telling, as to Mr Cavanaugh's character and attitude to this case, that he has chosen to develop the conspiracy theory. It speaks to his inability to see himself as in the wrong. The only way he can understand the allegations against him is that they have been the product of a conspiracy against him. His dogmatic pursuit of the point at trial seriously undermines his credibility as someone with a reliable perception of events. It also lends credence to the picture painted by Folsana's witnesses of a man who was not open to challenge or criticism, and determined to have things his own way.

Conclusion on the conspiracy case

197 For all these reasons, I completely reject the "conspiracy case". It was a serious allegation to have made. I have heard the evidence, and listened carefully to Mr Cavanaugh's challenge to Folsana's witnesses. Folsana's witnesses gave evidence in a clear and straightforward manner, and the account they gave was entirely plausible. There was little, if anything, to contradict it. Such inconsistencies as there were in the evidence were no more than one finds with the passage of time, and matters of detail. The decision to commence an investigation and the decision to suspend were not part of a premeditated plan to oust Mr Cavanaugh. The decisions were taken in response to a genuine resignation and grievance raised by Mr Donnelly. The investigation was not commenced with a pre-determined outcome.

REASONABLE GROUNDS FOR SUSPENSION

198 There remains the argument that even if Mr Donnelly's resignation and grievance were genuine, they did not give rise to reasonable grounds to suspend Mr Cavanaugh.

199 The ingredients of this argument are essentially as follows. The issues raised by Mr Donnelly were not substantial. Mr Donnelly gave no details of treatment of other employees and named no names. Any concern which Folsana may have had about Mr Cavanaugh's treatment of staff was based on old matters going back years, and was based on treatment which was known about and tolerated by Folsana. His grievance did not therefore raise issues sufficiently serious to suspend Mr Cavanaugh, either at all, or at least at the outset of the investigation.

- 200 In my judgment, suspension on 17 September was a reasonable step to have taken. I accept Mr Hyam KC's submission that suspension is a serious step that can have significant impact on an employee. It should not be done automatically or as a knee jerk reaction. However, in cases of bullying and harassment it is not uncommon for suspension to be an appropriate step at the beginning of an investigation. In this case, it is clear to me that suspension was a reasonable and appropriate step to take and was not in any way a knee-jerk reaction.
- 201 Mr Donnelly's resignation and grievance raised serious issues. Folsana faced a complaint, framed as a constructive dismissal, by a very long serving employee. Mr Donnelly had been, I find, in tears when Robert Haslam met him on 6 September. Although initially without detail, it was plain that serious allegations were raised against Mr Cavanaugh. Those allegations would need to be explored and investigated. Further, it was clear from Mr Donnelly's reference to other employees that the investigation would be likely to involve other employees – either as witnesses or possible complainants. Folsana had no choice but to investigate, and to take the matter seriously.
- 202 Mr Donnelly's complaint was consistent with behaviour that Robert Haslam was aware of. He felt that Mr Cavanaugh's behaviour had led to the loss of a number of good employees over the years. The complaint by Mr Donnelly was consistent with a pattern of behaviour with which Robert Haslam was familiar. Robert Haslam can be criticised for not acting on these matters sooner. I have already addressed this earlier in this judgment. Robert Haslam described his own behaviour in failing to address matters sooner as "spineless." But the earlier failure to deal with matters does not, in my assessment, cast doubt on the genuineness of the problem. Nor would it justify failing to take the matter seriously when Mr Donnelly's resignation brought matters to a head.
- 203 There was ample evidence to suggest that Mr Cavanaugh was an imposing and intimidating figure in the business, from multiple witnesses called by Folsana. I accept that evidence. It is difficult to see how a fair or effective investigation could have been carried out with Mr Cavanaugh in the workplace.

THE MANNER OF SUSPENSION

- 204 I have made findings on these issues at paragraphs 80-92 above. I reject all of the arguments that the suspension was carried out in an unreasonable manner, or a manner that amounted to a breach of contract. I also reject the arguments that the 17 September email and the collection of computer and phone equipment amounted to a breach of contract, for the reasons I have set out at paragraphs 94-98 above.
- 205 Mr Cavanaugh further claims that one aspect of the aftermath of the suspension which amounted to a breach was carrying out an investigation without specific terms of reference. There is no merit in that point. I do not regard an employer as under an obligation to commence an investigation with fixed terms of reference, though it may often be prudent to do so. I do not regard the lack of specific terms of reference as causing any unfairness to Mr Cavanaugh. The scope of the issues became clear through the course of the investigation. Mr Cavanaugh had the chance to deal with the matters raised by the investigation in his two investigatory meetings, in the disciplinary hearing and in the disciplinary appeal. While I accept that when suspended he had very little information, the allegations and the evidence in support became clear to him in due course.

- 206 I note in any event that the pleaded allegation is that the investigation had no specific terms of reference other than to trawl for other inculpatory evidence from employees – Particulars of Claim paragraph 56. I reject the contention that Folsana’s purpose was to trawl for inculpatory evidence.

FORESEEABILITY OF INJURY ARISING FROM THE SUSPENSION AND ITS AFTERMATH

- 207 Mr Cavanaugh argues that the events of 17 September, the suspension, the way it was conducted and the aftermath would cause a person of reasonable fortitude in similar circumstances to suffer stress related illness.
- 208 I have no doubt that the events would be “stressful” in the broader sense, and cause anxiety. It is clear from the cases, in particular *Yapp* and *Croft*, to which I have referred above, that that is not enough. Psychiatric injury will not usually be foreseeable unless the employer is aware of some previous injury or vulnerability.
- 209 Mr Cavanaugh was a man of reasonable fortitude. Indeed, he was known to be a strong character. It is clear from the evidence that his own approach to management and discipline was tough, and he was known to take a hard line with employees. There were no features prior to 17 September which indicated vulnerability to psychiatric injury. All of the Mental Health Notifications came later. In my judgment, it was not reasonably foreseeable that Mr Cavanaugh would be caused psychiatric injury by his suspension, or the manner in which it was carried out.

CONCLUSION ON BREACH OF DUTY IN RELATION TO THE SUSPENSION AND ITS AFTERMATH

- 210 It follows from my findings that Folsana did not act in breach of contract, or in breach of a tortious duty to maintain a safe system of work in suspending Mr Cavanaugh, in the manner in which the suspension was carried out, or in its actions in the aftermath of the suspension. Folsana had reasonable and proper cause to suspend, and in choosing to do so, and in the manner in which it was done, their actions were reasonable.

THE MENTAL HEALTH NOTIFICATIONS CASE

- 211 Mr Cavanaugh argues that despite his seven Mental Health Notifications, Folsana failed to make proper enquiry as to the state of his health, and proceeded with the disciplinary investigation with undue haste, and without the benefit of occupational health input, or without reasonable adjustments. As a result, it is argued, Mr Cavanaugh suffered further psychiatric injury.
- 212 This is a separate claim that is not dependent on any breach of duty in relation to the suspension. Mr Hyam KC puts the issue in this way: was Folsana on notice as to the risk of psychiatric injury, such that it was under a duty to take steps to prevent or mitigate the extent of that injury? If so, what steps should it have taken?

- 213 I accept Mr Platt KC's submissions that (a) a Defendant's duty arises only when there is an impending harm to health; (b) the duty arises where there are steps which would prevent or materially ameliorate the employee's condition; (c) an employer should not go behind an employee's stated treatment programme unless there are grounds to suspect that it is inadequate.
- 214 I have set out the chronology of the investigation and disciplinary process above, together with the chronology and content of the seven Mental Health Notifications.
- 215 I note the following about the Mental Health Notifications:
- a. Although Mr Cavanaugh made references to the condition from which he was suffering he did not, at any stage, raise a risk that the ongoing process would cause a deterioration in his condition, or further injury.
 - b. He did not use the Mental Health Notifications to ask for additional, or indeed any medical assistance. He informed Folsana that he was receiving medical assistance. The Second and Fourth Mental Health Notifications informed Folsana that he was under his doctor's care and has been prescribed medication. The Sixth Mental Health Notification informed Folsana that he was under the care of Manchester Mental Health NHS Foundation Trust and was undergoing psychological therapy. There is nothing to suggest to Folsana that the care he was receiving was inadequate, nor that he needed any further or different medical assistance.
- 216 Most of the Mental Health Notifications were made for the purposes of small adjustments in the process.
- a. The Second Mental Health Notification introduces Mr Cavanaugh's stress and anxiety as an explanation for the fact that he was suffering side effects of medication. Those side effects, he said, may lead him to have difficulty in answering questions so that he may need to come back with a further response after the meeting.
 - b. The Third Mental Health Notification made reference to Mr Cavanaugh's physical and emotional state to explain a request that Ms Pilkington, in the grievance hearing, read the statements that he had prepared. Implicitly, it may have been intended to suggest that he may have had difficulty in dealing with matters in the hearing, though Ms Pilkington did not think that he did, and the minutes do not indicate that he had any difficulty in addressing questions.
 - c. The Fourth Mental Health Notification asked for an adjournment of the second investigatory meeting, on account of the effects of a change in medication.
 - d. The Sixth Mental Health Notification was an explanation as to Mr Cavanaugh's problems in concentrating and explaining himself, so that he wanted to provide his defence in the disciplinary hearing as written statements, and to request a postponement.
 - e. The Seventh Mental Health Notification referred to Mr Cavanaugh's condition as an explanation for his inability to concentrate in the disciplinary hearing.

- 217 In each of these cases, accommodations were made in the light of the issues raised by Mr Cavanaugh. After the first investigatory meeting, Mr Cavanaugh had the opportunity to raise further points in the second investigatory meeting. That second meeting was postponed at his request. The disciplinary hearing was postponed at his request. On each occasion where he asked to rely on written statements, he was allowed to do so. His request to have the disciplinary hearing at a neutral venue was granted. Although his request to be accompanied by Mr Pilling at the hearing was refused, there was good reason for that, and he was accompanied by Mrs Cavanaugh instead.
- 218 The perception of the HR professionals who dealt with the various hearings was that Mr Cavanaugh was able to understand the process and participate properly in it. That is also clear to me from the transcripts of the various hearings, which show him engaged in detailed points in his defence.
- 219 It was not said by Mr Cavanaugh that he was unable to participate in the process. He did not ask for it to be suspended until his mental health improved.
- 220 Folsana made appropriate adjustments to the process in the light of Mr Cavanaugh's requests. I reject the argument that Folsana proceeded with the investigation with undue haste, or failed to make reasonable adjustments.
- 221 The process was not conducted with undue haste. It was in everyone's interest for the investigation, once commenced, to be conducted reasonably promptly. Not least because while the process was ongoing Mr Cavanaugh was suspended, and the issue would have been hanging over the whole company. The suspension was on 17 September, and the dismissal appeal was determined on 17 December. That does not indicate undue haste. Within the process, time was allowed for Mr Cavanaugh to prepare his case. On the occasions he asked for postponements, they were granted.
- 222 Mr Cavanaugh complains that there was no reference to occupational health. I do not accept that Folsana was under a duty to do so. Mr Cavanaugh never asked for such a reference but more importantly, given his repeated references to his ongoing medical care, there was no reason for Folsana to think that a reference would have served any purpose.
- 223 It was clear to me from the evidence of the parties' medical experts that a reference to occupational health would have made no real difference to Mr Cavanaugh's care. Professor Murphy pointed out that an occupational health professional might well have advised that Mr Cavanaugh continue to receive treatment from his GP. He said a reference to private health care may have slowed down the process. Dr Isaac accepted that an occupational health physician would be unlikely to have a mental health speciality, and would have needed to make a referral to a specialist. He thought it possible that a reference might have led to counselling commencing a few days sooner, but he was unable to say that would have made any difference to the outcome for Mr Cavanaugh. Dr Isaac said that occupational health advisors are particularly able to liaise between employer and employee, suggest ways in which adjustments can be made to the workplace or work pattern which will permit an employee to continue working. That is true, but not relevant in this case which is concerned with a period of suspension. There was nothing to suggest that an occupational health adviser would have proposed any changes to the investigation and disciplinary process.
- 224 It was not reasonably foreseeable that continuing with the investigation or disciplinary process would cause any, or any further, psychiatric injury to Mr Cavanaugh. Folsana did

not fail in their duty to provide a safe system of work by any failure to take steps in response to the Mental Health Notifications.

CONCLUSION ON BREACH OF DUTY

225 It follows from the above that Mr Cavanaugh has failed to establish that Folsana breached any duty owed to him, contractual or tortious. Accordingly, his claim fails in its entirety.

226 However, for completeness, I shall address briefly the questions of causation and loss.

CAUSATION

227 There was a large amount of agreement between Dr Isaac and Professor Murphy. The experts agreed:

- a. There was no evidence that Mr Cavanaugh was suffering from mental health problems prior to his difficulties at work, nor that he was not of normal fortitude.
- b. There were no factors independent of work that explained the mental health symptoms Mr Cavanaugh experienced at the time of his suspension.
- c. Mr Cavanaugh suffered an adjustment disorder with mixed anxiety and depressed mood which then evolved into a major depressive disorder, single episode, moderate, without psychotic features.
- d. Although Mr Cavanaugh was a person of normal fortitude, the fact that he was heavily invested in his work and it was a source of self-esteem to him meant that he would be more sensitive to being dismissed than others.
- e. At the time of the trial, Mr Cavanaugh was not currently capable of working in a high pressure highly skilled role similar to his old job although it is likely that in the medium term, with appropriate support, he will be able to take on higher/stress jobs or develop his current business.
- f. Progress to full recovery was markedly impacted by the ongoing litigation.
- g. Further treatment from a consultant psychiatrist was recommended.
- h. After the proceedings are concluded and after their recommended treatment, they anticipate a full recovery, albeit with an increased risk of future relapse.

228 Dr Isaac described the adjustment disorder with mixed anxiety and depressed mood as developing from September 2018. He described the evolution into a major depressive

disorder as occurring at a “hard to define point, probably during the first few months of 2019” (report paragraph 75). Professor Murphy did not disagree with that.

229 It is clear that Mr Cavanaugh has suffered from psychiatric injury. Mr Cavanaugh must prove that the breaches of duty (assuming for the moment that there were breaches) caused or made a material contribution to his mental illness. Mr Hyam KC argues that there is no rational basis to apportion part of Mr Cavanaugh’s illness to Folsana’s wrong and part as being due to other factors. Mr Platt KC argues that psychiatric injury is in general a divisible disease, and the Court should do its best to make a sensible attempt to apportion harm between what is and is not attributable to the defendant’s wrong, per *BAE Systems (Operations) Ltd. v Konczak* [2017] EWCA Civ 118 para 67 per Underhill LJ.

230 This is not a case in which the causation issues require me to conduct a detailed analysis of the law on divisible injury. Mr Cavanaugh’s initial injury occurred shortly after his suspension. It is not suggested that the injury was caused by factors outside the workplace, or would have happened in an event. There are however two questions:

- a. To what extent would have Mr Cavanaugh have sustained injury, in any event, however the investigation and disciplinary process been handled?
- b. To what extent was Mr Cavanaugh’s injury, or its deterioration, caused by dismissal, rather than pre-dismissal events?

231 *In Bailey v Ministry of Defence* [2008] EWCA Civ 883 Waller LJ summarised the position as follows (paragraph 46):

“I would summarise the position in relation to cumulative cause cases as follows. If the evidence demonstrates on a balance of probabilities that the injury would have occurred as a result of the non-tortious cause or causes in any event, the claimant will have failed to establish that the tortious cause contributed. Hotson's case exemplifies such a situation. If the evidence demonstrates that “but for” the contribution of the tortious cause the injury would probably not have occurred, the claimant will (obviously) have discharged the burden. In a case where medical science cannot establish the probability that “but for” an act of negligence the injury would not have happened but can establish that the contribution of the negligent cause was more than negligible, the “but for” test is modified, and the claimant will succeed.”

232 As I understood the experts’ evidence, the cause of Mr Cavanaugh’s psychiatric injury depended on his perception of how he was being treated by Folsana. In the Joint Statement (as supplemented by an addendum) they agreed on the following distinctions:

- a. If the pre-dismissal treatment of Mr Cavanaugh was inappropriate, then that inappropriate treatment served to cause the majority of the mental health symptoms, this was avoidable, and he would not have suffered from his mental health symptoms in the absence of the inappropriate process.
- b. If the process was carried out appropriately, then the cause of mental health symptoms was the combined effect of numerous social, economic and personality factors and the unavoidable stresses of going through disciplinary proceedings.

- c. If some of the treatment was “sub-optimal” (but not grossly inappropriate) this would have impacted on the severity of symptoms, but not their causation – and to a much smaller extent as compared to other factors.

233 In the course of the helpful answers by both experts in their evidence, they clarified that the issue was not the Court’s assessment of the appropriateness of Folsana’s conduct, but Mr Cavanaugh’s perception of how he was being treated.

234 This can also be seen in the approach in Dr Isaac’s report at paragraph 82: if Mr Cavanaugh had “merely” been summarily dismissed, without the events surrounding his suspension and the investigation or disciplinary procedure had been seen as open and fair, he doubted that he would have progressed to sustain a diagnosable psychiatric illness.

235 Unlike Dr Isaac, I have had the benefit of close consideration of the evidence, and of hearing Mr Cavanaugh in the witness box. I have seen, and evaluated, his reactions to Folsana’s disciplinary case in 2018, and his reactions to Folsana’s evidence in this claim. I have rejected Mr Cavanaugh’s criticisms of Folsana’s conduct. I have found that he had no reasonable basis to advance various arguments. Mr Cavanaugh was, and is, simply unable to accept any of the criticism of his treatment of staff, and has been driven to a conspiracy theory that has no basis in fact, as the way of explaining Folsana’s treatment of him. Professor Murphy’s opinion was that it was very unlikely that Mr Cavanaugh would have accepted the criticism that he had behaved wrongly. Having heard all the evidence, I have no hesitation in finding that however the investigation and disciplinary process had been conducted, Mr Cavanaugh would not have accepted its outcome or its fairness. I do not accept that Mr Cavanaugh would have avoided psychiatric injury had he “merely” been summarily dismissed. I accept Mr Platt KC’s submissions on this point. It seems to me overwhelmingly likely that Mr Cavanaugh’s reaction to the process would have been the same, however it was conducted.

236 Further, I find that the alleged breaches relating to the Mental Health Notifications did not cause any loss. Mr Cavanaugh’s initial psychiatric injury - an adjustment disorder with mixed anxiety and depressed mood – commenced, on Dr Isaac’s evidence, in September 2018. Mr Cavanaugh first attended his GP on 24 September. It is likely that Mr Cavanaugh’s initial symptoms were caused by his reaction to the suspension and its immediate aftermath. The agreed expert evidence is that Mr Cavanaugh’s condition evolved in the early months of 2019, after his dismissal. It cannot be established on the available evidence that Mr Cavanaugh’s condition worsened over the period of the investigation or disciplinary process. Having heard the experts’ evidence, there was no change in condition that resulted from Folsana’s alleged failure to respond to the Mental Health Notifications.

237 On the basis of these findings, I conclude that the alleged breaches of duty did not cause Mr Cavanaugh any loss – but for the alleged breaches of duty he would have been in the same position.

238 I accept Mr Platt KC’s submission that if Mr Cavanaugh’s injury would have occurred as a result of the dismissal in any event, he cannot recover for the resulting loss. Mr Cavanaugh does not claim, and cannot as a matter of law claim, for losses caused by dismissal. He

cannot challenge the dismissal, and his case proceeds on the basis that he would have been dismissed in any event.

239 I find that the dismissal would have caused the same psychiatric injury from which Mr Cavanaugh suffered from early 2019.

- a. It is clear that Mr Cavanaugh’s job, and its associated status were a major source of his self-esteem and sense of identity.
- b. Even had there been no flaw in the suspension or the conduct of the disciplinary procedure, the dismissal for gross misconduct would have been a huge blow to Mr Cavanaugh.
- c. In cross examination, Dr Isaac accepted that if Mr Cavanaugh had not been dismissed, or if he had been reinstated, there was no reason to suppose he would have gone on to develop a more significant psychiatric reaction. He accepted the proposition put to him that the dismissal was “responsible for his psychiatric downfall” as Mr Platt KC put it. That is consistent with paragraph 81 of his report, in which he said that after 17 September, subsequent breaches are likely to have been the main trigger in the shift from an acute adjustment disorder into a major depressive disorder. He clarified in cross-examination that the dismissal was the main subsequent blow.
- d. The progress of Mr Cavanaugh’s condition is that his condition evolved in early 2019, after his dismissal and after he had difficulties in his new job. All of that would have happened in any event.

240 On the basis of that finding, Folsana would not be liable for any of the injury which evolved after he was dismissed. The only injury caused by the earlier pre-dismissal events is the adjustment disorder with mixed anxiety and depressed mood. I am not satisfied that, if there had not been a dismissal, that injury would have evolved in the way it did. Indeed, Dr Isaacs evidence summarised above suggests that it would not have done.

241 Given that the expert evidence indicates that the adjustment disorder with mixed anxiety and depression began in September 2018, that clearly was not caused by the dismissal. Any claim for losses arising from that injury would not be defeated by the argument that losses were caused by dismissal. However, that condition was more moderate than the condition from which Mr Cavanaugh suffered post-dismissal. It would have likely resolved in a relatively short period. In any event, I have already found that even that injury was not caused by Folsana’s breach of duty, as the injury would have been sustained as a result of the suspension and investigation process, even if that had been conducted without any breach of duty.

242 Accordingly, Mr Cavanaugh fails to establish his case that any alleged breach of duty on the part of Folsana caused him loss.

ASSESSMENT OF DAMAGES

243 Having decided that Mr Cavanaugh's claim fails on grounds of breach of duty and causation there is no need to assess the quantum of damages. In some cases there is value in assessing damages in the event that on appeal judgment on liability may be held to be in error. However, in this case there are a number of permutations on the liability case, and I do not regard it as helpful or proportionate to set out a hypothetical assessment of damages, on a range of different scenarios, in the event that some or all of my findings may be held to be in error.

CONCLUSION

244 Folsana did not act in breach of any contractual or tortious duty to Mr Cavanaugh in suspending him, carrying out an investigation into his treatment of staff, or pursuing disciplinary proceedings against him.

245 Mr Donnelly's resignation raised genuine issues as to Mr Cavanaugh's treatment of him and of other employees. It was obviously appropriate, indeed necessary, for Folsana to investigate those matters. While they did so, it was reasonable and appropriate to suspend Mr Cavanaugh. There is nothing about the circumstances of the suspension or its aftermath that amounted to a breach of duty. In any event, it was not reasonably foreseeable that Mr Cavanaugh would suffer psychiatric injury as a result of the suspension or its aftermath.

246 Seen in their context, the Mental Health Notifications did not put Folsana on notice that further psychiatric injury was a reasonably foreseeable consequence of its continuation of the investigation and disciplinary process. Folsana made such adjustments to the process as were requested by Mr Cavanaugh. They had no reason to think that further adjustments were necessary. They had no reason to think that the medical treatment Mr Cavanaugh was receiving was inadequate, or that he needed further treatment.

247 In any event, the alleged breaches were not the cause of Mr Cavanaugh's losses. However the investigation and disciplinary process was handled, Mr Cavanaugh would not have accepted the allegations against him, and would have regarded the process against him as wrong and unfair; he would have suffered the same psychiatric injury however Folsana had handled the matter. Mr Cavanaugh does not, and cannot, challenge the decision to dismiss him. He has to accept that he would have been summarily dismissed. Whatever the process, the dismissal would have had a profound effect on him, and the evolution of his condition in early 2019 was caused by his dismissal.

248 Accordingly, I dismiss the claim in its entirety.