



EMPLOYMENT TRIBUNALS

Claimant: Mr S Humphreys

Respondent: Hotelplan Ltd

Heard at: Reading Employment Tribunal

On: 20-22 March 2023 (and 14 April 2023) in chambers

Before: Employment Judge Eeley
Ms M Thorne
Ms I Sood

Representation

Claimant: In person

Respondent: Ms H Platt, counsel

RESERVED JUDGMENT

The unanimous judgment of the Tribunal is that:

1. The claimant's claim of automatically unfair dismissal because of a protected disclosure is not well founded and is dismissed.
2. The claimant's claims of direct age discrimination contrary to section 13 of the Equality Act 2010 is not well founded and is dismissed.
3. The claimant's claims of age-related harassment contrary to section 26 of the Equality Act 2010 are not well founded and are dismissed.
4. By consent, the respondent is ordered to pay the sum of £384.84 in respect of the claimant's unpaid expenses.
5. The claimant's claim of unauthorised deductions from wages in respect of unpaid overtime fails and is dismissed.

REASONS

Background

1. By a claim form presented on 18 June 2020 the claimant brought claims of automatically unfair dismissal by reason of public interest disclosure, direct age discrimination, age related harassment, breach of contract (unpaid expenses) and unauthorised deductions from wages (unpaid overtime.)
2. The issues for determination were broadly set out at a preliminary hearing but were modified upon receipt of the claimant's further and better particulars in relation to some aspects of his case. The Tribunal took time to agree the following list of issues with the parties at the outset of the final hearing (portions of the list relating to remedy are omitted):

Protected disclosure dismissal (section 103A Employment Rights Act 1996) (automatic unfair dismissal for whistleblowing)

- 1.1 Did the claimant make one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996? The Tribunal will decide:
 - 1.1.1 What did the claimant say? The claimant says he made verbal disclosures in a meeting at Chalet Fronta Meribel with Neil Tuckwell and Emily Ward on 20 December 2019, in particular:
 - 1.1.1.1 the job(s) could not be done effectively in the time allocated in the theoretical schedule /duty roster;
 - 1.1.1.2 the company had insufficient staff to do the job(s) properly and particularly;
 - 1.1.1.3 the company had had insufficient staff to do his job which was really two or even three people's jobs, i.e. that of chalet manager and that of storekeeper and of chef, including staff chef; and
 - 1.1.1.4 the expectation that the employees, including me, sign the theoretical work schedule / duty roster rather than any actual timesheets was wrong and deliberately misleading designed to effectively misinform the labour authorities in France with other than the true facts about what hours staff were working.
 - 1.1.2 Did he disclose information?
 - 1.1.3 Did he believe the disclosure of information was made in the public interest?
 - 1.1.4 Was that belief reasonable?
 - 1.1.5 Did he believe it tended to show that:
 - 1.1.5.1 a person had failed, was failing or was likely to fail to comply with any legal obligation;
 - 1.1.5.2 the health or safety of any individual had been, was being or was likely to be endangered; or that
 - 1.1.5.3 information tending to show any of these things had been, was being or was likely to be deliberately concealed.
 - 1.1.1 Was that belief reasonable?
- 1.2 If the claimant made a qualifying disclosure, was it made to the claimant's employer? If so, it was a protected disclosure.

- 1.3 If the claimant made a protected disclosure, was that disclosure the reason or principal reason for dismissal? If so, the claimant will be regarded as unfairly dismissed.

Direct age discrimination (Equality Act 2010 section 13)

2.1 Did the respondent do the following things:

- 2.1.1 Resort Manager Emily Ward encouraged complaints against the claimant to try to get him to leave, for example two complaint letters from guests, one before Christmas 2019 and one in mid- January 2019 [20 December 2019 from guest “Derek”; on 8 January 2020 and on 18 January 2020 from a guest staying in Chalet Ancolie];
- 2.1.2 Resort Manager Emily Ward undermined the claimant by over-ruling his decisions and giving contradictory instructions to his team members, for example on about 10 or 11 December 2019 the claimant told a host, Jamie Stuart-Smith that he would have to shave in accordance with the grooming policy, but Emily Ward told him that he did not have to on 14 December 2019;
- 2.1.3 Three travel reps Anya Kinsberger, Carys Cox and Annabel Martiossian were contemptuous towards the claimant and substantially ignored him, frequently laughing at him and laughing in his face on 15 and 16 November 2019, from 27 November 2019 to 15 December 2019 during team building games in the lounge at Chalet EDN;
- 2.1.4 Resort Manager Emily Ward sent the claimant almost daily unpleasant WhatsApp messages asking to know where he was, telling him that what he was doing wasn't what he should be doing, and being generally extremely critical – the claimant relies on the entire log of messages from 22 November 2019 to 23 January 2020;
- 2.1.5 Chalet Host Zara Chetwode wrote in her witness statement to the disciplinary investigation that guests ‘thought [the claimant] was perhaps a paedophile’;
- 2.1.6 On 20 December 2019 in a meeting with Emily Ward and Neil Tuckwell held at Chalet Fronta Meribel Resort Manager Emily Ward repeatedly said that the claimant was slow and that his job could easily be done in 37.5 hours per week;
- 2.1.7 In a meeting on 20 December 2019 Area Manager Neil Tuckwell repeated several times that the claimant was slow and said that the claimant was difficult to talk to;
- 2.1.8 Area Manager Ben Lain suspended the claimant;
- 2.1.9 The outcome of the disciplinary investigation was pre-determined;
- 2.1.10 The respondent dismissed the claimant;
- 2.1.11 The respondent failed to give the claimant warnings as required by the respondent's HR policies and procedures;
- 2.1.12 The respondent required the claimant to leave his accommodation within 24 hours after his dismissal.

2.2 Was that less favourable treatment?

The Tribunal will decide whether the claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the claimant's.

If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether he was treated worse than someone else would have been treated.

2.3 If so, was it because of age?

2.4 Was the treatment a proportionate means of achieving a legitimate aim? The Tribunal will decide in particular:

- 2.4.1 was the treatment an appropriate and reasonably necessary way to

achieve those aims;

2.4.2 could something less discriminatory have been done instead;

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

2.5 The Respondent relies on the following legitimate aims (in the same order as the allegations set out at 2.1 above:

2.5.1 to look into guest complaints to ensure guest expectations are met;

2.5.2 to exercise managerial functions in her role as the Chalet Hosts' line manager;

2.5.3 facts denied but no OJ offered.

2.5.4 WhatsApp messaging was an understood means of communication between colleagues to ensure smooth operation of the Respondent's business;

2.5.5 to conduct a thorough and reasonable fact finding exercise in the investigation of a grievance and to note content of the investigation including what was said in interviews;

2.5.6 to question an employee about their ability to do the job in the expected time was reasonable and to informally provide feedback on communication style / issues;

2.5.7 having and applying a disciplinary policy;

2.5.8 having and applying a disciplinary policy;

2.5.9 having and applying a disciplinary policy;

2.5.10 having and applying a disciplinary policy;

2.5.11 having and applying a disciplinary policy;

2.5.12 to require former employees to leave their temporary accommodation within a reasonable period after the termination of their employment.

Harassment related to age (Equality Act 2010 section 26)

3.1 Did the respondent do the things set out at paragraph 2.1 above?

3.2 If so, was that unwanted conduct?

3.3 Did it relate to age?

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

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

Unauthorised deductions from wages (overtime)

4.1 Was the claimant entitled to pay for overtime?

4.2 Did the respondent make unauthorised deductions from the claimant's wages in respect of overtime pay? If so, how much was deducted?

4.3 [As part of his further information, the claimant must provide a list of the dates he worked overtime and what he did.]

Breach of Contract (expenses)

5.1 Did this claim arise or was it outstanding when the claimant's employment ended?

5.2 Did the respondent fail to reimburse the claimant for money spent on supplies for the business (expenses)?

- 5.3 Was that a breach of contract?
- 5.4 How much should the claimant be awarded as damages?
- 5.5 As part of his further information, the claimant must provide a list of the unpaid expenses, the dates they were incurred and what he bought.] The respondent concedes that the claimant is owed expenses of £384.84.
3. For the purposes of determining the case we read written witness statements and heard oral evidence from the following witnesses:
- 3.1 The claimant, Stuart Humphreys.
 - 3.2 Neil Tuckwell, the respondent's Area Manager.
 - 3.3 Ben Lain, dismissing officer in this case, now working as Area Manager, France.
 - 3.4 Nicki Couston, the respondent's Chalets Manager, France.
 - 3.5 Rachel Ducoin-Smith, the respondent's Operations Manager for France and Switzerland.
4. The Tribunal was also asked to read and take into account the signed witness statement of Emily Ward who was the respondent's Resort Manager for Meribel at the relevant time and, consequently, the claimant's direct line manager. She has since left employment with the respondent and was not called to give oral evidence. We therefore gave her evidence such weight as was appropriate given that it had not been tested in cross examination. Likewise, the claimant asked us to read and have regard to a number of testimonials and references from Jeff Golez, Kim Smallwood, Brian Boggis, Mark Torres, Martine Freestone and others. We did read them and take them into account so far as they were relevant to the issues we had to determine. We also took into account that they had not been questioned in cross examination.
5. The Tribunal was directed to consider the evidence contained in the hearing bundle consisting of 575 pages together with two lever arch files of timesheet information. We read those documents to which we were referred by the parties. The Tribunal also had the benefit of written and oral submissions on behalf of both parties, for which we were grateful.

Findings of fact

6. The respondent is the UK subsidiary of a global travel company which is headquartered in Switzerland. As part of its portfolio it provides holidays in chalets in the skiing resort of Meribel in France. The claimant was employed on a fixed term contract as a Chalet Manager. The contract was to run from 15 November 2019 until 30 April 2020. The claimant was 69 years of age at the date of dismissal.
7. Meribel is a resort in which the respondent had operated for a number of years prior to the claimant's employment. The respondent had a tried and tested way of running the business in line with appropriate service standards for guests whilst maintaining profitability for the business.

8. The respondent's operation in Meribel consisted of four chalets which could be booked by guests for holiday accommodation. The chalets were arranged along the side of the mountain within reasonable proximity of each other. Slightly further down the mountain was the respondent's office block which included staff accommodation on the top floor of the building. The claimant's accommodation was in this building. The office block was just a stone's throw away from the nearest of the respondent's guest chalets. The respondent provided a van to be used in travelling between the chalets. This was particularly useful for (and to be used by) the claimant when he was required to deal with deliveries or stock issues or deal with laundry deliveries to the guest chalets.
9. The claimant's position as Chalet Manager meant that he was the line manager for a team of ten Chalet Hosts. There were two Hosts per chalet plus two 'Flexi Hosts' who could move between the different chalets. The employees working as Chalet Hosts were a younger group of people, generally aged between 18 and 25. The accepted premise of working as a Chalet Host was that the employee would do the hosting job and receive pay for it but would get the opportunity to spend their free time away from work on the slopes, skiing. At each of the guest chalets guests could either book a certain number of rooms in the chalet to accommodate the exact number of guests in their party or they could book the exclusive use of a particular chalet, whatever the actual number of guests in their party. The Chalet Hosts generally had their accommodation in the chalet that they serviced. The Hosts were responsible for cleaning the chalet, cooking meals and dealing with changeover days (where guests arrived and departed, the chalet was thoroughly cleaned and bed linen etc. was changed.) Hosts catered for breakfast, afternoon tea/cake and the evening meal. They cooked meals according to a recipe book/menu plan and had to cater for various dietary requirements as they arose within the groups of guests. Hosts were not required to cater for lunch. It was anticipated that guests would be out on the slopes during the lunch period.
10. The wider organisational structure within the respondent was that the claimant's line manager was Emily Ward. In turn, she was line managed by Neil Tuckwell, the Area Manager. Mr Tuckwell was not present in the resort fulltime but came into resort to carry out specific parts of his job role.
11. The work schedules and time plans for the Chalet Hosts and Chalet Managers were developed over a number of years based on the respondent's experience of the time needed to provide the required level of service in the given chalet (given the age of the property, number of rooms etc.)
12. The claimant underwent training at the beginning of his contract. He attended centralised training at Val d'Isere before he started work in Meribel. He was then required to cascade that training to his team of Chalet Hosts. He met the team of Chalet Hosts before the start of the season and had the opportunity to train them prior to the guests arriving. Other managers within the respondent's organisation also helped to train

his team (including Emily Ward, the claimant's line manager.)

13. The claimant's job role was located between that of Emily Ward (as Resort Manager) and the Chalet Hosts (his direct line reports) within the respondent's hierarchy. He was responsible for the immediate line management of the Hosts, for training them, for organising their tasks and their deliveries and he was also responsible for placing food orders. His role also included a compliance element insofar as he would be expected to check that the Hosts had carried out their tasks on time and to the appropriate standard.
14. The claimant had originally applied for a role as a Hotel Manager but was offered the role of Chalet Manager instead. The Tribunal is satisfied that the claimant was responsible for many tasks including: looking after standards of presentation within the chalets; looking after the catering for the chalets; ensuring that all chalets were properly supplied with required foods and materials; staying within budget; catering for special dietary requirements; managing the Chalet Hosts on a day-to-day basis. We were referred to the claimant's contractual documents (offer letter [146,154], terms and conditions [149,151 154], French contract for a seasonal employee [156].) (The Tribunal noted the presence of a Job Description document [at 167] but we are not sure if this is the claimant's job description or that of Emily Ward. The language contained within the document at various points could refer to either of these employees. It remained unclear and neither party confirmed to whom that job description applied. On that basis, the Tribunal made its findings on the nature of the claimant's role and the tasks that he was required to perform from the substance of the witness evidence presented to us.)
15. The claimant's pay entitlement was based on a standard 37.5 hour week. Timesheets were completed by Emily Ward based on those standard weekly hours. If she agreed an increase or decrease in the hours to be worked in any given week, she would factor that into an amended timesheet which would then be signed off by the employee, in this case, the claimant. The signed timesheet therefore reflected the authorised hours worked in a given week by a given employee. Overtime was only paid if it was authorised and agreed with Emily. If the claimant worked extra hours but did not get them authorised, then he would not receive any payment for them (see term 5 [158] signed and acknowledged by the claimant at [163].) Sometimes, as an alternative to payment for authorised overtime, the system of "modulation" would be applied. This was, in effect, a 'Time Off In Lieu' ("TOIL") system. If an employee agreed to work extra hours one week then, instead of extra payment, they might be given TOIL through 'Modulation' later in the season. At the end of a given employee's contract they would have received 'compensation' for authorised overtime, either in the form of TOIL prior to termination or extra payment for extra hours worked. The time owed would therefore be reconciled over the course of the season to ensure that the employee was not left undercompensated. If the overtime was not authorised, then the employee would receive no compensation for the extra hours worked (whether in a financial payment or in TOIL/modulation.) The Tribunal finds that the claimant knew that this was the way that the system worked

for overtime. He ought to have understood it given his communications with the respondent.

16. In the course of his employment the claimant compiled a log [299]. In that log he says that he recorded the extra hours he worked over and above the standard 37 ½ per week. However, in light of our findings about the way the overtime system worked, this log document carries no evidential weight in relation to his claim for unpaid overtime. In the event of a conflict in the figures between the claimant's personal log and the signed timesheets then the terms of the contract dictate that the signed timesheet must prevail. The timesheet is the definitive record of the claimant's authorised and agreed overtime and must be the basis for any overtime payments. Whilst the claimant's log may or may not accurately reflect the time the claimant spent on his work for the respondent, this does not mean that he was legally entitled to be paid for the hours that he logged. The claimant's log is therefore irrelevant in relation to his claim for unpaid overtime. Indeed, the claimant accepted during the hearing that he never actually showed his log to the respondent's managers, still less had the hours within it authorised by them. The respondent's case is that the claimant has already received payment in respect of the authorised hours in his signed timesheets. Thus, the respondent maintains that no further payment in respect of overtime is owed. The claimant has shown the Tribunal no evidence to indicate that the sums he received in his pay did not tally accurately with the authorised hours on the timesheets. In those circumstances, the Tribunal is forced to conclude, on balance of probabilities, that the respondent's evidence is factually correct and that the claimant has been paid or given TOIL in respect of all his authorised hours of work in the timesheets. We further note that page 9 of the timesheet information bundle showed the hours reconciliation for all staff. It recorded who had worked over and under the standard hours per week.
17. The claimant's log does have a relevance to matters other than the claimant's claims for unpaid monies. It logs other events during the claimant's employment from the claimant's point of view. We note, in relation to the log [at 299] that some of its contents were roughly contemporaneous with the matters they describe but some of it was completed from memory, after the event. The claimant's evidence was that he had started to compile it around 14th December. Anything relating to matters from 14th December onwards was therefore completed 'in real time' whereas matters before that date were compiled from memory.
18. The claimant's employment commenced on 15 November 2019. The first relevant guest complaint was made in December. This was the 'Derek complaint' and the written document was in the Tribunal bundle [85-86]. Derek was a guest. He raised a complaint and spoke to Emily Ward about it. He also put his complaint in writing. There was nothing in the evidence put before the Tribunal to suggest that this was not a genuine complaint from one of the guests. There was no indication that Derek was known to the respondent's staff beforehand or that he had been encouraged to raise the complaint.
19. Once Derek made his complaint it was discussed with the claimant at a

meeting with Emily Ward and Neil Tuckwell on 20 December (see below). The meeting was designed to clear the air and sort out a number of matters related to the claimant's work.

20. Derek's complaint related to some matters which he had witnessed firsthand and others which were based on the reports of other guests. One matter which he had personally witness concerned a hairdryer. He had discovered that there was no hairdryer in the chalet. One of the guests mentioned it to the claimant who was unapologetic. The claimant offered to lend the guest his own and indicated that the guest was welcome to walk down to collect it. Alternatively, he recommended that the guest buy one from the spa. He suggested that the guest should have thought to bring one with them. When the claimant delivered a hairdryer the next day (and was thanked) he went on to say, "I understand you were not happy with my responses yesterday." This left the guests embarrassed. This was given as an example of the claimant's lack of understanding of appropriate customer service and how to deal appropriately with guest complaints. It also demonstrated that some of the problems were not wholly to do with the claimant's substantive actions but were based on how he interacted with guests. The claimant's tone would be inappropriate and he would not demonstrate appropriate customer service skills. He would not always offer an apology where it was appropriate to do so. The complaint and the surrounding evidence demonstrated that the claimant did not always have adequate insight into how he came across to others. Derek gave an example relating to the problems with Broadband within the chalet. The substantive problem was not adequately resolved and the claimant's manner in his interactions with the guests was the subject of criticism.
21. There were also criticisms of the way the claimant interacted with the Chalet Hosts and the way that he spoke to them. An example was given relating to a shortage of apple crumble (where the claimant was responsible for supplies but told the host to make one from scratch: "it's simple"). It was noted that the claimant thought nothing of adding to the Hosts' workload. Guests overheard the claimant threatening to put the Hosts on performance reports when they were barely two weeks into the job. He was overheard making inappropriate comments about a waitress's breasts. The claimant had spoken to Hosts inappropriately in front of guests and had insisted that they carry out specific tasks there and then when they were fully occupied in making breakfast for the guests. Guests had seen Hosts visibly upset by the claimant and some individuals had contemplated giving up their jobs. There were also supply shortages because the claimant had not placed the orders appropriately.
22. The complaint was very complimentary about the work of the Hosts. Derek gave a glowing report of the Hosts' service and indicated that he was concerned about their welfare. He indicated that they needed to be supported and not harassed or reduced to tears. The picture painted by Derek is at odds with the claimant's own assessment of the Hosts that he line managed. The evidence shows that he was consistently critical of them and disparaging about the quality of their work and levels of

commitment to the job. The picture painted by this complaint (and other evidence presented to the Tribunal) was that, on the whole, guests were impressed by the Hosts rather than by the claimant. It was the claimant who was the subject of adverse guest comments despite his long career in the industry.

23. Emily Ward and Neil Tuckwell met with the claimant to discuss Derek's complaint on 20 December. The claimant referred to the meeting in his log. The comments in the log reflect on it having been a positive meeting overall. It was viewed as a constructive meeting. The claimant promised to respond further to the complaint.
24. No official minutes or notes were taken in relation to this meeting. It was at this meeting that the claimant mentioned to his managers that he was keeping the 'log.' There was nothing further within the claimant's notes to suggest that he said anything more than that. The Tribunal heard evidence from the respondent's witnesses that the claimant said he was keeping a log but did not say why. The respondent's managers just thought that the claimant was keeping a note of his working hours in the same way that a lot of employees would. Nothing was said to them by the claimant to suggest that he was in anyway making a point about the timesheets being misleading. He did not say what he was going to do with the log and did not suggest that it would be used to show that the respondent had misled or was misleading the French authorities. The comments alleged at paragraph 1.1.1.4 of the list of issues (above) were not made. Indeed, in cross examination the claimant went so far as to accept that he did not think that he had 'blown the whistle' around the time of this meeting. It was only later that the idea of whistleblowing occurred to him.
25. The Tribunal is satisfied that during the course of the meeting on 20 December Neil Tuckwell and Emily Ward pointed out their concerns that the claimant was not working efficiently and getting the job done in line with the respondent's time expectations. They did not say that he 'could not' be expected to do it within the standard time. There was some discussion between the participants which probably referred to the claimant as being 'slow'. Mr Tuckwell gave evidence to the Tribunal that the issue was really about work inefficiency. This meant that there was also a discussion about the fact that employees tended to get quicker and more efficient at completing the tasks in the allotted time as the season progressed. What the managers were saying was that the claimant was slow in completing his work within the expected timeframe and that this was an efficiency issue which might improve over time as he became more experienced in the post. This would be equally true of other staff members. The Tribunal accepts that the word 'slow' can sometimes be used as 'code' for 'old'. When a person refers to another as 'slow' they *may* actually be making a comment that the person is seen as old. However, this is not always or automatically the case. 'Slow' is not automatically synonymous with 'old' and we find that it wasn't in this case. The circumstances of the conversation would not reasonably have led the claimant to conclude that his managers were referring to his age rather than to his speed, efficiency, and proficiency at the job. This is particularly so given that the respondent knew how old the claimant was

when he was recruited. Given that efficiency was an issue, Emily and Neil came up with a suggested timetable for the claimant to use. This was based on the respondent's experience of operating these chalets over a number of years and the organisational understanding of the most efficient way to do the job.

26. During the 20 December meeting the managers also gave the claimant some feedback on his communication style. This is perhaps not surprising given the content of Derek's written complaint. As part of this the managers did indicate that 'some people found him difficult to talk to.'
27. The respondent's managers evidently considered that the meeting on 20 December was likely to lead to improvements by the claimant as no further or more formal steps were taken in relation to his performance at that stage. As far as the respondent was concerned the claimant had been made aware of the issues and would be able to address them.
28. The claimant's log [299] said the following in relation to the meeting: *"about 1/1.15pm went to office for what turned out to be long but productive meeting with Neil & Emily about complaint from EDN guests & my communication & hosts feelings of same & mine & Emily's communication & mutual support. Many issues aired. Good clearing of the air & exchange of views/feelings. Commitment to do better. No minutes but this suffices as minutes- very constructive dialogue. Agreed to review following Tuesday. I will respond in detail in writing to email complaint point by point. Contains many untruths, twisting of facts & clearly designed by hosts to try and get me fired. Meeting finished 3.45 so we could final prepare for Chalet Staff meeting 4pm."* It recorded nothing about the verbal disclosures allegedly made by the claimant as set out at paragraphs 1.1.1.1 to 1.1.1.3 of the list of issues. Those alleged disclosures were first articulated in the claimant's further and better particulars [74]. When asked about this in cross examination the claimant explained that he did not know what a public interest disclosure was until he did the further and better particulars during the course of the Tribunal proceedings. He confirmed that he was not aware at the meeting on 20 December that he was in fact 'blowing the whistle.'
29. Taking into account the totality of the evidence presented to the Tribunal, we were not satisfied that the claimant made the comments or disclosures set out at paragraph 1.1.1.1- 1.1.1.3 of the list of issues during the meeting on 20 December.
30. The Tribunal's list of issues refers to a further guest complaint made to Emily Ward on 8 January. As far as the Tribunal can discern this was not a formal written complaint. However, it is referred to in the 'GFF' document completed by this guest [293]. The 'GFF' is the Guest Feedback Form. Guests are sent an electronic link to leave feedback after their holiday. By the time it is completed the guest will have left the resort. In the GFF the guest complained about the claimant's presence in the chalet which was seen as an invasion of privacy when the guests had booked exclusive use of the chalet. The claimant worked from the sofa in the chalet, joined the guests for lunch and waited for some laundry to be completed in the washing machine at the chalet. The guest felt that

she had to return to her bedroom in order to read in privacy. The claimant was said to have continued an appraisal type conversation with the Chalet Hosts within earshot of the guests and whilst the Hosts were trying to prepare the guests' meal. The guest found this to be particularly unprofessional and inappropriate. The guests also felt unable to use the sauna in the chalet because the claimant was sitting outside it working on a computer whilst his laundry finished. This meant that the guests would have to walk past him clad only in a towel. One of the guest's sons bumped into the claimant outside (the guest's) bedroom when only wearing underwear and another guest's son fell asleep in his underwear with the bedroom door open and would have been seen by the claimant who was present in the vicinity. The guest giving the feedback in question went so far as to ask the claimant to leave the premises. Instead of complying with the request without comment, the claimant asked if he could come back later for his laundry.

31. On 18 January the claimant forewarned Emily that there might be a further guest complaint relating to his presence in the chalet whilst he was doing the laundry [134-135]. This suggests that the claimant was well aware that his presence was unwelcome to at least one of the guests.
32. On 19 January Emily sent an email to Neil Tuckwell, Rachel DuCoin and Nicki Couston. In it she explained how things were going in Meribel, particularly in relation to the claimant. She picked up on the guests' complaints about the claimant's inappropriate presence in the chalets. She also noted the friction between the claimant and all other members of the team. Emily had been notified that the Hosts had decided to put in a formal group complaint about the claimant. Emily clearly felt 'stuck in the middle' between the Hosts and the claimant. She recorded that the claimant had still not got the hang of ordering by this point. This was causing shortages. When the Hosts raised this issue with the claimant he was rude with them. Whilst the Hosts needed help with getting their own work up to standard in places, the claimant's presence turned out to be more of a hindrance than a help. Hosts had been left crying in front of the guests. Emily also noted that her relationship with the claimant was strained. It was causing her anxiety and led her to consider giving up the job. In essence, she asked for the claimant to be moved.
33. On 19 January the Chalet Hosts lodged a formal group grievance [325]. It was signed by ten Chalet Hosts. They complained about his poor treatment of guests and staff and his poor standards of management. They noted that the claimant got in the way when they were catering for guests and took food and cutlery from guests. Numerous specific examples of problems with the claimant were contained within the written complaint. Receipt of the complaint triggered an investigation into the claimant's work and conduct.
34. Part of the evidence taken into consideration as part of the investigation were the relevant comments left by guests in the GFF. The Tribunal noted that, as the GFF link is sent to guests after the end of their holiday, guests were no longer a 'captive audience' and would have to be quite well motivated in order to fill out the form. In addition to the comments

noted above, we reviewed the GFF evidence. It is apparent that the guests were, on the whole, very complimentary about the Chalet Hosts and their work. Their criticisms related more to the claimant. One guest complained that the claimant never introduced himself and that he was more of an inconvenience than a help to the Host that he was supposed to be assisting. The guest suggested that the respondent might reconsider the claimant's position as a manager (and even within the organisation as a whole) as he was thought to create an uncomfortable and awkward environment around his co-workers and also around customers. Another guest asked, "what is the purpose of Stuart?" Someone else referred to the appalling behaviour of the Chalet Manager towards staff. Another guest pointed out that, despite his position as a manager, the claimant was unable to grasp the difference between lactose free and dairy free dietary requirements despite it being explained to him on a number of occasions. The guest also complained that when the claimant was cooking the evening meal it was usually late and not served before 9pm. Another guest noted that the claimant was not very helpful regarding a broken chair and consistently turned up when guests were midway through dinner. Others who were critical of Chalet Hosts also indicated that they should have had better training and support from their manager (i.e., the claimant.)

35. Following receipt of the staff complaints Neil Tuckwell carried out a visit and reported on the situation in the chalets. He did this on 10 and 20 January [450]. He focused on the hygiene checks and measures within the chalets. The HACCP system in place at the chalets meant that the Hosts should do daily temperature checks on food and record the temperature readings in writing. The records should then be checked on a weekly basis by the claimant as part of his management of his staff. If this compliance check were properly carried out, the claimant would be made aware of any shortcomings on the part of his staff and would be able to provide further guidance and training to them, as appropriate. If the secondary checks were not carried out, then there would be nothing to indicate that the claimant was aware of the problems in the Hosts' work. This failure by the claimant might also indicate that there were other aspects of his managerial tasks which were being neglected and that Hosts were not receiving the levels of training or supervision expected by the respondent. This was certainly the view of the respondent's witnesses at the Tribunal hearing.
36. The chalet observations carried out by Neil Tuckwell indicated that some Hosts were repeatedly failing to do the temperature checks. It was not a one-off failure. (Nor was it a problem with every host in every chalet.) Mr Tuckwell also had to dispose of several out-of-date food items from the fridges. Some of the foodstuffs were visibly mouldy. As at the date of the report (26 January), Mr Tuckwell noted that across all four chalets the weekly management sign off of HACCP books (i.e., the claimant's compliance checks) had only been completed once in one chalet for the whole season to date. This was evidently not an isolated problem with the standard of the claimant's work.
37. The Tribunal also heard that the claimant had direct responsibility for carrying out the temperature checks in the stores. This was not a

secondary check of readings taken by the Hosts. The claimant was supposed to do the primary checks. The claimant had failed to do all the required temperature checks in the stores. This was also a significant health and safety failing on his part.

38. The failure to check the Hosts' temperature records and the claimant's failure to do his own temperature checks in the stores were significant health and safety failings. This was not just a 'tick box' exercise but an important part of the systems that the respondent had in place to guard against cases of food poisoning (for which the respondent could be held liable.) The failure to double check the temperature records indicated a failure to do meaningful compliance checks on food safety. The respondent identified problems not only with temperature checks but also with out-of-date food being retained or food being incorrectly stored. These were the sorts of things that the claimant should have been teaching Hosts about and making sure that they did their jobs correctly. It was key to his supervisory responsibilities.
39. The Tribunal also notes that Mr Tuckwell's report was based partially on observations made on 10 and 20 January. This is more than one month on from the so called 'clear the air' meeting of 10 December. Some of these issues had been raised with the claimant at that stage and he had been given time to start to improve matters. Mr Tuckwell's report suggested that this had not happened. The Tribunal also notes that the chef (Dan Davies) had also already raised these issues with the claimant on 28 December. This was not a case where the employee was taken straight to a disciplinary without the concerns being raised with him first so that he had an opportunity to improve.
40. As part of the investigation Neil Tuckwell spoke to a number of witnesses. He did not confine the interviews to those who had signed the grievance letter but also included others who might have relevant information to give (whether or not that information might exonerate the claimant or lend weight to the evidence against him.) The interview schedule document [449] recorded that many of the team were visibly emotionally distressed. Those who had not been part of the group grievance largely corroborated what was said by the signatories to the grievance. The notes of the investigation interviews provide evidence and examples in relation to the claimant's time in his post. One interviewee alleged that the claimant had urinated on the outside of the chalet rather than use a toilet. Interviewees recorded that the claimant had been known to call staff liars. There were complaints that the claimant had failed to order required food supplies despite requests. It was alleged that the claimant made inappropriate comments about a waitress's breasts. He would tell certain hosts that they were *'one of the ones in the group I don't like.'* Interviewees noted that the claimant rarely gave positive feedback or acted in an encouraging or motivating way. They reported being scolded and the claimant behaving in an aggressive manner. More than one of the hosts indicated that if this had been a job based in the UK then they would have left the job. It was because the Host was working abroad that he had decided to stay. The claimant was noted to call employees 'liar' and suggest that he could not trust them. Some of the interviewees corroborated the complaints and observations made by the guests about

the claimant's behaviour around the chalets. One of the hosts indicated that the claimant was more pleasant with male hosts than female hosts. The Host also gave an example of the claimant arriving at the chalet in a Santa suit and giving out packs of dried fruit to the children. This was badly received by the guests who felt it was weird, particularly as they did not know who the claimant was. The guests joked about the claimant being a paedophile and this was reported by one of the Hosts in their investigation interview. The evidence also suggested that the claimant repeatedly referred to the Hosts as 'teenagers' and 'kids' in a derogatory way.

41. The maintenance man indicated that Emily was having to do extra work to keep the peace between the claimant and his team. He described the way the claimant spoke to employees as being the same style as that used in the 1970s, which was not acceptable in a modern workplace. He referred to bullying, shouting, and screaming. When he tried to raise it with the claimant directly, he was told not to tell the claimant how to do his job. The witness saw the claimant shouting, swearing, and screaming at the Hosts. He described the claimant's aggressive manner.
42. The investigation evidence indicated that the claimant had told one of the Hosts that he needed to shave off some stubble as the claimant did not think the Host was complying with the respondent's grooming standards. It was reported that the claimant kept touching the employee's face as he said this.
43. It was alleged that the claimant accused Hosts of not cleaning toilets properly and made comments such as "I bet your mum cleans them at home." The claimant was said to phone Hosts regularly outside their working hours and became unpleasant with them if they did not answer. The employees also corroborated the guests' complaints about the claimant doing laundry at the chalets and hanging around the chalet and invading the guests' privacy. They indicated that the claimant was reluctant to leave when asked to do so. On one occasion the claimant had a nap in the pool room which meant that the facility was out of bounds for the guests. The claimant was also seen to hold the phone away from his head when on a phone call with one of the Hosts.
44. As well as food orders the claimant was noted to make errors with the laundry provision and often blamed this on the Hosts. The witnesses confirmed that the claimant asked guests if he could sit and eat with them and sulked if they refused. He was reported as 'getting in the way of Hosts' during meal service times.
45. Some of the Hosts did refer to the claimant's age in the course of their interviews but mainly on the basis that the age gap between them did not justify him speaking to them with so little respect.
46. The respondent took the decision to suspend the claimant and this was communicated to him on 22 January [328]. The suspension letter made it clear that a number of allegations of misconduct had been made. The letter confirmed that a grievance had been raised by members of the claimant's team and that, as a result, the respondent had concerns about

the effectiveness and appropriateness of the claimant's leadership which required further investigation. There were allegations that the claimant had breached health and safety procedures in chalet kitchens, including poor fridge management, holding out of date stock and missing HACCP records. The letter also confirmed that there had been negative guest feedback regarding the claimant's communication and presence in communal areas of the chalets. It was made clear that there was no presumption of guilt.

47. The claimant was also interviewed as part of the investigation [386]. The interview took place on 24 January. His overall approach to the investigation lacked self-awareness and insight. Overall, he did not accept that he was 'in the wrong' in any way. In his view the Hosts were not up to the job and he blamed them for any failings in the service provision and also in the working relationships. He was of the view that there was a clear agenda within the team to get him out of his employment with the respondent. He viewed the grievance as a campaign to get him fired rather than a genuine grievance. He suggested that guests had been prompted and encouraged to write the complaint about him. He questioned the genuineness of the guest comments and complaints. He alleged that some of the Hosts lied and some were manipulative. He complained that the problem with the Hosts was attitudinal.
48. The claimant gave his point of view about the matters which had been raised as part of the concerns. His use of language was telling. For example, he said that he 'bitch[ed] and moan[ed]' to the Hosts about certain issues. In his view, he was just holding the Hosts to the required standards. He did not see that there might be better and more positive ways to communicate with his team about such issues.
49. The claimant was particularly aggrieved by the report that the guests had referred to him as a potential paedophile. However, it is clear from the relevant document that the Host in question (Zara) was not reporting her own views about the claimant and was not making the allegation herself. Rather, she was reporting back what guests had said without endorsing the comment. If guests were making comments of this sort then the respondent was entitled to be informed about it.
50. Some of the issues about the claimant's conduct were raised in more than one place. The claimant often had an explanation for his behaviour which had to be put in the proper context of the evidence about how certain parts of the respondent's business operation worked on a day-to-day basis. One example of this was in relation to laundry. One of the claimant's explanations for his presence in one of the chalets over a period of hours was that he was required to do some laundry and that using the machine at the chalet and waiting until it had finished was both a necessary and appropriate way of discharging his professional duties. We heard evidence that there was a commercial launderette within the resort which was used by the respondent to do a weekly delivery of clean linen to the chalets. The delivery and collection system meant that each chalet should, as a matter of course, have spare clean bed linen to be used as required, in addition to fresh linen for guest changeover days.

The idea was that, even in an emergency, there should be adequate spare linen to change bedding without having to arrange for an additional load of washing to be completed. Part of the claimant's role was to oversee the laundry delivery service and to ensure that the weekly deliveries were made and appropriate to the needs of the chalets in question. The claimant alleged that he was present in the chalet doing laundry because it was an emergency situation where there was a mid-week changeover in respect of *some* of the guests in the party which necessitated an ad hoc wash. The surrounding evidence indicated that this should not have been the case. There should have been ample spare linen for such an eventuality and it was part of the claimant's job to plan for such a situation and ensure that the regular deliveries were adequate. In the event that such an 'emergency' could not be avoided there were other ways that the clean linen could and should have been obtained without the need for the claimant to intrude on guests' privacy. The linen could have been taken to the commercial launderette and done there using a larger machine. Staff or guest washing machines in the chalets should not have been used. Even if it was necessary to use the washing machine in a chalet, the claimant did not have to stay on the premises to watch the cycle through to its conclusion. He could have come back later to collect the laundry (thereby minimizing intrusion) or could have asked one of the Hosts to get the laundry out of the machine once it was ready. The Tribunal did not find the claimant's justifications for his presence to be credible or reasonable in all the circumstances. If he had planned properly then an 'emergency' should not have arisen. Once a guest asked him to leave the premises he should have done so without question or reluctance. The guests had booked exclusive use of the chalet and were entitled to expect him not to be there and for him not to be resistant when asked to leave. He could (and should) have asked the Host to empty the machine in his absence to avoid him having to return against the guests' wishes.

51. The claimant's other explanation for his ongoing presence in the chalets was the need to access Wi-Fi in order to do his job. The claimant's case was that there was inadequate Wi-Fi elsewhere and that he needed to sit on the top step of the stairs in the chalet in order to get a proper signal. Firstly, the evidence suggested that the claimant had his own office and accommodation within the separate office block. He could (and should) have used the Wi-Fi there if there was a connectivity problem. The respondent accepted that sometimes the quality of the Wi-Fi in the resort was poor but this was because of the location, in the mountains, and was a general problem insofar as connectivity was not as fast as it would be in a UK city. The respondent gave evidence that all the respondent's properties had internet routers, including the office. The evidence suggested that the claimant had not notified the respondent of any particular connectivity problem in relation to Wi-Fi in the office. It is reasonable to conclude that if this had genuinely been a problem, the claimant would have informed the respondent of it at some point relatively early in the season as it would have interfered with him being able to do his job properly. Furthermore, the respondent's case was that, as an alternative to Wi-Fi, it was possible to 'hotspot' mobile phones and connect to the internet in that way. The respondent also made it clear to the Tribunal that the claimant did not need continuous internet access in

order to be able to do his job properly. Many of his tasks did not require internet access. For example, stock takes could be carried out (and the relevant paperwork completed) without internet access. All of this suggests that the claimant's use of the internet as a reason for being present in the chalets was something of a red herring. This is particularly so in relation to those complaints which referred to his presence away from the stairs (in the lounge, on the sofa or outside the sauna). If the best internet signal was on the stairs and that was why he was in the building, why would he be sitting in another room which should be for the exclusive use of guests? The Tribunal does not find this justification for the claimant's unwanted and intrusive presence in the chalets to be a credible one. Indeed, as one of the respondent's witnesses pointed out, there were plenty of coffee shops and other commercial premises in the resort where the claimant could have gone to log on to the internet without bothering the respondent's guests. The claimant also had access to the van so would have been able to drive back to the office to log on without losing too much time from his working day. If there was a genuine problem regarding internet access, we would have expected to see some evidence of the claimant having raised this with his manager at some point prior to the disciplinary investigation.

52. The Tribunal also queried with the witnesses whether the claimant could justifiably have been in the guest quarters on his way to the storerooms (where he needed to work on stock.) Would this be a good reason for his presence? The evidence was that the stores were located underneath the chalets but there was a separate, external access door which he could use to get into the stores without encroaching on guests' privacy. Indeed, the external doors were used on a regular basis when deliveries were made to the stores. Working in the stores did not provide a justification for the claimant being in the guest areas of the chalets.
53. Following the investigatory interview, the claimant produced a fifty-page written response to the allegations [399]. Once again, the tone of the response was to emphasize his long experience in the industry and to suggest that he knew what he was doing whereas the other staff members did not. The overall impression given was that the claimant viewed the Hosts as a load of 'teenagers' who did not know what they were talking about. The claimant referred to a number of testimonials from his previous employment in showing that he was in the right about the way the job should be done. However, we note that the claimant's testimonials were somewhat out of date and referred to work in hotel management rather than in this sort of ski chalet accommodation. Furthermore, the roles he performed in hotels seem to have been more managerial and less 'hands on.' He would be expected to delegate more than perhaps would be appropriate within his role with the respondent.
54. The claimant's response alleged that the people complaining about him wanted him to be out of his job. His view was that they wanted him to be fired because he expected them to do their jobs properly and deliver the standards promised in the brochure. He said that, *"I do not expect them and I will not tolerate them being lazy, habitually late, uncooperative, insolent, scruffy, lying to me, or serving or eating un-hygienically or improperly handled, prepared, cooked or stored food."* He explicitly

states that the correct standards are achievable and he does not accept excuses about lack of time or adequate staffing required to get the job done. In the course of this document the claimant does not make any allegation that any of the allegations against him or the potential disciplinary action is anything to do with age. The claimant does not allege age discrimination as a relevant factor in his response to the investigation. Rather, he says it is because the hosts do not want to be told how to do the job properly. The Tribunal noted that the claimant had inserted a lot of photographs of conditions in the chalets into this document. The claimant suggested that he had used such photos as a training tool but there was not much evidence of him having used them to coach the staff. The photos appeared to be used more to gather evidence in order to blame others for the standards within the chalets. The claimant complains about the hosts leaving food in places which were not properly temperature controlled but the claimant did not actually check the temperature readings (as he was required to do.) The claimant's response also referred to his daily journal or log.

55. By a letter dated 29 January the claimant was invited to a disciplinary hearing [452]. The hearing was due to discuss concerns about: breaches of health and safety procedures; the effectiveness and appropriateness of the claimant's team leadership and management style; and the effectiveness and appropriateness of the claimant's interactions with guests. In the letter he was warned that one potential outcome was dismissal.
56. The disciplinary hearing took place on 31 January 2020. The claimant signed the notes of the hearing as being an accurate record of the hearing.
57. During the course of the disciplinary hearing the claimant confirmed that he understood why it was important to do the food temperature checks and understood that he was supposed to verify and countersign them weekly. He confirmed that he did this periodically. He did not, however, confirm that he did them once a week as required. He said that the Hosts did not complete them adequately as they were trained to do.
58. When asked about the way that he communicated he confirmed that he thought it was appropriate, although not always effective given the situation. He did not accept that his communication could have come across as aggressive. When questioned about whether it was respectful to refer to staff as a "group of teenagers" he merely confirmed that it was a fact and did not accept that it was disrespectful. He seemed unable to understand how referring to them in this way would be seen as lacking respect. It certainly could give the impression that he did not view them as colleagues and thereby worthy of respect. It was not necessary for him to refer to their age in this way in order for him to do his job. The fact that they were young was not relevant to the management issues he wished to raise with them.
59. The claimant was asked to explain what he had done to motivate his team. The claimant explained how he had tried to get to the bottom of why their motivation levels had diminished over time. This included

asking some individuals whether they were on non-prescription drugs. The claimant confirmed that he had done a lot of coaching to improve the team's performance. He suggested that he gave praise but that he would not do so when the job was not done well. He would give feedback when a job was not done well. He did not accept that the guests could have heard him giving an appraisal or feedback to Hosts, as alleged. He alleged, again, that the comment/complaint had been manipulated and that the guests had been 'put up to it.' He suggested that an auditory test should be performed in order to check whether it was possible to hear the things allegedly being said from the distance alleged.

60. The claimant reiterated that he felt that the guests had been encouraged to make the complaints by the Hosts. He complained that Emily had undermined his authority when she countermanded the instruction he gave to a Host to shave his stubble off. He felt that it was very clear from early on that Emily did not want him there and that there was a campaign mounted by the staff to get rid of him within three days of him being there.
61. It is evident from the claimant's response at the disciplinary hearing that he wanted to discipline his staff and issue PIPs (Performance Improvement Plans.) He was very quick to allege dishonesty on the part of the Hosts. He would not recognize that this was not a good motivational tool. His idea of coaching seemed to be quite negative rather than motivational. His suggestion that guests had been encouraged to give these reports lacks credibility. They had no reason to fabricate their complaints and observations, particularly after their holidays had ended and they had left the resort. The suggestion that there should be sound tests to check whether the guests were lying about what they overheard is, in itself, remarkable.
62. When the claimant was challenged about not introducing himself to guests he maintained that he did introduce himself, except when he was overworked. Regarding the complaint about his doing the laundry at the chalet, when asked at the hearing, the claimant seems to suggest that he had been instructed or told to do this by someone. He never said who had given him this instruction or why. This was not something which featured in his evidence to the Tribunal at the hearing.
63. The Tribunal pauses to note that the claimant clearly demonstrated that he lacked insight into the fact that he was invading the guests' privacy by working as he did. This could be seen as a strange lack of insight for an employee with lots of experience of working in a customer service-based role.
64. The Tribunal also finds that the conduct allegations which were made against the claimant were not some sort of 'cover' for discrimination. There was plenty of evidence available to the respondent and it came from multiple sources. The respondent did not rely solely on the employees which the claimant characterized as the 'clique' that was 'ganging up on' him. Rather, there was clear evidence from third parties (i.e., the guests) who had no particular axe to grind. The respondent was entitled to conclude that the guests were honestly reporting their experiences rather than participating in a fabricated set of grievances

which had been designed to facilitate the claimant's removal from his job. To the extent that the claimant maintains that the disciplinary was a sham, we do not accept this, based on the evidence before us.

65. At page 464 there is a pre-adjudgment note. Amongst other things it asks: *"Do you feel that the disciplinary process has been followed fairly and allowed you sufficient opportunity to make representations for your case?"* The claimant's response was: *"I think the process has been followed in accordance with the standard corporate HR procedures and I have seen a lot of that as I have been in senior positions in corporations. I am familiar with the procedure. I am not going to describe it in any other way than the way I have described it."* The claimant signed the notes as accurate. The claimant did not, therefore, complain about the process which was being used at the disciplinary hearing at the time.
66. The hearing was adjourned for a decision to be reached. When it reconvened Mr Lain confirmed that, based on the evidence, he considered there was a breakdown in trust and confidence in the claimant's ability to do the role. He decided to summarily dismiss the claimant. He confirmed that in such circumstances the respondent would not normally provide repatriation but he decided to make an exception in the claimant's case. He confirmed that the respondent could assist with the claimant's travel in the next 24 hours. The claimant was also notified of his right of appeal.
67. The dismissal decision was confirmed in a letter [468] which enclosed a copy of the notes from the hearing. The letter confirmed dismissal without notice which meant that the last day of service would be 31 January 2020. The claimant was notified that if he wished to appeal he should send his appeal in writing to Sara Bravery (HR Manager) stating the grounds of the appeal and this should be done within seven days of the dismissal letter.
68. As indicated above, according to the usual procedure, the claimant should have left the resort within 24 hours. He did not. The respondent paid for the claimant to stay in a hotel for ten days and paid for repatriation. This was outside their obligations in the terms and conditions of employment.
69. On 7 February the claimant sent a letter of appeal [470]. He raised various complaints and alleged that he had been harassed and criticized in an attempt to make it so unpleasant that he had to quit. However, he made no explicit reference to the respondent discriminating against him on grounds of age.
70. Matters were then rather overtaken by the global Covid 19 pandemic. In an email on 6 May the respondent proposed that the claimant could attend an appeal hearing online or, alternatively, wait until things got 'back to normal' if he wanted a face-to-face appeal meeting. In response the claimant confirmed that he had lodged his Tribunal claim and did not know how long it would take to be processed. He seemed to indicate that it would be more convenient to meet with the respondent but did not respond directly to the suggestions made by the respondent about how

to have an appeal hearing given the circumstances of the pandemic. Neither side to the dispute progressed the appeal any further and no appeal hearing ever actually took place.

71. The Tribunal heard evidence that following the events in question, the Hosts were offered retraining in relation to any breaches of policy regarding temperature checks etc. The respondent's managers decided to do this because they concluded, first of all, that it was not all of the Hosts who were under performing in this regard. Secondly, the respondent managers were not satisfied (in light of the evidence about the claimant's work) that the Hosts had been properly trained at the outset. They were, therefore, not convinced that the Hosts had had a proper and fair chance to perform at the required standard from the outset. If initial training and management was inadequate, then they could not be blamed for underperforming. In those circumstances the Hosts were not given formal warnings. The respondent's managers concluded that the correct approach was to 'press the reset button' and let them perform better second time around. (Some of the Hosts may subsequently have been put on Performance Improvement Plans, depending on the nature, extent and continuation of performance shortcomings but even a PIP can be bypassed in appropriate cases [page 184]) Furthermore, there was no requirement within the respondent's procedures to go through a formal warning stage with the claimant before deciding to dismiss him. If the claimant's conduct or performance was serious enough that it went to the root of the employment relationship, then the respondent was entitled to dismiss him without giving a formal disciplinary warning first [185].

The Law

Direct discrimination

72. Section 13 Equality Act 2010 states:
- (1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.
 - (2) If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim.
73. Section 23 of the Equality Act 2010 provides:
- (1) On a comparison of cases for the purposes of section 13, 14, or 19 there must be no material difference between the circumstances relating to each case...
74. In some cases, it may be appropriate to postpone consideration of whether there has been less favourable treatment than of a comparator and decide the reason for the treatment first. Was it because of the protected characteristic? (*Shamoon v Chief Constable of the Royal Ulster Constabulary 2003 ICR 337, HL; Stockton on Tees Borough Council v Aylott*)

75. The claimant must show that they received the less favourable treatment 'because of' the protected characteristic. In Nagarajan v London Regional Transport 1999 ICR 877, HL Lord Nicholls stated: "a variety of phrases, with different shades of meaning, have been used to explain how the legislation applies in such cases: discrimination requires that racial grounds were a cause, the activating cause, a substantial and effective cause, a substantial reason, an important factor. No one phrase is obviously preferable to all others, although in the application of this legislation legalistic phrases, as well as subtle distinctions, are better avoided so far as possible. If racial grounds... had a significant influence on the outcome, discrimination is made out'."
76. The judgment in R (on the application of E) v Governing Body of JFS and the Admissions Appeal Panel of JFS and ors 2010 IRLR 136, SC summarised the principles that apply in cases of direct discrimination and gave guidance on how to determine the reason for the claimant's treatment. Lord Phillips emphasized that in deciding what were the 'grounds' for discrimination, a court or tribunal is simply required to identify the factual criteria applied by the respondent as the basis for the alleged discrimination. Depending on the form of discrimination at issue, there are two different routes by which to arrive at an answer to this factual inquiry. In some cases, there is no dispute at all about the factual criterion applied by the respondent. It will be obvious why the complainant received the less favourable treatment. If the criterion, or reason, is based on a prohibited ground, direct discrimination will be made out. The decision in such a case is taken on a ground which is inherently discriminatory. The second type of case is one where the reason for the decision or act is not immediately apparent and the act complained of is not inherently discriminatory. The reason for the decision/act may be subjectively discriminatory. In such cases it is necessary to explore the mental processes, conscious or subconscious, of the alleged discriminator to discover what facts operated on his or her mind.
77. The relevant comparator must not share the claimant's protected characteristic. There must be no material difference between the circumstances relating to each case. The circumstances of the claimant and the comparator need not be identical in every way. Rather, what matters is that the circumstances which are relevant to the claimant's treatment are the same or nearly the same for the claimant and the comparator (paragraph 3.23 EHRC Employment Code.) With the exception of the prohibited factor (the protected characteristic) all characteristics of the complainant which are relevant to the way his case was dealt with must be found also in the comparator. They do not have to be precisely the same but they must not be materially different. (Macdonald v Ministry of Defence, Pearce v Governing Body of Mayfield Secondary School [2003] ICR 937). Whether the situations are comparable is a matter of fact and degree (Hewage v Grampian Health Board [2012] ICR 1054.)

Burden of Proof

78. Section 136 of the Equality Act 2010 provides that, once there are facts from which an employment tribunal could decide that an unlawful act of discrimination has taken place, the burden of proof “shifts” to the respondent to prove any non-discriminatory explanation. The two-stage shifting burden of proof applies to all forms of discrimination under the Equality Act.
79. The wording of section 136 of the act should remain the touchstone.
80. The relevant principles to be considered have been established in the key cases: Igen Ltd v Wong 2005 ICR 931; Laing v Manchester City Council and another ICR 1519; Madarassy v Nomura International Plc 2007 ICR 867; and Hewage v Grampian Health Board 2012 ICR 1054.
81. The correct approach requires a two-stage analysis. At the first stage the claimant must prove facts from which the tribunal could infer that discrimination has taken place. Only if such facts have been made out on the balance of probabilities is the second stage engaged, whereby the burden then “shifts” to the respondent to prove (on the balance of probabilities) that the treatment in question was “in no sense whatsoever” on the protected ground.
82. The approved guidance in Barton v Investec Henderson Crosthwaite Securities Ltd [2003] ICR 1205 (as adjusted) can be summarised as:
- a) It is for the claimant to prove, on the balance of probabilities, facts from which the employment tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an act of discrimination. If the claimant does not prove such facts, the claim will fail.
 - b) In deciding whether there are such facts it is important to bear in mind that it is unusual to find direct evidence of discrimination. In many cases the discrimination will not be intentional.
 - c) The outcome at this stage will usually depend on what inferences it is proper to draw from the primary facts found by the tribunal. The tribunal does not have to reach a definitive determination that such facts would lead it to conclude that there was discrimination, it merely has to decide what inferences could be drawn.
 - d) In considering what inferences or conclusions can be drawn from the primary facts, the tribunal must assume that there is no adequate explanation for those facts. These inferences could include any that it is just and equitable to draw from an evasive or equivocal reply to a request for information. Inferences may also be drawn from any failure to comply with the relevant Code of Practice.
 - e) When there are facts from which inferences could be drawn that the respondent has treated the claimant less favourably on a protected ground, the burden of proof moves to the respondent. It is then for the respondent to prove that it did not commit or, as the

case may be, is not to be treated as having committed that act. To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that its treatment of the claimant was in no sense whatsoever on the protected ground.

- f) Not only must the respondent provide an explanation for the facts proved by the claimant, from which the inferences could be drawn, but that explanation must be adequate to prove, on the balance of probabilities, that the protected characteristic was no part of the reason for the treatment. Since the respondent would generally be in possession of the facts necessary to provide an explanation, the tribunal would normally expect cogent evidence to discharge that burden.

- 83. The shifting burden of proof rule only applies to the discriminatory element of any claim. The burden remains on the claimant to prove that the alleged discriminatory treatment actually happened and that the respondent was responsible. It is not for the respondent to prove that the claimant has the particular protected characteristic. The statutory burden of proof provisions only play a role where there is room for doubt as to the facts necessary to establish discrimination. In a case where the tribunal is in a position to make positive findings on the evidence one way or another as to whether the claimant was discriminated against on the alleged protected ground, they have no relevance (Hewage). If a tribunal cannot make a positive finding of fact as to whether or not discrimination has taken place it must apply the shifting burden of proof.
- 84. Where it is alleged that the treatment is inherently discriminatory, an employment tribunal is simply required to identify the factual criterion applied by the respondent and there is no need to inquire into the employer's mental processes. If the reason is clear or the tribunal is able to identify the criteria or reason on the evidence before it, there will be no question of inferring discrimination and thus no need to apply the burden of proof rule. Where the act complained of is not in itself discriminatory and the reason for the less favourable treatment is not immediately apparent, it is necessary to explore the employer's mental processes (conscious or unconscious) to discover the ground or reason behind the act. In this type of case, the tribunal may well need to have recourse to the shifting burden of proof rules to establish an employer's motivation
- 85. The claimant bears the initial burden of proving a prima facie case of discrimination on the balance of probabilities. The requirement on the claimant is to prove on the balance of probabilities, facts from which, in the absence of any other explanation, the employment tribunal could infer an unlawful act of discrimination. The employer's explanation (if any) for the alleged discriminatory treatment should be left out of the equation at the first stage. The tribunal must assume that there is no adequate explanation. The tribunal is required to make an assumption at the first stage which may in fact be contrary to reality. In certain circumstances evidence that is material to the question whether or not a prima facie case has been established may also be relevant to the question whether or not the employer has rebutted that prima facie case.

86. The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, with more, sufficient material from which tribunal “could conclude” that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination (see Madarassy).
87. If the claimant establishes a prima facie case of discrimination the second stage of the burden of proof is reached and the burden of proof shifts onto the respondent. The respondent must at this stage prove, on balance of probabilities that its treatment of the claimant was in no sense whatsoever based on the protected characteristic.
88. In some instances, it may be appropriate to dispense with the first stage altogether and proceed straight to the second stage (Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337.) The employment tribunal should examine whether or not the issue of less favourable treatment is inextricably linked with the reason why such treatment has been meted out to the claimant. If such a link is apparent, the tribunal might first consider whether or not it can make a positive finding as to the reason, in which case it will not need to apply the shifting burden of proof rule. If the tribunal is unable to make a positive finding and finds itself in the situation of being unable to decide the issue of less favourable treatment without examining the reason, it must examine the reason (i.e., conduct the two-stage inquiry) and it should be for the employer to prove that the reason is not discriminatory, failing which the claimant must succeed in the claim.
89. In a case of harassment under section 26 of the Equality Act the shifting burden of proof in section 136 will still be of use in establishing that the unwanted conduct in question was “related to a relevant protected characteristic” for the purposes of section 26(1)(a). Where the conduct complained of is clearly related to protected characteristic then the employment tribunal will not need to revert to the shifting burden of proof rules at all. Where the conduct complained of is ostensibly indiscriminate the shifting burden of proof may be applicable to establish whether or not the reason for the treatment was the protected characteristic. Before the burden can shift to the respondent the claimant will need to establish on the balance of probabilities that she was subjected to the unwanted conduct which had the relevant purpose or effect of violating dignity, creating an intimidating etc. environment for him. The claimant may also need to adduce some evidence to suggest that the conduct could be related to the protected characteristic, although he clearly does not need to prove that the conduct *is* related to the protected characteristic as that would be no different to the normal burden of proof.

Section 26: harassment

90. Section 26 states:
- (1) A person (A) harasses another (B) if-
 - (a) A engages in unwanted conduct related to a relevant protected characteristic, and
 - (b) The conduct has the purpose or effect of-
 - (i) violating B’ s dignity, or

- (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B

....

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

- 91. 'Unwanted' conduct is essentially the same as 'unwelcome' or 'uninvited' conduct.
- 92. Harassment will be unlawful pursuant to section 26 if the unwanted conduct related to a relevant protected characteristic had *either* the purpose *or* the effect of violating the complainant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them.
- 93. The harassment has to be "related to" a particular protected characteristic. The tribunal is required to identify the reason for the harassment with a particular focus on the context of the particular case. In Unite v Naillard [2017] ICR 121 the EAT indicated that section 26 requires the tribunal to focus upon the conduct of the individual(s) concerned and ask whether their conduct is associated with the protected characteristic. In that case it was not enough that an individual had failed to deal with sexual harassment by a third party unless there was something about the individual's own conduct which was related to sex. The focus will be on the person against whom the allegation of harassment is made and his conduct or inaction. So long as the tribunal focuses on the conduct of the alleged perpetrator himself it will be a matter of fact whether the conduct is related to the protected characteristic. As stated in Tees Esk and Wear Valleys NHS Foundation Trust v Aslam [2020] IRLR 495, "there must still ... be some feature or features of the factual matrix identified by the tribunal, which properly leads it to the conclusion that the conduct in question is related to the particular characteristic in question, and in the manner alleged by the claim. In every case where it finds that this component of the definition is satisfied the tribunal therefore needs to articulate, distinctly and with sufficient clarity, what feature or features of the evidence or facts found have led to the conclusion that the conduct is related to the characteristic, as alleged. Section 26 does not bite on conduct which, though it may be unwanted and have the proscribed purpose or effect, is not properly found for some identifiable reason also to have been related to the characteristic relied upon, as alleged, no matter how offensive or otherwise inappropriate the tribunal may consider it to be."
- 94. The test as to the effect of the unwanted conduct has both subjective and objective elements to it. The subjective element involves looking at the effect of the conduct on the particular complainant. The objective part requires the tribunal to ask itself whether it was reasonable for the complainant to claim that the conduct had that effect. Whilst the ultimate

judgement as to whether conduct amounts to unlawful harassment involves an objective assessment by the tribunal of all the facts, the claimant's subjective perception of the conduct in question must also be considered. So, whilst the victim must have felt or perceived her dignity to have been violated or an adverse environment to have been created, it is only if it was reasonable for the victim to hold this feeling or perception that the conduct will amount to harassment. Much depends on context. See the guidance Richmond Pharmacology v Dhaliwal [2009] ICR 724 revisited in Pemberton v Inwood [2018] IRLR where Underhill LJ stated:

In order to decide whether any conduct falling within sub-paragraph (1)(a) has either of the proscribed effects under sub-paragraph (1)(b), a tribunal must consider *both* (by reason of subsection (4)(a)) whether the putative victim perceives themselves to have suffered the effect in question (the subjective question) *and* (by reason of subsection (4)(c)) whether it was reasonable for the conduct to be regarded as having that effect (the objective question). It must also, of course, take into account all the other circumstances—subsection (4)(b). The relevance of the subjective question is that if the claimant does not perceive their dignity to have been violated, or an adverse environment created, then the conduct should not be found to have had that effect. The relevance of the objective question is that if it was not reasonable for the conduct to be regarded as violating the claimant's dignity or creating an adverse environment for him or her, then it should not be found to have done so."

The context of the conduct and whether it was intended to produce the proscribed consequences are material to the tribunal's decision as to whether it was reasonable for the conduct to have the effect relied upon. Chawla v Hewlett Packard Ltd [2015] IRLR 356.)

95. As stated in Dhaliwal:

'If, for example, the tribunal believes that the claimant was unreasonably prone to take offence, then, even if she did genuinely feel her dignity to have been violated, there will have been no harassment within the meaning of the section. Whether it was reasonable for a claimant to have felt her dignity to have been violated is quintessentially a matter for the factual assessment of the tribunal. It will be important for it to have regard to all the relevant circumstances, including the context of the conduct in question.

Protected Disclosures

96. A protected disclosure is defined by section 43A Employment Rights Act 1996 as a qualifying disclosure made by a worker in accordance with any of sections 43C to 43H. In this case the alleged disclosures were made to the claimant's employer in line with section 43C.

97. Section 43B of the Employment Rights Act 1996 defines a qualifying disclosure thus:

- (1) In this Part a “qualifying disclosure” means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following:
- a. that a criminal offence has been committed, is being committed or is likely to be committed,
 - b. that a person has failed, is failing, is likely to fail to comply with any legal obligation to which he is subject,
 - c. that a miscarriage of justice has occurred, is occurring or is likely to occur,
 - d. that the health or safety of any individual has been, is being or is likely to be endangered,
 - e. that the environment has been, is being or is likely to be damaged, or
 - f. that information tending to show any other matter falling within one of the preceding paragraphs has been, or is likely to be deliberately concealed.

....

- (5) In this Part “the relevant failure,” in relation to a qualifying disclosure, means the matter falling within paragraphs (a) to (f) of subsection (1).

98. As set out in Williams v Brown AM UKEAT/0024/19 there are five separate stages to applying the necessary tests: *“First, there must be a disclosure of information. Secondly, the worker must believe that the disclosure is made in the public interest. Thirdly, if the worker does hold such a belief, it must be reasonably held. Fourthly, the worker must believe that the disclosure tends to show one or more of the matters listed in subparagraphs (a) to (f). Fifthly, if the worker does hold such a belief it must be reasonably held.”*

Disclosure

99. In order to make a disclosure an employee simply has to communicate the information by some effective means in order for the communication to constitute a disclosure of that information.
100. ‘Information’ in the context of section 43B is capable of covering statements which might also be characterised as allegations (Kilraine v London Borough of Wandsworth [2018] ICR 1850). ‘Information’ and ‘allegation’ are not mutually exclusive categories of communication. Rather, a statement which is general and devoid of specific factual content cannot be said to be a disclosure of information tending to show a ‘relevant failure.’ The decision in Kilraine stressed that the word ‘information’ in section 43B(1) has to be read with the qualifying phrase ‘tends to show’. The worker must reasonably believe that the information ‘tends to show’

that one of the relevant failures has occurred, is occurring or is likely to occur. In order for a statement or disclosure to be a qualifying disclosure, it must have sufficient factual content to be capable of tending to show one of the matters listed in section 43B(1)(a)–(f).

101. The context of any disclosure may also be relevant in determining the content of the disclosure. Meaning can be derived from context. Disclosures may also have to be looked at cumulatively. Information previously communicated by a worker to an employer could be regarded as ‘embedded’ in a subsequent communication. Two or more communications taken together can amount to a qualifying disclosure even if, taken on their own, each communication would not (Norbrook Laboratories (GB) Ltd v Shaw [2014] ICR 540). Whether two communications are to be read together is generally a question of fact (Simpson v Cantor Fitzgerald Europe [2021] ICR 695).

Qualifying disclosures

102. A qualifying disclosure does not have to relate to a relevant failure of the employer that employs the worker making the disclosure. It may relate to the relevant failure of a colleague, a client or other third party.
103. Section 43B(1) requires that, in order for any disclosure to qualify for protection, the disclosure must, in the ‘reasonable belief’ of the worker:
1. be made in the public interest, and
 2. tend to show that one of the six relevant failures has occurred, is occurring, or is likely to occur.
104. The employee has to have a reasonable belief that that the information he or she disclosed tends to show one of the six relevant failures. This has both a subjective and an objective element. If the worker subjectively believes that the information he or she discloses does tend to show one of the listed matters, and the statement or disclosure he or she makes has a sufficient factual content and specificity such that it is capable of tending to show that listed matter, it is likely that his or her belief will be a reasonable belief.
105. The worker’s reasonable belief must be that the *information disclosed tends to show* that a relevant failure has occurred, is occurring, or is likely to occur, rather than that the relevant failure *has* occurred, *is* occurring, or *is likely to occur*. The worker is not required to show that the information disclosed led him or her to believe that the relevant failure was established, and that that belief was reasonable. Rather, the worker must establish only reasonable belief that the information tended to show the relevant failure.
106. The focus is on what the worker in question believed rather than on what a hypothetical reasonable worker might have believed in the same

circumstances. This does not mean that the test is entirely subjective. Section 43B(1) requires a *reasonable* belief of the worker making the disclosure. This introduces a requirement that there should be some objective basis for the worker's belief. In *Korashi v Abertawe Bro Morgannwg University Local Health Board* [2012] IRLR 4, EAT it was held that reasonableness under section 43B(1) involves applying an objective standard to the personal circumstances of the discloser, and that those with professional or 'insider' knowledge will be held to a different standard than laypersons in respect of what it is 'reasonable' for them to believe. The subjective element is that the worker must believe that the information disclosed tends to show one of the relevant failures and the objective element is that that belief must be reasonable (*Phoenix House Ltd v Stockman* [2017] ICR 84). The EAT in *Korashi v Abertawe Bro Morgannwg University Local Health Board* stated that the focus on 'belief' in section 43B establishes a low threshold. However, the reasonableness test clearly requires the belief to be based on some evidence. Unfounded suspicions, uncorroborated allegations etc. will not be enough to establish a reasonable belief.

107. There can be a qualifying disclosure of information even if the worker is wrong (*Darnton v University of Surrey* [2003] ICR 615). However, determination of the factual accuracy of the worker's allegations will often help to determine whether the worker held the reasonable belief that the disclosure in question tended to show a relevant failure. It may be difficult to see how a worker can reasonably believe that an allegation tends to show that there has been a relevant failure if he or she believes that the factual basis of the allegation is false.
108. The worker must reasonably believe that his disclosure tends to show that one of the relevant failures has occurred, is occurring or is *likely* to occur. Likely should be construed as requiring more than a possibility or a risk, that an employer or other person might fail to comply with a relevant legal obligation. The information disclosed should "in the reasonable belief of the worker at the time it is disclosed, tend to show that it is *probable or more probable than not* that the employer will fail to comply with the relevant legal obligation" (*Kraus v Penna Plc and anor* [2004] IRLR 260).

Public interest

109. The public interest element of the test is also qualified by the requirement of 'reasonable belief.' In order for any disclosure to qualify for protection the person making it must have a 'reasonable belief' that the disclosure 'is made in the public interest.' There is no statutory definition of the public interest. The focus is on whether the worker reasonably believed that the disclosure was in the public interest rather than on the objective question of whether the public interest test was in fact satisfied.
110. In *Chesterton Global Ltd (t/a Chestertons) and anor v Nurmohamed (Public Concern at Work intervening)* [2018] ICR 731 the Court of Appeal

rejected the argument that for a disclosure to be in the public interest it must serve the interests of persons outside the workplace and that mere multiplicity of workers sharing the same interest was not enough. The essential point was that to be in the public interest the disclosure had to serve a wider interest than the private or personal interest of the worker making the disclosure. Even where the disclosure relates to a breach of the worker's own contract of employment there may still be features of the case that make it reasonable to regard disclosure as being in the public interest. The following factors might be relevant:

- (a) the numbers in the group whose interests the disclosure served;
- (b) the nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed
- (c) the nature of the wrongdoing disclosed, and
- (d) the identity of the alleged wrongdoer.

The number of people sharing the interest is not determinative. The fact that at least one other person shared the interest was insufficient in itself to convert it into a matter of public interest. Conversely, it was wrong to say that the fact that it was a large number of people whose interests were served by the disclosure of a breach of the contract of employment could never, in itself, convert a personal interest into a public interest.

111. In Underwood v Wincanton Plc EAT/0163/15 the EAT held that it was arguable that the public interest test was satisfied by a group of employees raising a matter specific to their terms of employment. 'The public' can refer to a subset of the general public, even one composed solely of employees of the same employer. In Morgan v Royal Mencap Society [2016] IRLR 428 it was held that it was reasonably arguable that an employee could consider a health and safety complaint, even one where the employee is the principal person affected, to be made in the wider interests of employees generally.
112. There may be a difference between a matter of public interest and a matter that is of interest to the public, and that there may be subjects that most people would rather not know about that may be matters of public interest (Dobbie v Felton t/a Feltons Solicitors 2021 [IRLR] 679, EAT). A disclosure could be made in the public interest even though the public will never know that it has been made, and a disclosure could be made in the public interest even if it relates to a specific incident without any likelihood of repetition. The absence of a statutory definition of 'public interest' does not mean that it is not to be determined by a principled analysis. The four factors identified in Nurmohamed will often be of assistance. Some private employment disputes will more obviously raise public interest matters than others.
113. For a disclosure to qualify the worker need only have a *reasonable belief* that his or her disclosure is made in the public interest. The tribunal does not have to determine the objective question of what the public interest is, and whether a disclosure served it. The Tribunal has to consider what the worker considered to be in the public interest; whether the worker

believed that the disclosure served that interest; and whether that belief was held reasonably. As reasonableness is judged to some extent objectively, it is open to a Tribunal to find that a worker's belief was reasonable on grounds which the worker did not have in mind at the time. Tribunals should be careful not to substitute their own view of whether the disclosure was in the public interest for that of the worker (*Nurmohamed*). That does not mean that it is illegitimate for the tribunal to form its own view on that question as part of its thinking but only that that view is not, as such, determinative. The necessary belief is simply that the disclosure is in the public interest and the particular reasons why the worker believes that to be so are not of the essence. A disclosure does not cease to qualify simply because the worker seeks to justify it after the event by reference to specific matters which the tribunal finds were not in his or her head at the time. A tribunal might find that the particular reasons why the worker believed the disclosure to be in the public interest did not reasonably justify his or her belief but nevertheless find it to have been reasonable for different reasons which he or she had not articulated at the time: all that matters is that his or her (subjective) belief was (objectively) reasonable.

114. Belief in the public interest need not be the predominant motive for making the disclosure or even form part of the worker's motivation. The worker's motive might, however, be one of the individual circumstances taken into account by a tribunal when considering whether the worker reasonably believed the disclosure to be in the public interest. A worker may seek to justify an alleged qualifying disclosure by reference to matters that were not in his or her head at the time he or she made it, but if he or she cannot give credible reasons for why he or she thought at the time that the disclosure was in the public interest, that may cast doubt on whether he or she really thought so at all. Belief in a public interest element would not have to form any part of the worker's motivation so long as the worker has a genuine (and reasonable) belief that the disclosure is in the public interest.

Breach of a legal obligation

115. Section 43B(1)(b) is capable of covering not only those obligations set down in statute and secondary legislation but also any obligation imposed under the common law (e.g., negligence, nuisance and defamation), as well as contractual obligations and those derived from administrative law. It can include breaches of legal obligations arising under the employee's own contract of employment (subject to the public interest element of the test also being met.) It does not cover a breach of guidance or best practice, or something that is considered merely morally wrong. A worker will not be deprived of protection in relation to a disclosure simply because he or she is wrong about what the law requires.
116. A worker need not always be precise about what legal obligation he or she envisages is being breached or is likely to be breached for the purpose of a qualifying disclosure under section 43B(1)(b). In cases where it is

‘obvious’ that some legal obligation is engaged then the absence of specificity will be of little evidential relevance. In less obvious cases, a failure by the worker to at least set out the nature of the legal wrong he or she believes to be at issue might lead a tribunal to conclude that the worker was merely setting out a moral or ethical objection rather than a breach of a legal obligation.

Health and safety disclosures

117. Any disclosure which, in the reasonable belief of the worker, is made in the public interest and tends to show that the health or safety of any individual has been, is being or is likely to be endangered is a qualifying disclosure section 43B(1)(d). ‘Health and safety’ is a well understood phrase and so it will usually be obvious whether the subject matter of the disclosure has the potential to fall within section 43B(1)(d). A disclosure does not have to relate to a failure of the employer employing the worker making the disclosure — it may cover wrongdoing by a third party (Hibbins v Hesters Way Neighbourhood Project 2009 ICR 319). Thus, the health and safety matter at issue need not necessarily fall under the control of the employer. A worker will be expected to have provided sufficient details in the disclosure of the nature of the perceived threat to health and safety. Furthermore, the worker’s belief must be reasonable. A wholly irrational belief will not acquire protection.

Method of disclosure

118. In order to be a protected disclosure, the qualifying disclosure must be made in the correct manner as set out in sections 43C-43H. A worker who makes a disclosure to their employer has fewer hurdles to get over than one who makes the disclosure to an outsider. A disclosure made to a worker’s employer will be a protected disclosure s43C(1)(a).

Causation and burden of proof in section 103A dismissal cases

119. In a claim of automatically unfair dismissal for making a public interest disclosure, the public interest disclosure must be the sole or principal reason for the dismissal. As in a case of ordinary unfair dismissal the Tribunal must examine the mind of the decision maker. What was the decision maker’s reason for dismissal? However, if a person in the hierarchy of responsibility above the employee determines that, for reason A, the employee should be dismissed but that reason A should be hidden behind an invented reason B which the decision-maker adopts, it is the court’s duty to penetrate through the invention rather than to allow it also to infect its own determination. (Royal Mail Group Ltd v Jhuti [2020] ICR 731) This principle applies in so-called ‘lago’ cases where an honest decision maker, acting in good faith, has been manipulated by a third party. The line of reasoning in Jhuti only needs to be used where an innocent decisionmaker is manipulated into dismissing a whistleblower for an apparently fair reason and is ‘unaware of the machinations of those

motivated by the prohibited reason.’ It does not apply where the decisionmaker is aware of the protected disclosure and is thus not deceived into dismissing for an unrelated reason (University Hospital North Tees and Hartlepool NHS Foundation Trust v Fairhall EAT 0150/20).

120. Where the employee lacks the necessary two years’ qualifying service to pursue a claim of ordinary unfair dismissal the employee will bear the burden of proof in showing the reason for the dismissal was the protected disclosure (i.e., the automatically unfair reason.)

Unauthorised deductions from wages

121. The right to claim for unauthorised deductions from wages is set out in section 13 of the Employment Rights Act 1996. ‘Wages’ are defined by section 27 Employment Rights Act 1996 and include ‘any sums payable to the worker in connection with his employment’. This includes ‘any fee, bonus, commission, holiday pay or other emolument referable to the employment’ (section 27(1)(a).) These may be payable under the contract ‘or otherwise’. Wages can include overtime payments. It does not include expenses (s27(2)(b).) Any complaint of a failure to reimburse expenses would have to be addressed as a claim for breach of contract.

122. Where a claim for unauthorized deductions is made the Tribunal must first determine what sums were ‘properly payable’ at any given pay date. Properly payable wages will include those due under the contract and those to which some other legal entitlement is established. However, purely discretionary payments will not be caught by the provision, the claimant must have some form legal entitlement to the sums claimed although it need not be contractual (New Century Cleaning Co Ltd v Church 2000 IRLR 27). If a deduction from the wages ‘properly payable’ is established then it may yet constitute an authorised deduction if it falls within the scope of s13(1)(a) or (b). Section 14 Employment Rights Act 1996 also sets out certain deductions which are ‘excepted’ or excluded from the scope of the worker’s right not to suffer unauthorised deductions.

Breach of contract claims

123. The Employment Tribunal is empowered to hear and determine certain types of breach of contract claim by the provisions in the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994. The claim must arise or be outstanding on the termination of employment. Any damages for breach of contract in such a claim are limited to £25,000. The damages sought must be damages for breach of the contract of employment or any other contract connected with employment. Certain types of claim are specifically excluded by the terms of the Order.

Conclusions

Public interest disclosure claim

124. The claimant had relied on four verbal disclosures as set out in the agreed list of issues.
125. As set out above, the Tribunal was not satisfied that the claimant made the comments set out at paragraph 1.1.1.1- 1.1.1.3 of the list of issues. We note that the claimant's case in this regard is somewhat undermined by the evidence he gave that the Hosts' jobs were in fact achievable based on planning and experience. He was essentially saying that the Hosts could do the job if they tried hard enough. This is inconsistent with his alleged disclosure that the roster was not realistic, the company was understaffed or that his job was really enough work for two people. In his fifty-page response to the allegations he stated [404] *"I know they can achieve it even if they don't and some of them don't believe it can be done for a variety of reasons, most of them erroneous and unfounded- such as- "there isn't enough staff" ... we need more hosts here" ... I'm sure you've heard it all before. I have."* The claimant's written document therefore directly contradicts what he is alleged to have said at this meeting, certainly in relation to the achievability of the Hosts' tasks. That, taken together with the lack of any evidence given by the claimant about this during the Tribunal hearing, means that the claimant has failed to prove that he made the disclosure at paragraphs 1.1.1.1 to 1.1.1.3 of the list of issues. All of the surrounding evidence also does not paint a picture of the claimant having genuine concerns for the Hosts. The claimant's evidence and the documents as a whole indicate that the claimant was not genuinely concerned with the working conditions of the young people in France. He did not respect his younger colleagues and thought that they were lazy and ineffective.
126. In any event, even if we had been satisfied that the disclosures at paragraphs 1.1.1.1 to 1.1.1.3 had been made, they would not have met the legal definition of public interest disclosures. The alleged disclosure at 1.1.1.1 did not disclose information which tended to show the relevant breach of a legal obligation or health and safety matters. The public interest element is also lacking. The alleged disclosure at 1.1.1.2 is about service standards. It does not disclose information tending to show breach of a legal obligation or the relevant health and safety matters within the meaning of the Act. The alleged disclosure at 1.1.1.3 is a complaint about his own working schedule but does not disclose information tending to show breach of a legal obligation or the relevant health and safety matters. Furthermore, there is no public interest element. The concern in this paragraph is solely in relation to the claimant's own situation. It is a personal grievance rather than a public interest disclosure. In light of this, in the Tribunal's view, the claimant did not have the necessary reasonable beliefs in relation to the purported disclosures (taking into account both the subjective and objective elements of the test.)
127. In line with our findings of fact set out above, we also conclude that the

claimant did not actually make the verbal disclosure set out in paragraph 1.1.1.4 of the list of issues. He did not say anything about the roster or timesheets being wrong or deliberately misleading and designed to mislead the French authorities. At most he mentioned that he was keeping a log but did not confirm what it contained or what it was to be used for. He has failed to prove, as a matter of fact, that he made the disclosure relied upon as being a protected disclosure.

128. In light of the above we are not satisfied that the claimant made any protected disclosure during the course of this meeting. Furthermore, we would be unable to find that any disclosures made by the claimant were the reason or principal reason for his dismissal. The respondent collated copious amounts of evidence against the claimant in the course of the investigation and disciplinary procedure. It was this which the respondent acted on when it decided to dismiss the claimant. This was the information that the decision maker had access to. It is not credible or plausible to suggest that this was a pretext for dismissal to cover the real reason (i.e., the alleged protected disclosures.) The claimant may complain about the fairness of the respondent's decision to dismiss him based on the available evidence but that is another legal matter. He does not have sufficient qualifying service to bring a claim for so called 'ordinary unfair dismissal' and so he was forced to fall back on asserting that the dismissal was on grounds of public interest disclosure. The impression given by the claimant's evidence to the Tribunal is that this was something of an afterthought which occurred to him during the course of the Tribunal proceedings. Indeed, during the course of the evidence the claimant admitted that if he had been presented with the same evidence as Ben Lain, and if he had been charged with making a decision, he too would probably have decided to dismiss in this case. The claimant has not even shown that Mr Lain knew about the disclosures. Nor has he shown that others within the management structure have done something to manipulate the decision maker (in a Jhuti sense.)

Direct age discrimination

129. In line with our findings of fact we could find no evidence that Emily Ward had encouraged such complaints against the claimant in order to get him to leave (paragraph 3.1.1). We found the complaints to be genuinely made, especially those made by guests (who had no reason to get involved unless these were genuine complaints.) The Tribunal could not see any basis on which Emily could manipulate the guests in this way. The claimant had no evidence to support this assertion. He just had a 'feeling.' We also note that in the documentary evidence the assertion that the guests were encouraged to make complaints was predominantly made about the hosts rather than Emily. The assertion lacks consistency.
130. The claimant has failed to prove the factual allegation at paragraph 3.1.1.
131. The factual allegation at paragraph 3.2.1 was proven in that Emily Ward did contradict the claimant's instruction to a Host that he should shave off his stubble. However, the crucial question is why she did this. Was this because of age? We doubt it. Would she have done the same if the

claimant was younger? Yes. We accept the rationale she gave in her witness statement. She effectively concluded that the Host's was a borderline case in terms of what was an acceptable appearance. She made a judgment call based on her previous experience of working for the respondent and how the guidelines had previously been interpreted. It is not plausible to suggest that she would have acted differently in the case of a comparator who was younger than the claimant. There would be no difference in treatment between the claimant's case and that of a comparator. The decision was essentially about brand image. She had decided that the Host was not looking scruffy. Whether this could be interpreted as undermining the claimant or not is not the legal issue before us. It might well have been inadvisable for her to be seen to undermine the Host's line manager and overrule him in this way in terms of building a good working relationship with the claimant. However, that is not the question we have to address. Would she have treated the comparator more favourably? No. She would have no reason to. Less favourable treatment because of age is not established in relation to this allegation. The complaint of discrimination therefore fails on the merits and we do not need to address the issue of jurisdiction in line with the relevant time limits.

132. In relation to the allegation at paragraph 3.1.3 we do not find that the claimant led any real evidence in relation this at the hearing and none of the documents addressed it. The claimant did not raise these concerns with Emily Ward or Neil Tuckwell at the time and did not raise these concerns during the investigation nor in his 50-page letter responding to the disciplinary allegations. They were not raised in his appeal or even in the ET1. We do not know what precisely the travel reps are said to have said or done in concrete terms. We cannot find this factual allegation proved on the available evidence. Still less are we able to draw any conclusion about whether they would have treated the younger comparator in the same way or more favourably. The complaint of discrimination fails on the merits and must be dismissed.
133. In relation to the allegation at 3.1.4 there were a number of messages included in the hearing bundle. When taken to them in cross examination the claimant was unable to point to any particular message or messages that he considered to be discriminatory or harassing. The content of the messages did not seem to be the problem. Instead, he suggested that it was the actual fact of receiving the messages that made him feel harassed. He did not appreciate the fact that he was being contacted by text. It wasn't the content of the messages which was the problem. Even so, he declined to withdraw this complaint of discrimination. Whilst the claimant may have objected to his manager contacting him in this manner, the Tribunal acknowledges that this could be seen as part and parcel of the job role. She is his manager and this is one way of contacting him given that she and the claimant were not working in the same place at the same time. Furthermore, there was no evidence from which we could infer or conclude that Emily Ward would not have sent messages like this and in this quantity to a younger comparator in the same circumstances. It is just a mode of communication between line manager and direct report. Consequently, we cannot find that there was

less favourable treatment of the claimant than of the relevant comparator. Nor was age any sort of factor in Ms Ward's text communication with the claimant.

134. At paragraph 3.1.5 the claimant complains about one of the Hosts reporting one of the guest's comments. However, we note that this is not the Host setting out her own opinion. She is just relaying the comment of one of the customers. She is not agreeing with the content of the comment. Whilst it may be considered an inflammatory comment there is no evidence from which we can conclude it was anything to do with the claimant's age. If the comment was made by the guest then the Host was likely to have relayed it even if it had been made about a younger comparator. There would be no difference in treatment as between the claimant's case and that of a younger comparator. The claimant has not satisfied us that there was less favourable treatment in relation to this incident.
135. The claimant's real complaint is about the fact that the guest made the comment at all. He is understandably offended by it. However, the guest's comment would not be a comment for which the respondent or its employees would be liable. Further, the Host in question was entitled to relay the comment to her employer. The employer needed to know what guests were saying about its employees. Nor do we understand the claimant's assertion that the comment would not have been made by the guest about a younger employee. He sought to point out examples of paedophiles from the world of popular entertainment who were older when their crimes were discovered. He sought to suggest that reference to a paedophile therefore automatically meant a reference to an older man. This is not so. This is not a crime which is confined to the older offender. There will be examples of such individuals within many age groups. The defining characteristic of a paedophile is the age of the victim. There is no evidence to suggest that the Host would have made no report of this comment if it had related to a younger comparator or that she did so in this case because of age. The complaint therefore fails on its merits.
136. In relation to allegation 3.1.6 we have found as a fact that Emily and Neil are both likely to have said something about the claimant being slow at his work in the context of a discussion about his performance in the role and the need for him to work more efficiently. (They felt that he was likely to speed up over the course of the season as the claimant became more familiar with the job.) The claimant has interpreted the reference to 'slow' as being a covert reference to his age. We do not accept that. Again, whilst in some circumstances it could be seen in this way, on the facts of this case it was truly a reference to speed of work. Ms Ward knew from her own experience how long the tasks should take. She therefore recognised that there was a time management issue in the claimant's case. She and Mr Tuckwell were both attempting to get the claimant to work more quickly and efficiently. The claimant in fact said that he was slow and could not complete his allotted tasks within standard working hours. We also note that in his written documents the claimant on occasion referred to his younger colleagues as slow in their work. This was not, apparently, a coded reference to their age and so demonstrates

that 'slow' is not always or necessarily a synonym for 'old'. We also note that the claimant's log entry for this meeting does not record that such comments were a problem. Rather it refers to a good and positive meeting where there was a clearing of the air.

137. In light of this, the claimant has not established that a younger comparator would have been treated more favourably in this regard. A slower worker would have received the same comments whatever his age. There was no less favourable treatment in this regard and the comment was not made because of age.
138. We repeat the observations made in the above paragraph in relation to allegation 3.1.7 which refers specifically to Mr Tuckwell. We accept that Mr Tuckwell made comments about the claimant being slow in his work. In Mr Tuckwell's case he may well have said that the claimant was difficult to talk to. This was not, and could not reasonably be interpreted as, a reference to the claimant's age. Rather it was a reflection of the need to improve communication between the claimant and his colleagues. It was aimed at highlighting a problem with a view to resolving it. It could and, we find, would just as likely be said to a younger comparator in similar circumstances. It is wholly unrelated to age. Thus, there was no less favourable treatment of the claimant than of a younger comparator and the comments were not made because of age.
139. In light of the above we conclude that there was no less favourable treatment because of age. These two complaints of direct discrimination fail and are dismissed (paragraphs 3.1.6 and 3.1.7.)
140. Paragraph 3.1.8 refers to the decision to suspend the claimant. The suspension decision was made in light of the allegations which had been made and the grievance which had been raised. Even if suspension is considered a neutral act (which the claimant accepted in cross examination), there is no evidence from which we can conclude that a younger comparator in the same circumstances would not have been suspended. Faced with the same allegations the comparator would also have been suspended. The suspension was part of the respondent's process in such cases and there is no evidence to indicate that age was a factor in the decision at all. A suspension would be expected given the seriousness of the allegations. The respondent was entitled to suspend the claimant, especially given the health and safety issues raised by some of the evidence. It was a protective measure from the business's point of view which did not imply guilt and was not a punishment. In the absence of less favourable treatment than of a comparator, this complaint fails and is, therefore, dismissed.
141. At paragraph 3.1.9 the claimant asserts that the outcome of the disciplinary investigation was predetermined. He has brought forward no evidence on which we could base such a conclusion. Indeed, he said himself that if he had been faced with such evidence he too would have decided to dismiss. The respondent has amply demonstrated the evidential basis for the decision to take the claimant to a disciplinary hearing and then dismiss him, as set out in detail in the findings of fact above. We cannot conclude that the outcome was predetermined. There

is no evidence to support such a conclusion. The decision was made by someone (Mr Lain) who had no prior involvement in the claimant's work. He was entirely impartial and there was no evidence that anyone had approached him or otherwise trespassed upon that impartiality. We are satisfied on the evidence that Mr Lain would have made the same decision in relation to a younger comparator if confronted with the same or similar evidence.

142. At paragraph 3.1.10 the claimant asserts that the decision to dismiss him was also an act of direct age discrimination. For the reasons traversed above, we do not agree. The decision was taken on the basis of the available evidence by an independent and impartial decision maker. The claimant accepted that he was not accusing Mr Lain of age discrimination and that he was objective and had never met the claimant before. The dismissal was based on the evidence not the claimant's age. A younger comparator would have been dismissed if faced with similar evidence against them. The claimant said that he would have made such a decision to dismiss if faced with such evidence. There was no less favourable treatment of the claimant than of an appropriate comparator and nothing from which we could deduce that the decision was related to age. This complaint of direct discrimination fails and is dismissed.
143. At paragraph 3.1.11 the claimant argues that the respondent failed to give the claimant warnings as required by the respondent's HR policies and procedures. As set out above, we found that the respondent's procedures did not require a warning prior to dismissal if the conduct or performance was serious enough to merit dismissal without a prior formal warning. We also heard evidence that Hosts were offered retraining in relation to any breaches of policy regarding temperature checks etc. The respondent's managers decided to do this because they concluded that it was not all of the Hosts who were under performing and they were not satisfied (in light of the evidence about the claimant's work) that the Hosts had been properly trained at the outset. They were, therefore, not convinced that the Hosts had had a proper and fair chance to perform at the required standard from the outset. If initial training and management was inadequate, then they could not be blamed for underperforming. In those circumstances the Hosts were not given formal warnings. The respondent's managers concluded that the correct approach was to 'press the reset button' and let them perform better second time around. Furthermore, there was no requirement within the respondent's procedures to go through a formal warning stage with the claimant before deciding to dismiss him. If the claimant's conduct or performance was serious enough that it went to the root of the employment relationship, then the respondent was entitled to dismiss him without giving a formal disciplinary warning first. So, for example, some of the problems with the claimant's work related to health and safety measures designed to prevent issues such as food poisoning. The respondent could reasonably conclude, given the claimant's managerial post, that this was serious enough to warrant dismissal.
144. The claimant's allegation is essentially that he was dismissed straight away without being given a formal warning first and that the Hosts were treated more favourably. We do not accept that this is what evidence

discloses when properly analysed. The claimant was told that there were problems with his performance and was given an opportunity to improve before the formal procedure was initiated. He did not receive a formal warning pursuant to internal policies and procedures prior to dismissal but he was alerted to the problems and given a chance to improve. The comparators (the Hosts) also did not receive formal warnings under the internal policies and procedures either. To that extent, there was no less favourable treatment of the claimant than of the comparators. Neither the claimant nor his comparators received formal warnings for their conduct or performance.

145. In any event, the comparators relied upon by the claimant (the Hosts) were not in a truly comparable position to the claimant and were not appropriate comparators for the purposes of this complaint. They had different job roles to the claimant and were at a lower level of seniority and responsibility within the respondent's organisation. The respondent could rightly have higher expectations of the claimant (as a manager) than of the Hosts (the claimant's subordinates.) The respondent could legitimately apply a different standard to the claimant given his managerial role. We also find that the nature and extent of the Hosts' performance failings were different to the claimant's. Nor were they facing the same guest complaints as the claimant. Thus, the Hosts were not proper comparators for this element of the claim. Nor are we satisfied that the way the Hosts or the claimant were treated was because of their respective ages.
146. It is also relevant to note that when faced with evidence in relation to his shortcomings the claimant didn't really accept responsibility for them. He did not give any real assurance that things would improve or that similar incidents would not happen again in future. There was a real risk of reputational damage to the respondent given the nature of the business. Again, these are distinguishing features of the claimant's case as opposed to the comparators' and show why different approaches would be merited irrespective of the parties' ages.
147. The allegation at paragraph 3.1.12 alleges that the claimant was required to leave his accommodation within 24 hours of his dismissal. In evidence the claimant accepted that this was not in fact the case. He was allowed 10 days to leave his staff accommodation. This allegation therefore fails on the facts. The respondent treated him more favourably than it was in fact required to based on the terms and conditions. There was no less favourable treatment than of a comparator and certainly no indication that this was anything to do with age.
148. In light of our findings above all of the allegations of direct age discrimination fail on their merits. It is therefore not necessary for us to address the respondent's legitimate aims defence or any time limit jurisdiction points.

Harassment

149. The claimant relies upon the same allegations for the purposes of his section 26 claim as for his direct discrimination claim. In light of our

findings above the factual allegations largely fall away for the purposes of the harassment claims.

150. Allegation 1 was not proven.
151. Allegation 2 was proven insofar as Ms Ward overruled the claimant in relation to the instruction that Jamie should shave off his stubble. We do not accept that the claimant has proven any pattern of similar behaviour by Ms Ward (as implied by the allegation i.e., that this happened more than once.) The only incident proven is the shaving instruction incident. We have set out the reasons for Ms Ward's actions above. They are nothing to do with age, whether the claimant's or anybody else's. Ms Ward's act does not, therefore, meet the requirement of section 26 that the unwanted conduct be related to age. The Tribunal is also not satisfied that the conduct had the necessary purpose or effect as set out in section 26(1)(a)(i) and(ii). Taking into account the factors in section 26(4) we are not satisfied that the conduct violated the claimant's dignity or created an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.
152. Allegation 3 was not proven on the facts.
153. Allegation 4 was not proven insofar as the messages were not unpleasant or extremely critical in the way that the claimant alleges. The claimant took issue with being contacted by text and with the number of messages sent. Applying the test in s26 they did not have the necessary purpose or effect (section 26(1)(a)(i) and(ii)). Nor were they related to age in anyway. The claimant was unable to point to any particularly offensive messages and did not explain how any of this was age related.
154. Allegation 5 related to the Host reporting the words of a guest. Whilst this was no doubt offensive to the claimant, we cannot conclude that it was related to the protected characteristic of age. It is the allegation of sexual misconduct and criminality which makes it offensive rather than any age-related feature. Furthermore, it was not the respondent's allegation, it was the guest's. Viewed in that context the Host's witness statement should not have had the necessary effect (section 26(1)(a)(i) and(ii)). The claimant could reasonably be expected to take into account that this was someone else's view or opinion, not that of his colleague. Put another way, the respondent should not be liable for the offence caused by a guest over which they have no control. They cannot be liable for the actions of the guest as a third party. The respondent's employee must be able to report a guest's comment to her employer without fear that the respondent will thereby assume liability for the guest's personal views.
155. Allegations 6-12 have already been addressed at some length in the context of direct discrimination. Where the necessary factual allegation has been proved we are nevertheless unable to conclude that the acts are related to age for the reasons already stated (and which we do not repeat here.) They therefore do not fall within the definition age related of section 26 harassment and so fail and are dismissed.

Overtime

156. As set out above in our findings of fact, the respondent paid the claimant for the overtime which was included in the claimant's signed and authorised timesheets. On the basis of the claimant's terms and conditions and the respondent's overtime process, the claimant was not entitled to payment for any further sums. The overtime had to be authorised and signed for in the timesheets before the respondent became liable to pay for it. The claimant has not proved that any pay for authorised overtime remains outstanding. Therefore, this aspect of the claimant's claim fails and is dismissed.

Expenses

157. The claimant has made a claim for reimbursement of expenses. The respondent conceded that £384.84 of expenses were still owed to the claimant and so we have issued a judgment to that effect. The claimant did not produce any evidence to contradict the respondent's position. The respondent had calculated the expenses owed to the claimant on the basis that the expenses had to be related to the claimant's job and had to have been incurred prior to the date of termination. Applying those tests, the respondent considered that nothing further was owed. The claimant was unable to contradict that assessment and did not provide evidence as to what further amounts should be recoverable in line with the applicable principles.

Employment Judge Eeley

Date: 29 May 2023

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

5 June 2023

GDJ
FOR EMPLOYMENT TRIBUNALS