Claim Number: **1304912/2020**

EMPLOYMENT TRIBUNALS

Claimant | Respondents

Mr Dharminder Kalirai **v** **(1) Hamton Environmental Services Limited**
(2) Aston Martin Lagonda Limited

FINAL MERITS HEARING
(CONDUCTED FOR THE MOST PART BY THE CLOUD VIDEO PLATFORM)

Heard at: **Birmingham** On: **6 to 10 & 13 to 15 September 2021 and in chambers 16, 17 and 20-23 September 2021**

Before: **Employment Judge Perry, Ms W Ellis & Mr J Sharma**

Appearances
For the Claimant: **Ms Gillian Crew (counsel)**
For the first Respondent: **Mr Jeffrey Jupp (counsel)**
For the second Respondent: **Mr Martin Palmer (counsel)**

JUDGMENT

1 The claimant's wrongful dismissal/notice pay and unpaid holiday pay complaints are dismissed on withdrawal.

2 The claimant's complaints that he was unfairly dismissal due to making a protected disclosure and/or in the alternative due to raising health and safety concerns are not well founded and are dismissed.

3 The claimant was not subjected to a detriment(s) on the ground that he made a protected disclosure and/or in the alternative due to raising health and safety concerns contrary to Parts IVA and V Employment Rights Act 1996 and those complaints are also dismissed.

4 The claimant was not harassed and/or in the alternative directly discriminated against for reasons respectively related to and/or because of his race in contravention of Part 5 Equality Act 2010 and those complaints are also dismissed.

REASONS

References below in circular brackets are to the paragraph of these reasons. Those in square brackets to the page of the bundle or where preceded by a document reference or the initials of a witness, that document or witness statement. A number after a paragraph mark symbol "¶" refers to the paragraph number of a witness statement or document. For those witnesses who provided supplementary statements we refer to their principal statement as [#1¶…] and supplemental as [#2¶…].

BACKGROUND

5 By a claim form presented on 11 March 2020, following a period of early conciliation from 30 December 2019 to 11 February 2020 (against the second respondent - hereafter "*Hamton*") and to 13 February 2020 (against the first respondent – hereafter "*Aston Martin*" although this is sometimes abbreviated by the parties and witnesses to "*AML*"), the claimant brought a variety of complaints.

6 A claim against a third respondent, Aston Martin Lagonda Global Holdings Limited was dismissed upon withdrawal on 5 May 2021.

The parties

7 Aston Martin is a designer and manufacturer of luxury sports cars and grand tourers that operates from a site in Gaydon, Warwickshire ('*Gaydon*') but also from a number of other sites.

8 Hamton describes itself as a multi-service contractor that provides services (including production workers) to amongst others, the automotive industry.

9 It was not in dispute that Hamton and Aston Martin had a long-standing relationship under which Hamton provided staff to work on Aston Martin's Gaydon production lines, together with waste and janitorial services. That relationship is reflected in a contract titled *'Heads of Contractual Agreement for Production Workers'* [123 -124]. That contract ceased in June 2021 and any remaining workers were transferred to the new contract provider.

10 Both Hamton and Aston Martin assert that on 10 January 2018 the claimant entered into a contract of employment with Hamton [134 -141] and following an induction/training period started work at Gaydon on 15 January 2018. Both respondents also allege that the claimant remained an employee of Hamton at all material times. The claimant asserts he was employed by Aston Martin.

The issues

11 The issues were identified initially at a case management hearing before Employment Judge Battisby held on 22 July 2020 [80-86] as:

11.1 Automatic unfair dismissal due to making a protected disclosure

11.2 Automatic unfair dismissal due to raising health and safety concerns

11.3 Direct discrimination on the grounds of race

11.4 Harassment on the grounds of race

11.5 Detriment arising from making a protected disclosure

11.6 Detriment as a result of raising concerns regarding health and safety

12 We sought at the outset to identify how two additional issues identified by Employment Judge Battisby were pursued and also to seek the detail of what was said or done by whom and when that was complained of given some of the matters argued in the list of issues originally prepared appeared to rely upon matters undertaken on differing dates and/or by differing perpetrators.

13 The list of issues that was finally agreed by the representatives is attached as an appendix hereto. it was confirmed the following complaints were not pursued:-

13.1 Wrongful dismissal/notice pay relating to contractual procedures not followed

13.2 Unpaid holiday pay

14 In addition some of the issues fell away by virtue of concessions made in oral evidence.

15 As to the race discrimination/harassment claims the Claimant describes himself as ***"...a person of non-white, Panjaabi-Sikh ethnicity..."*** [34 [ET1¶129]].

16 At the outset we also sought to clarify the earliest date a complaint (or the last of a series of complaints that extended over a period) could be in time as it appeared to us that was 1 October 2019. That was agreed by the parties.

17 Prior to the hearing one of the respondents sought a reduction in the time estimate from 15 to 10 days based on the purpose of the hearing having being limited to liability only from liability and remedy. That was acceded to but based on counsel's opening submission that shortened time estimate appeared to be unrealistic. Given all parties were represented we asked the representatives to agree a timetable such that the evidence could be concluded and in which some time was provided for panel deliberations. That was done and the Tribunal is grateful. It subsequently transpired that a case the chair was due to commence the following week was vacated and additional deliberations time was made available. Despite that due to the number of conflicts between the evidence of the various witnesses and between them and the documents and indeed the introduction of documents and in one case witness evidence the whole of that time was taken up and this judgment has taken far longer to write and is far longer than is ideal.

Applications

18 At the start of this hearing applications concerning the preparations for and conduct of the hearing that were outstanding were made. Two related to disclosure; the absence of certain documents and the redaction of others. There was also an application for a witness order.

19 We asked the parties' representatives to attempt to resolve the issues concerning disclosure and they were able to do so. Accordingly a considerable number of additional documents were added to the bundle including :-

19.1 unredacted copies of 7 pages of the bundle [various pages],

19.2 Hamton's whistleblowing policy, Health and Safety Policy Statement and Supporting Policies & Risk Assessment Policy [433-455],

19.3 Aston Martin's Occupational Health, Safety & Wellbeing Policy Statement, Confidential Reporting and Whistleblowing Policy, Manual Handling and Ergonomics Policy/Guidance [456-471].

20 During the course of the hearing a chain of emails came to light that Aston Martin told us had not previously been identified despite their searches because the relevance of two individuals only latterly became apparent. They too were added by agreement:-

20.1 Emails concerning Mr Fox 7–17 June [472-476] and

20.2 Emails concerning Mr Quinn 20-24 June [477-479].

21 Finally, it came to light before Mr Benjamin started giving evidence that he had kept a work diary in which some of the events that concerned us were addressed. Arrangements were made for that to be inspected and the relevant pages, albeit in two tranches, were identified and added by agreement [480-486].

22 As to the application for a witness order this related to Mr Phil Heap, who the claimant asserted was a relevant witness, who was unwilling to give evidence given he still worked for Aston Martin. We were told he would not attend without a witness order being issued. We were told a statement had been taken from him but not exchanged and so the witness order was opposed on the basis of the prejudice caused to the respondents. An issue arises concerning the claimant and all his witnesses referring to Mr Heap as Mr Leap and the input of Mr Heap into that statement.

23 So that that the respondents could identify the relevance of what Mr Heap intended to say and to avoid being taken by surprise they should be given a draft of his witness statement. Three versions were provided; an initial one prepared prior to the trial, a second prepared during the trial and a third approved version. A marked up version showing all three sets of changes was provided.

24 Having given the usual warnings we determined Mr Heap would not attend without the witness order, his evidence was relevant, outweighed any prejudice caused to the respondents and as to the issue of the content and how it came about we could only decide what weight, if any, to give to his evidence having heard from him so we concluded it was in the interests of justice for him to be called. A witness order was accordingly issued and he gave evidence.

25 Mr Heap told us he saw the first version of his statement in May 2021 when witness statements were exchanged and had spoken to the claimant prior to that being produced but had not spoken to Mr Singh (from the claimant's solicitors) until the third version had been produced.

26 As will become apparent the claimant has suffered from very poor mental health for some time. We checked with Ms Crew and his legal advisor Mr Singh that he has received signposting to mental health support services and is accessing the same. We are grateful to the sympathetic way all counsel addressed the claimant (and all the other witnesses) and should note that Ms Crew expressed her appreciation on the claimant's behalf for the way that was conducted and the regular breaks the claimant and all the witnesses were given. That said, having given evidence the claimant's attendance was excused (other than where was necessary for him to give instructions) because he found that giving evidence had brought up matters again for him.

The evidence

27 Due to the Covid pandemic one of the panel could only attend remotely and so the hearing commenced as a hybrid. Given the numbers of representatives (counsel and solicitors) and witnesses we canvassed if anyone had objection to the hearing being conducted remotely thereafter. No objections were raised and the hearing proceeded in that way.

28 By virtue of the matters we relay above by the conclusion of the hearing we had before us a bundle that ran to 486 numbered pages. We are extremely grateful to the representatives of Aston Martin for preparing a bundle where the electronic and hard copy pagination of the bundle married.

29 The following witnesses provided witness statements the initial and number in brackets indicates the party calling that witness :-

29.1 **Mr Dharminder Kalirai [DK],** the Claimant. Mr Kalirai provided

29.1.1 **a** witness statement (17 pages) which incorporated and adopted the details of claim [15-36] attached to his claim form ("ET1") [3-14] ,

29.1.2 **a** supplemental witness statement (13 pages) which incorporated and adopted his further and better particulars of 8 September 2020 [103-106],

29.1.3 an impact statement, and

29.1.4 a Witness Statement about difficulties accessing his medical records (4 pages).

Mr Kalirai was known as "Pete" by some of his colleagues. We will refer to him as the claimant to avoid confusion arising because amongst other matter he called his brother as a witness.

29.2 **Mr Jagroop Kalirai (C) [JK],** the claimant's brother, who was employed at Gaydon as an agency worker by Hamton before later being employed by Aston Martin.

29.3 Mr Stuart Mason (C) [SM] – an Aston Martin Build Technician and former colleague of the claimant.

29.4 Mr Jamie Robinson (C) [JR] - an Aston Martin Build Technician and former colleague of the claimant. He describes himself as Black-Caribbean [¶17].

29.5 Mr Thomas Collins (C) [TC] an Aston Martin Build Technician and former colleague of the claimant.

29.6 **Mr Phil Heap (C) [PH]** an Aston Martin Build Technician and former colleague of the claimant who was the subject of the witness order we refer to above.

29.7 Mr Adam Rowe (C) [AR], an Aston Martin Build Technician, and former colleague of the claimant.

29.8 Mr Andy Wassell (R1) [Wassell – *his initials are the same as Mr Wood***],** Hamton's Regional Manager. He also provided a supplementary witness statement.

29.9 Mr Denzil Benjamin (R1) [DB], Hamton's production staff manager, from September 2018 until he too was made redundant on or about 11 December 2020. He was permanently based at Gaydon.

29.10 **Mr Neal Stribbling (R2) [NS],** an Aston Martin Group Leader and a line manager of the claimant from the start of the claimant's engagement until production line changes in May/June 2019.

29.11 **Mr Sam Jones (R2) [SJ],** an Aston Martin Lead Technician, who on a day to day basis was the claimant's immediate supervisor from May/June 2019 until the claimant's engagement was terminated.

29.12 **Mr Dominic Terrell (R2) [DT],** a Senior Production Manager with Aston Martin. He provided a supplementary witness statement in addition to his original witness statement.

29.13 **Mr Alan Wood (R2) [Wood]**– an Aston Martin Group Leader and a line manager of the claimant from May/June 2019 until the claimant's engagement was terminated.

29.14 **Mr Trevor Howarth (R2) [TH]** an Ergonomist who was employed by Aston Martin from 22 July 2019. He too provided a supplementary witness statement in addition to his original witness statement.

30 Whilst witness statements were also provided for the following witnesses, by virtue of this hearing being limited to liability only and their evidence relating to remedy, they were not called. We will give such weight to their evidence as we deem appropriate:-

30.1 **Mrs Amandip Kalirai (C),** the claimant's wife, to which were exhibited a umber of attachments,

30.2 **Mr Chris Blundell (C),** one of the claimant's colleagues at one of his former places of work, and

30.3 **Mr Thomas Davies (C)** an Aston Martin employee, who worked in a different section the claimant.

31 In addition we were provided with a chronology, reading list, a list of issues that went through several iterations, written opening and closings from all three parties, the latter were expanded upon orally. Mr Jupp also provided at the request of the Tribunal and the agreement of the other parties a supplemental closing submission addressing matters the panel raised with him.

OUR FINDINGS

Our findings below are made on the balance of probabilities from the information before us. We have limited them to matters relevant to the issues we need to determine.

32 On 28 September 2017 the claimant made an application for employment [125 – 133] with Hamton as a production support operative at Gaydon. Each member of staff from whom we heard that was asked, told us this was seen as a necessary precursor to the offer of a permanent role from Aston Martin.

33 One of the witnesses who confirmed that was so to us was the Claimant's brother, Jagroop. He started working at Gaydon, in October 2017, initially as a worker placed by Hamton and effective September 2018, one who was later directly employed by Aston Martin. He told us his offer of a permanent contract was "in record time" having been offered this after only 8 months or so and this commenced just short of a year after he started working there. He and the other witness suggested this normally took a couple of years.

34 Mr Jagroop Kalirai's employment with Aston Martin ended on 30 August 2020. It is alleged that was on grounds of redundancy although he is pursuing an Employment Tribunal claim in his own right.

35 The claimant's role was that of a technician. He remained in that role until his dismissal of which he received written notice on 3 October 2019. Although the last day he attended Gaydon was Monday 30 September 2019.

36 Both respondents say that Hamton supplied the services of the Claimant temporarily to Aston Martin as a production operative at Gaydon [134, 135 ¶1, 4.1 & 5.1] and that the claimant remained an employee of Hamton whilst undertaking production tasks for Aston Martin. The claimant's contract provided that he was required to comply with Aston Martin's rules [135 ¶4.3] and his hours of work would be set by Aston Martin from time to time [135 ¶6.1]. The contract referred to Hamton's non contractual disciplinary and grievance procedures [138 ¶12]. Whilst the claimant disputes that he was provided with the latter that was before us [116-122]. The claimant's contract could be terminated by Hamton giving one week more than statutory notice, without notice for gross misconduct or by the claimant giving one week's notice [139 ¶13 & 14].

37 The witnesses before us all essentially told us that Aston Martin was responsible for the day to day work allocation of the staff supplied by Hamton and where the Hamton workers worked. We were told and it did not appear to be disputed that holidays had to be approved by Aston Martin before being requested and processed by Hamton and that Hamton also administered their pay.

38 In the event the claimant could not attend work on a given day he was required by Hamton to inform it, 1 hour before the start of his shift [138 ¶11.1]. We were also shown a card [207] giving contact numbers for Aston Martin's Lead Technicians (the claimant's immediate supervisor) and his Group Leader, that indicated Aston Martin required contact be made within 30 minutes of the start of shift by telephone.

39 We find that disparity between what happened in practice at Aston Martin and the Hamton contractual position was most likely to allow Hamton to arrange alternative cover for Hamton's other clients at their sites and that given Aston Martin employed staff to cover absences and holidays etc (for instance Mr Heap (see below)) Aston Martin's requirement was for its employees to report within 30 minutes of the start time (which in turn reflected in part that the first half hour of each shift were taken up by a staff briefing).

The claimant's role

40 Over the period of the matters that concern us there were initially two production lines at Gaydon, one manufacturing a Lagonda and the other, the DB11 [AW¶20]. Prior to the end of May 2019 the claimant worked night shifts. Thereafter Aston Martin ceased to operate a two shift system and instead its work was reorganised into a single day shift.

41 Throughout his engagement the claimant worked on the part of the DB11 assembly line known as 'trim and final' (or sometimes finish) ('*T&F*') and was managed day to day by an Aston Martin Lead Technician and a Group Leader. When he worked days, his Lead Technician (immediate supervisor) was Mr Sam Jones and his Group Leader, Mr Alan Wood. Mr Jones was initially employed by Aston Martin as a technician in 2016 and held his current role for 3 years at the time of the matters that concern us. Mr Wood joined Aston Martin Ltd in November 2004 and has been a Group Leader for more than three years. He remains employed by Aston Martin at its Gaydon site on its T&F 1 assembly area.

Complaints

42 The claimant's details of complaint [19 [ET1¶25]] identify that his claim concerns the injuries he alleges he suffered that arose from his role which involved fitting certain harnesses (see (48)) ***"… and the connected detriments suffered by the Claimant from the specified Respondents and his dismissal as a result of raising these acute and chronic health and safety concerns."***

43 The alleged injuries are detailed thus:-

> ***"[ET1¶] 36. During the course of this aforesaid work in this employment, the Claimant developed serious mounting acute and chronic injuries to his body over time. This was due to the volume. intensity and nature of the Work concerning the tilting of the wire harnesses. The injuries comprised:***
>
> > ***a) Chronic back. chest, shoulder, neck and leg strain***
> >
> > ***b) Damaged hand muscles and continued shaking hands clue to repetitive strain caused by work***
> >
> > ***c) Sever[e] bruising to arms***
> >
> > ***d) Cuts and skin torn on fingers (hand)***
>
> ***37. This has left the Claimant In constant physical pain due to the multiple Injuries show. which have worsened with the continuous same work. He has been forced to take pain-killers constantly to ameliorate the pain."***

44 The claimant alleges those complaints concerned:-

> ***60. … the nature of the work, which was repetitive and injurious and straining on the body. It caused me mental stress as well, due to the pain, injuries and the constant pressure to keep doing the painful and injurious work within the allocated time span of 24 minutes per car frame.***

45 Aston Martin's Senior Production Manager was Mr Dominic Terrell. He joined Aston Martin in January 2001 as an Interior Trim build technician before working across many

different Aston Martin production areas and progressing through the tiers of supervision to his current role in 2012. He has been the T&F assembly Manager for 8 years.

46 Mr Denzil Benjamin was Hamton's production staff manager. He was permanently based at Gaydon and responsible for overseeing the Hamton's operatives who worked there. He filled that role from about September 2018 (9 months after the claimant had been engaged) until Mr Benjamin was made redundant on 11 December 2020. Mr Benjamin told us his role mainly involved the recruitment and payroll of individuals Hamton supplied to Aston Martin [DB¶1]. A colleague of Mr Benjamin's was responsible for the non-production operatives Hamton provided.

47 Mr Benjamin reported to Mr Andy Wassell, Hamton's Regional Manager who was responsible for customer liaison and ensuring its services ran smoothly across a number of sites (Gaydon was the biggest of the sites for which he was responsible, the others were in the south east). He told us he spent most of his time at Gaydon. He remains employed by Hamton.

48 The production line was made up of a number of workstations each assigned various tasks to fulfil. The Claimant role when he worked on night shifts included fitting "sills" and "harnesses" (a "harness" is a collection of different wires which constitutes part of the vehicle's wiring system) to the car body. The harness would arrive in a "bag" and the role of the claimant was to install the harness into the vehicle, manoeuvre the various wires that made up the harness into the car. The time allocated to undertake those assignments (the "*TAKT*" time) was 44 minutes.

49 Aston Martin moved production to the single day shift in about May 2019. Thereafter the workstation at which the claimant worked (3040) was near the start of the production line. Two technicians were assigned to the claimant's work station, the claimant on one side of the production line (3040/2) and a colleague, Mr Lawrence Brown, on the other (3040/1). The *TAKT* for the workstation for the claimant (and Mr Brown) following his move to the day shift was 24 minutes.

50 It was not in dispute that Aston Martin wanted the production line to keep moving without delays and there was pressure on all staff to ensure they kept to *TAKT* time.

51 No job specification setting out what the Claimant's role precisely entailed at any point was before us. Various ergonomic assessments (see (57)) were before us which implicitly set out elements but not all of the role. In his details of complaint the claimant alleged on day shifts he was given three harnesses to fit [18 [ET1/¶21-22]]. Elsewhere the claimant asserted he was required to fit four [#1¶42, 45, 69 & 70 #2¶77 (that reference also mentioned sills and hence whilst that may have been a reference to his night shift role given it referred to a TAKT time of 24 minutes that applied during the day shift, something the following paragraph also referenced)].

52 It was not in dispute the claimant's role was a physically demanding. Mr Benjamin told us [¶4] that fitting the harness is considered to be one of the harder tasks on the production line but no-one other than the claimant had complained to Hamton about that task. He told us some of the operatives were bigger physically than the claimant, some were physically smaller, that they have been of different racial and ethnic origins but all were able to undertake the work and maintain the speed of the line.

53 A final matter we need to address by way of background is that following the move to the day shift the claimant' working hours were 0630 to 1530 with two ¼ hour 'tea' breaks and ½ hour for lunch. At the start of each shift there was a morning briefing conducted by the claimant's Group Leader and Lead Technician (Alan Wood and Sam Jones).

Events pre May 2019

54 It is not in dispute that the claimant suffered an injury around February 2018 and was off work for a considerable period. His brother [¶8] told us he suffered a football injury in February 2018 and had to have around five weeks off work. Mr Stribbling told us [¶4] that he and the claimant both worked nights in 2018/19 and the claimant had had 5 weeks off in total but they were two weeks on either side of a shutdown. The claimant's GP records [373 following] show he went to see his GP for an 'ankle sprain' on 28 March 2018 at (207).

55 The claimant told us [¶16] that was a serious injury and it led to him being on sick leave for 5 weeks. He also stated that he provided his GP sick note to both Aston Martin and Hamton's representative at Gaydon, Mr Benjamin. Mr Benjamin told us he did not start working for Hamton until September 2018 so the claimant could not have handed the sick note to him.

56 Whilst clearly an injury that lasted for 5 weeks could be viewed as a serious one, we find that the claimant was mistaken when he alleged he handed it to Mr Benjamin. That reflects what became a common theme in the claimant's account, his making assertions that were incorrect and/or him providing in oral evidence a different account. We address those issues together with the lack of detail of dates and what was said, who to and when and that the claimant gave and what we found were the inconsistencies across his account as to those matters the documents and/or the witnesses at (402) below.

Ergonomics

57 Mr Howarth told us Ergonomics is a specialism which relates to "... ***the interface between humans and machine in the working environment"*** and so far as concerned us an Ergonomist's role included the provision of assessments of ***"...Technicians' working environments, facilities, tooling, and postures, and manual handling undertaken during the process of vehicle manufacture".***

58 Mr Howarth told us the form of ergonomic assessment undertaken by Aston Martin was in the form of a *"Sue Rodgers Muscle Fatigue Analysis"* and this assessed the combined effect of multiple processes according to force used, posture, duration, and frequency, for multiple zones of the operator's body. He told us that assessment was used across all production areas and the scorings used a Red/Amber/Green rating to reflect the severity of the assessment; green meaning there were no issues, amber meaning improvements could be made if feasible, and red that improvement action must be taken.

59 Neither the claimant nor respondents were able to provide job specifications identifying the nature of the work that the claimant was required to do at the material times. In the absence of that detail we set out in the table below a summary of the three ergonomic assessments that were before us that related to the claimant's workstation 3040/2. Mr Howarth told us that because of the limitations of the ergonomic assessment form, only the 3 most problematic areas that were identified in the reports:-

Date:	21/09/18	23/09/19	24/10/19
Bundle ref.	[146-148]	[184-187]	[203-206]
Harnesses:	Cabin	Cabin	Cabin and wheel arch *(although Mr Howarth this reference to wheel arch was different to the Wheel arch harness mentioned on 23/09/19 because the wheel arch mentioned here was merely an extension of cabin harness)*

	ICE	Wheel arch	toe board
	Header rail	boot	footwell

60 We concluded therefore that those assessments without more could only give a partial view at best. As a further indicator that caution should be exercised with regard to the weight to be attached to them was the ambiguity highlighted before us over the descriptions applied to the various harnesses. However in our judgment those assessments identify that it was clear changes were made to the claimant's role over time.

61 The first of the ergonomics assessments that were before us was undertaken on 21 September 2018 (before Mr Howarth was appointed) by Mr Joshua Fox, an undergraduate ergonomist who was on a one year industrial placement with Aston Martin. He worked under the supervision of Ms Phoebe Richards, Aston Martin's Chartered Ergonomist at the time.

62 The claimant alleges he only obtained the ergonomics report of 21 September 2018 [146-148] as a result of a subject access request [DK#1¶113].

63 Ms Richards left Aston Martin in March 2019. Her replacement was Mr Trevor Howarth joined Aston Martin on 22 July 2019. The gap between Ms Richards' departure and his arrival we were told was solely to recruitment time frames and was filled by Mr Fox who left the last working day (19 July) before Mr Howarth's arrival.

64 Mr Howarth said this about his first involvement [#1¶6]

> ***"6. Between starting work with Aston Martin on 22nd July 2019 and carrying out the ergonomic assessment on 9th September 2019, I had no knowledge of any previous ergonomic issues associated with Dharminder's work. The handover email I received relevant to that workstation, from my predecessor Joshua Fox (sent on 19 July 2019), stated that there were no process content changes on station 3040, so no immediate re-assessment was required, until it fell due on an annual basis in September. …"***

65 The handover email referred to had minimal content. Mr Howarth explained that was probably due to factors outside Mr Fox's control. That aside he told us Mr Fox was a competent and well respected and his work was supported and reviewed by Ms Richards.

66 Mr Howarth went on to accept :-

> ***"[#1¶6] … I was also aware that the position of the heater cabinet could be improved, and also the amount of heat getting into each harness could be improved. These were then picked up in the September 2019 assessment and subsequent changes. On their own they did not warrant a re-assessment. These were not related to any individual technician having difficulties. I have also seen emails between Alan Wood (Group Leader) and Joshua on 14 June in relation to ergonomic assessments that were required. This is at pages 309 - 312 of the bundle and shows that Dharminder's station did not need a new review at that time.***
>
> ***7. I am aware that there had been ergonomic concerns raised in October 2018 (see powerpoint at page 323) and a cabin harness heater had been put in place. A recommendation had been made in relation to job rotation to be implemented by April 2019. This was set as an amber concern. Both people involved in this have left Aston Martin and I don't know when that recommendation was made as I was not employed by Aston Martin at the time. I was not aware of this recommendation and it was not something that was handed over to me to do and it was not on the ergonomic assessment for the station."***

67 For context it was explained to us that harnesses were "soaked" in a heater cabinet to increase their flexibility and their ease of fitting into the shell of the vehicle.

68 Rotation is where the technicians switched between two or more roles over a given interval (for examples two individuals swapping the tasks they did every hour etc.). Mr Howarth explained to us that administration difficulties aside (that is those difficulties relating to ensuring two people who were trained on both roles could be rotated, for example concerning rostering, holiday and absence cover) rotation was generally seen as a last resort because it was considered better to move the process away from a technician than to rotate because rotation on its own did not ***eliminate or reduce the severity of the risk or eliminate exposure to it***, it simply ***reduced*** the exposure to the risk.

69 Mr Howarth [#1¶8] told us that Mr Fox's 21 September 2018 assessment identified that the severity rating on each muscle group on each of the tasks involved in the process fell between either Low (2 – 3) or Moderate (4 – 6). None of the tasks were rated as High (7 – 8) or Very High (9).

70 As stated in [#1¶6] Mr Howarth told us that absent major changes with the tasks undertaken on the workstation or issues arising, assessment were undertaken annually. The next assessment was therefore due in September 2019.

71 The powerpoint document [323] ('the *PowerPoint')* Mr Howarth referred to at [#1¶7] (see (66)) was not a full ergonomic assessment and was undated. Mr Howarth told us that he attended monthly health and safety committee meetings at which ergonomic issues were raised. Using our industrial relations experience we conclude that the *PowerPoint* was a slide that had been prepared for such a meeting (or similarly for the benefit of management) to summarise what were considered to be ergonomic issues of concern.

72 The *PowerPoint* identified against a date raised of October 2018 an issue concerning the claimant's work station 3040/1 & 3040/2 relating to the cabin harness. The problem identified was that the technician was ***"required to manipulate the cabin harness around various fixings throughout the whole car. Knees bent, twisting of the back and neck as well as difficulty manipulating the thick harness with hands and fingers."***

73 The ergonomic/engineering process or tooling improvement that was identified as being required to resolve this was ***"Cabin harness heater implemented (both lines) issue with heater temperature-temperature reduced resulting in harness that warming to correct temperature to be easily manipulated. CME to complete the study of optimum temperature due to less plastic casing of harness.***" The containment identified was ***"Rotation plan to be agreed to reduce technicians exposure-this will improve all stations on trim line 1.***"

74 Responsibility for the task was assigned to CME/production and its status marked "***wk 17***". Given some status issues were identified as ongoing and for others a week was identified we take from that that the week marked was identified as the day that job had been or was planned to be resolved. Aston Martin used a calendar year week numbering system so week 17 equated to the end of April as the date it was (intended it be) resolved.

75 We acknowledge using industrial relations experience that sometimes such reports are prepared prospectively and some retrospectively. Given it was headed ***"March Priority Red & High Amber Processes"***, that Mr Howarth told us health and safety committee meetings took place monthly, in the column *"Date Raised"* the first of the matters where that field was completed was marked January 2018, the last March 2019 and the resolution planned for week 17 namely the end of April we conclude s on balance it was prepared in April 2019.

76 Whilst the September 2018 ergonomics report [146] was not a document prepared by Mr Howarth, he accepted the severity was initially graded as high amber. He pointed out to us that the process the technician was required to undertake could have been completely different to that at the time of the events that concern us. He also told us the *PowerPoint* referred to the original ergonomic severity of the process being graded as amber and the ergonomic severity post implementation (scheduled for the end of April 2019) as yellow. (that is moderate, not high).

77 The three harnesses identified in the September 2018 ergonomics report were

77.1 *Cabin,*

77.2 *ICE,* and

77.3 *Header rail.*

78 We return to the September and October 2019 assessments and an assessment the claimant alleges was undertaken in June 2019 in due course.

79 In addition to telling us he attended Health & Safety committee meetings Mr Howarth told us he was a member of Aston Martin's Health And Safety committee. This was not led directly as evidence within his witness statement but in our judgment has a bearing upon the claimant's ability to raise health and safety matters at least from September 2019 onwards when he spoke to Mr Howarth.

The claimant's alleged complaints

80 The claimant told us at various points in his *details of complaint* and his witness statements [see for e.g. #1¶54] that he had been complaining, verbally to his Group Leaders, Mr Stribbling, Mr Wood and Mr Terrell whenever they came round on their 'line walks' to his section (see (96)), that he was experiencing a lot of problems and getting bruising and injuries to his hands and body. In cross examination he confirmed that another of the managers concerned was Gary Poole. In his claim form [21 [ET1¶42]] he mentioned having done so to Mr Stribbling and Mr Wood.

81 The claimant stated he started making those complaints around March 2018 [DK#1¶ 71].

82 Mr Wood told us he and Mr Stribbling alternated one week on and one week off nights as the claimant's Group Leader prior to the production line changes in the early summer of 2019. Based on the evidence we heard we find after those changes Mr Stribbling ceased to be one of the claimant's Group Leaders (see also (85)) . Given the dates Mr Stribbling was one of his managers that places those alleged complaints to when the claimant worked nights.

83 Mr Robinson told us [¶25] that in addition to the claimant telling him that he suffered a lot of injuries because of this work, speaking to him about a lot of pain in his arms, back and shoulders and that he had to constantly take pain-killers to suppress the pain, he saw that the claimant's hands were always shaking, and the skin on the claimant's hands was scraped and torn.

84 Mr Stribbling was asked if he had been made aware of any concerns about the claimant or his workstation and he did not recall any concerns. He also told us he was not aware of and had not seen the *PowerPoint*. In his witness statement [¶7] he stated that it was unusual for a Technician to raise concerns about their working processes, but when that happened the usual practice was to ask for an ergonomic assessment of the workstation to be carried out to identify any risks and to recommend changes to the role or method of

working. He gave an example in his current area where that had happened and job rotation had been adopted.

85 At [#1¶57] the claimant stated he continued to raise his concerns and complaints to the Group Leaders and they kept ignoring them. That appeared to be a reference back to [#1¶54] where he named the Group Leaders as Neil Stribbling, Alan Wood and Dominic Terrell. At [#1¶66] the claimant stated that over 2018 and 2019 he continued to express his concerns and complaints, to the same Group Leaders but made clear Mr Stribbling had left some months into 2019.

86 Later in his first witness statement [#1¶80] the claimant again told us he repeated those complaints on 30 or 31 May 2019, when he told Alan Wood and Dominic Terrell, about the enduring problems repeating what he had said before, and that the company was breaking health and safety laws by leaving him exposed to injuries and danger from his work and that that finally caused them to think and do something[#1¶81]. He stated that soon after, in June 2019, a young male individual from the ergonomics department came over to my work-station to do an 'assessment' as a result [DK#1¶81 & 116].

87 In his claim form [25 [ET1¶65]] he alleged he reported his concerns about this severely unsafe working conditions intermittently to ***"... his Aston Martin Group Leader (namely Alan Wood), Dom Terrell (Production Manager) and Denzil Benjamin (Hamton Production Manager on site at the Gaydon factory) and showed them his injuries, such as the bruising on his arms and his swollen hands and torn and scarred skin on his finger tips. [and] mentioned his chronic back pain and neck pain."***

88 In [ET1¶66] the claimant alleged he reported those same matters in a lengthy conversation on one of the final shifts that month to '*the same three above individuals'* and he stated that was on the second to last or last day of the night shift in the month of May 2019 and specifically that was on Thursday or Friday 30 or 31 May.

89 At [ET1¶67] he asserted that when Mr Terrell was doing a 'line walk' as ***"we were about to move over to the day shift"*** he told Mr Terrell in a conversation lasting a couple of minutes that he was suffering bruising to his arms, damage to his hands, the work was too much, harmful and injurious to him and causing a great deal oi physical strain and injury to him.

90 Aston Martin accept that following the production line changes we address next the claimant raised with them bruising to his arms but issues arise as to whom the complaints were made to and when.

The production line changes in early Summer 2019

91 Mr Terrell told us that following a change in production such as that which occurred in Spring 2019, the practice was that the first few hours of the first shift after the change (that is prior to the mid morning tea break) was non production time to allow workers to acquaint themselves with any changes to their roles (to include any technical and health and safety requirements). He stated production line workers did so using the screens that were on their workstations ("*EASE*" screens). He also explained that to allow the workers acquaint themselves with their new roles and to identify any teething problems the production line would run at 50% for the first week, 75% for the second week and only at 100% in the third week.

92 We find it surprising that none of Aston Martin's witness gave any detail surrounding the dates of the change in production lines or the matters we relay at (91 & 96) and it was only in oral evidence that it became apparent that the production changes were implemented on Monday 3 June, following a works shutdown at Gaydon between Monday 27 and Friday 31 May 2019.

93 As that only became apparent after the claimant had given evidence and conflicts with the claimant's account that he made what he alleged amounted to a protected disclosure on the second to last or last day of the night shift in May and specifically that was on Thursday or Friday 30 or 31 May Miss Crew sought to suggest, upon instructions, it must have been during one of the night shifts before the claimant moved over to day shifts that the protected disclosure conversation occurred.

94 The difficulty with that proposition is that it is at odds with what the claimant alleged in his subsequent grievance of 30 September 2019 [191] where the claimant said this:-

> ***"In May 2019 when the current Line Balance was implemented within 3 days I spoke Dom (Production Manager) less to face in order to formally whistle blow regarding the last that my Process was injurious to my physical wellbeing. I told him the following:***
>
> > ***- I had already suffered severe & chronic bruising & swelling to my upper arms on both sides. which was causing the chronic muscular a joint pains, as Well as chronic back pain.***
> >
> > ***- It was impossible to collect. warm. prep & fit the cabin harness within the TAK time. as well as fitting 2 other harnesses. as part of my overall process which also included other tasks.***
> >
> > ***- That my injuries would get worse if my process was not changed immediately to made much lighter.***
>
> ***I recently broke down twice and let the building as l was so emotional. On one occasion I planned not to come back. I have been altered no counselling or any type of therapeutic, emotional or physical support, despite all the above.***
>
> ***Dom and Alan my GL have been fully aware of all at the above and privy to all of the above.***
>
> ***My grievance is that despite the above and various opportunities both before and after to relieve me or assist me, or support me. no such assistance whatsoever was afforded me proactively.***
>
> ***Neither have any elements of my process been passed onto other technicians & neither were occupational health sent to see me until I contacted them myself recently. Therefore it is my assertion that Aston Martin have knowingly and willingly allowed and then continued to allow me to carry out employment duties that were and are injurious to my health."***

95 The claimant alleges his complaint in May 2019 was amongst other matters a protected disclosure. The claimant's grievance of 30 September [191] (see (304)) made no mention of his complaint in May 2019 being to Mr Benjamin and instead he only mentioned Mr Terrell. During his oral evidence the claimant accepted he had not made the first protected disclosure and health and safety concern to Mr Benjamin in May 2019. . By the conclusion of the hearing it was therefore accepted on behalf of the claimant that the first protected disclosure was not been made to Hamton.

96 Mr Terrell also told us following production line changes it was his practice to carry out two walks of the production line ('*line walks*') with the relevant group leader (here Mr Wood). The first was to identify any problems, and delegate them so they could be addressed. The second, to check that the issues had been resolved [#1¶10].

97 Both the claimant and Mr Robinson corroborated this. Mr Robinson told us [¶26-27] that Mr Wood and Mr Terrell chatted to individual technicians, to check how things were working and if there were any problems. He said he saw that the claimant spoke to them

a number of times, (4-5 times) over 2018 and 2019. Mr Robinson did not say if he heard what had been said.

98 As we say above (89) the claimant also accepted that the line walks occurred and during them Mr Terrell asked staff about any issues they had.

99 Mr Terrell [#1¶10-12] accepted that during one of those line walks with Mr Wood in or around late May/early June the claimant approached him to raise some concerns. He accepted the claimant showed him some bruising on his arms which the claimant said was due to the cable harness fitting process and that the claimant had said he had wrist ache. Mr Terrell stated the claimant did not show him any injuries to his back, chest, shoulder, neck, leg, or cuts to his arms and nor did the claimant raise any concerns about completing his man assignment in the *TAKT* time.

100 Mr Terrell maintained in cross examination that bruising and wrist ache were the only two things raised by the claimant and that the claimant had not raised he was suffering injuries from carrying out process or as he alleged before us that he was grossly over worked at that time.

101 Those matters aside Aston Martin deny the words the Claimant said he used were said and/or that amounted to a protected disclosure being made.

102 Mr Terrell told us [#1¶11-12] that he agreed to look into the claimant's concern. Having discussed this with Mr Jones and Mr Wood he decided to make an adjustment to the harness role to fit a cushion padded 'seal extrusion' (referred to as a *'slave seal'*) to the car body. This was a piece of soft rubber to protect the claimant's arm in order to prevent any further bruising or soreness. He states Mr Jones assisted with this.

103 Mr Terrell said that on his second line walk a week later, he checked that the claimant was happy, the claimant said he had no further issues, and that Mr Wood looked into the use of a wax bath to help alleviate soreness to his wrists. A wax bath apparently provides a deep penetrating heat soak of the muscles to aid relaxation and stress in the muscles and is a tool widely promoted by Aston Martin's ergonomics department (see (270) following and our discussion about the claimant's concerns about their use at (281-282)).

104 In a subsequent chronology of events set out in Mr Terrell's email to Mr Benjamin of 1 October [193] Mr Terrell dates the claimant's complaint about his wrists to Thursday 5 June.

105 Mr Jones [¶7-9] told us in around May or June 2019 the claimant had spoken to Mr Terrell about bruising to his arms which came from reaching through the cable harnesses. He said the claimant had shown him the bruising on his arms and told him that his hands hurt but the claimant did not tell him about any injuries elsewhere. He said he gave the claimant a protective Kevlar sleeve which would help protect his arm.

106 Mr Jones stated the claimant did not complain to him about any further bruising or issues or any specific health and safety concerns about the claimant's role until September 2019 although the claimant subsequently told him he stopped using the Kevlar sleeve because this made his job harder and he had gone back to using the rubber seal he already had as it worked fine and gave him more room to work.

107 There is thus a disparity between Mr Jones' account and that of Mr Terrell as to when use of the *'slave seal'* was adopted; Mr Jones' account suggested that was used earlier than Mr Terrell by virtue of the claimant reverting to it rather than using the Kevlar glove which Mr Jones dates to the outcome of the line walk.

108 In addition to the omission of any detail of the production line changes and when these were (see (92)), there are disparities/questions raised as to the wider accounts of both Mr Jones (see (151 & 152)) and Mr Terrell that we address below (see for example (309, 315 & 317)).

109 Mr Jones also accepted the claimant did complain to him at times about the job saying things like ***'this job is killing me'*** (which he dated to around September 2019) although Mr Jones also stated that he heard complaints on a daily basis from technicians and he did not think that complaint form the claimant was more than the usual type of complaints he heard from technicians. He said there was nothing specific said that gave him concerns about the claimant's health and safety or ability to do the role.

110 Mr Wood's account of those matters was this:-

> ***"11. In around May or June 2019, I recall that Dharminder told Dominic Terrell … that he had bruising on his arms caused when fitting a harness. Dominic looked into this and provided a length of rubber seal to fit onto the car's body to prevent his arm from rubbing on it - which he accepted. Dharminder did not make any complaints about this afterwards. Dharminder did also say that he had sore wrists. I recall that he was told to use a wax bath (which was in Trim shop area). This is a 'bath' using warm wax which helps soothe discomfort. Again I did not hear any further concerns from Dharminder as to the role. At this time I checked the Ergonomic report in place which had set the role with a status of 'amber' and these issues weren't part of it".***

111 On 7 June [475] Mr Wood emailed Mr Fox asking Mr Fox him to clarify if he was planning to undertake ergonomic assessments following the line balance. Mr Fox responded that day stating he was, but not for another week.

112 On 13 June [474] Mr Wood [¶12] stated he had placed a workstation that required an ergonomics assessment on his Problem and Counter Measure ("PCM") board (an electronic screen where everyone can add an issue which needs fixing) to flag that further ergonomic assessments may be needed [310]. He told us that technicians were encouraged to populate the PCM board with any issues they might have.

113 On 14 June Mr Wood provided to Mr Fox a list of work stations that required an ergonomics assessment [474]. Mr Wood told us [¶12] that whilst there were a number of ergonomic reviews that were needed following the line balance the claimant's workstation was not one of them and referred us to [309-313]. That list was not before us.

114 We find on balance that did relate to the claimant's workstation because on Friday 14 June at 14:21 Mr Terrell emailed Mr Fox [473] to say the claimant had highlighted ***"… an ergo concern on his station and a potential problem he may incur.".*** That view is further supported by Mr Fox's reply and his reference to Alan whom we take to be Mr Wood, having raised a concern at an 'ergo' meeting on the Friday (which we take to mean the 14th) within it (see (126)). Mr Terrell asked Mr Fox to prioritise that as urgent and copied that to Mr Wood and another colleague, Jack Broadhurst.

115 We find that amongst others, Mr Wood and Mr Terrell were therefore aware of the claimant raising that concern on or about 14 June. However we find the evidence we heard does not on balance support the claimant's suggestion that he spoke to Mr Wood and Mr Terrell about the issue on Thursday 30 or Friday 31 May as he alleges as it became apparent during the evidence that was when Gaydon was on shutdown. As we state above, we find it surprising that point had not been identified earlier by the respondents but given it was not substantively challenged we accept that was so.

116 Whilst the claimant sought to suggest once the dates of the shutdown became clear that he had raised concerns before the shutdown we find that he would not have become aware

of the precise nature of the changes to his role until the first morning when he was asked to review the new processes on his *EASE* screen. His change of stance when that occurred and the claimant's acceptance that he was wrong when he asserted that Mr Benjamin had been present, all lead us to conclude that we should give little weight to the claimant's recollection of those events.

117 That conclusion also leads us to question the claimant's account of what he told Mr Wood and Mr Terrell and is reinforced by the differing version of the accounts the claimant gives and the vagueness of those accounts (see below).

118 Amongst other matters the claimant alleges in support of his assertion that a protected disclosure was made in May to Aston Martin staff (and of the detriments that follow from it) was that a formal ergonomic assessment was carried out by Aston Martin staff, that the result supported his assertions about the conditions he was working under and calls into doubt the respondents' (and in particular) Aston Martin's version of events. In particular he alleges that disclosure late on by Aston Martin supports his account.

119 Mr Wood was cross examined on the late disclosure of the email chain [472-476], whether an ergonomic assessment was carried out in June 2019 and if rotation was put in place for the claimant.

120 Mr Wood told us that as soon as Aston Martin came across the email chain [472-476] it was disclosed, but it had not been identified previously.

121 Mr Wood stated [¶12] that another ergonomic assessment was not done for the claimant's workstation but that he recalled speaking to Mr Fox about moving the processes around and he had advised about use of the wax bath.

122 Mr Wood agreed a rotation plan was not implemented but told us instead that was discussed and it was agreed that rather than put multiple technicians at risk it was decided it was better to spread the workload out to ensure they were all safe.

123 Mr Wood also accepted there was nothing to suggest there was any follow up between June and September 2019.

124 We address whether a formal ergonomic assessment was undertaken in June 2019 at (162-167). That aside we find that by his email of Friday 14 June Mr Terrell asked Mr Fox to review an ergonomics concern about the claimant's workstation.

125 We set out at (402) our rationale why no weight should be given to the claimant's account where unsupported elsewhere. Having considered the evidence in the round in our judgment the claimant's complaint in May to Mr Terrell was that his working was causing him bruising. Our concerns about the disparities between the accounts of Mr Terrell and Mr Jones aside (107-108) the claimant's September grievance, and the account of Mr Jones support that (see (105)).

126 Mr Fox replied to Mr Terrell's email of Friday 14 June (see (114)) on Monday 17th June at 09:13 [472] as follows:-

> ***"I'm down in St Athan today, will pop down tomorrow morning. I believe Alan mentioned the issue on Friday in an ergo meeting regarding the tech having to get into various awkward body positions? Due to the nature of this problem being difficult to find a short term solution, I would recommend getting a form of rotation plan in place fairly swiftly to reduce the impact the station is having on the tech.***
>
> ***If the tech is struggling with hand pain I would also send them to the wax bath in the trim shop to and relieve symptoms."***

127 Thus, whilst Mr Fox suggested rotation, namely that the claimant's role be alternated with that of a colleague, he did so before he had visited the claimant's workstation to investigate the matters at hand. Later on 17 June [336] Mr Terrell provided an update to colleagues on the status of his line walks. That update [328] was colour coded (Red was unresolved, Amber was partially resolved with some finesse required and Green closed). It recorded with green against the claimant's workstation ***"Wrist band / slave seal process to protect arm"***. That appears to have been reference to the fact that the *'slave seal'* (see (102)) was to be used to protect the claimant's arm against the rough edges of the vehicle shell.

128 Within the email Mr Terrell thus implicitly accepted that issues remained and that he intended to re-walk the areas on his return from holiday, at which point he would provide an update.

129 Despite that colour coding we find that at the time of Mr Terrell's report on 17 June the issue with the claimant's workstation could not have been resolved because Mr Fox had not visited the claimant's station, as Mr Fox's email of 17 June [472] indicated he was intending to do that until the morning of 18 June (see (126)). Our view that the issue with the claimant's workstation could not have been resolved by 17 June is further reinforced because at 09:13 on 20 June Mr Jones emailed Phil Quinn (an MBO – the Aston Martin team that generated man assignments – the work the technicians were tasked with undertaking) copying in Mr Wood to say ***"Morning [P]hil when you get some time today could you come down to DB11 trim one to discuss station 3030 and 3040 it is problem area at the min and I feel it may be in a large part due to the lay out of the man assi[gn]ments."***

130 We were told that changes to man assignments required multidisciplinary involvement (see (190)), hence Mr Quinn's involvement and thus usually took some time to achieve as they had knock on effects on the production line. We find Mr Quinn's involvement indicated changes to the content of the claimant's role was considered as being required.

131 At 13:18 that day Mr Jones also emailed Mr Quinn

> ***"The reason this is urgent is:***
>
> ***This process has been highlighted as an economic concern and the tech has complained of repetitive strain.***
>
> ***We have had cover from a pilot tech to start a rotation plan which has failed as the tech is unable to complete the process within takt.***
>
> ***Sam and I have identified a potential way of aiding this process which we could do with your support with.***
>
> ***Currently my absence cover is covering absence so I am struggling to help with training."***

132 The pilot tech as we say above was Mr Rowe.

133 On Monday 24 June at 14:00 [477] Mr Wood emailed Mr Quinn and Mr Fox copying in Mr Jones, Mr Terrell and another colleague:-

> ***"Quinny / Josh***
>
> ***Sam has had a look at the man assignments within this area and we are struggling with a solution.***
>
> ***So far we have tried using Adam Rowe to cover so we can train the tech on a new process so he rotate however Adam was unable to hold the process to takt.***
>
> ***My absence cover is still covering absence so I am unable to use him.***

It is quite clear this tech is in some discomfort so I feel we need to look at other options.

Have you guys got any suggestions?

I know after the summer shutdown we are looking to move the helitape processes which will give something to play with but short term I am struggling with both ergonomics and work content."

134 Three minutes after Mr Wood's email Mr Quinn responded [477]

"Hi Alan

Will pop down ASAP to support.

Did work with Sam on Friday and he asked me to print off MA [man assignments] for him to review- will follow up today.

Quinny"

135 The absence cover referred to by Mr Wood was as we say above Mr Heap.

136 The claimant's position on this issue [26 [ET1¶73-74]] is that that the outcome of that ergonomics assessment was that an ergonomics report was produced, that was withheld from him, and that he was to be rotated every 2 days; but that was not done and that the failure to do so was detrimental treatment due to him raising health and safety concerns/ protected disclosures at the end of May 2019.

137 Instead of rotation being implemented the claimant alleges [26 [ET1¶75-76]] as a short-term attempt to deal with his work problems two white colleagues, namely Adam Rowe and "Phil Leap" were asked to undertake his role.

138 The claimant accepted [¶86 & 88-90] Mr Heap (not Leap) was an 'absence cover / floater' and that Mr Heap was brought in to learn cable harness fitting from him one Friday in June 2019. He alleges that when Mr Heap found the work physically too much Mr Rowe, who was experience in cable harness fitting, was called in to assist Mr Heap.

139 The claimant asserts that while both were experienced in the work that the Claimant was doing they both found the ***"work too intense and wholly undoable",*** told Mr Wood that it was physically harmful and impossible to do and required at least two persons to the job that the Claimant was doing on his own. The claimant says that after doing the work for a day or so Mr Rowe told Mr Wood that ***"Pete's [the claimant's] process is slavery, I don't understand how he's coping."*** In contrast a few paragraphs later [#1¶91] he stated he was told in June 2019, that he was going to be rotated with Tom Collins, on a 2-day on, and 2-day off basis and that was confirmed on the PCM board.

140 The claimant also argues [ET1/39-40, 77, 111 & 129-132] that after Mr Heap and Mr Rowe (who he states were both white) complained about the demands of the claimant's role to managers, they were not required to carry on doing the work and moved to other less onerous roles, whereas the Claimant and another non-white colleague were required to continue doing so. That was the basis for the claimant's belief the treatment he received was connected to his race.

141 We sought to identify where the claimant had raised any allegation of race discrimination prior to the claim being presented, the claimant having made no mention of race discrimination or any similar complaint in his subsequent grievance of 30 September and we sought to explore with the claimant how Mr Benjamin would be aware that there was a racial element to the claim without the claimant stating that. The claimant told us that was because he wanted to sit down and explain what happened so the truth came out. He wanted answers but did not wish to throw accusations around until his grievance had been

addressed. He stated he was not going to call anyone a racist without a basis for that. We took from his answers that would have become apparent from Mr Benjamin's investigation.

142 Mr Robinson worked on the next workstation on to production line following the claimant's. He describes himself as Black-Caribbean. When he was asked why he did not raise concerns concerning his treatment on racial grounds Mr Robinson told us that as an agency worker he did not feel comfortable to raise concerns because he did not have a (permanent) contract.

143 We return to the claimants complaints as to his treatment on racial grounds in due course (542 following).

144 Two inconsistencies arise from the claimant's account:-

144.1 The claimant told us at certain points he did not have time to check his EASE screen or the various notice boards as to what his role entailed, yet here he states he was aware of at least the PCM board's contents. Further if as he states the claimant never read any notice boards or his EASE screens he was deliberately ignoring relevant (safety) information and acting in breach of his duties for the years and a half he worked at Gaydon.

144.2 The claimant suggests at one point that Mr Heap and Mr Rowe were to learn his role yet (and when they complained they were moved) yet he accepted they were there temporarily and Mr Collins and he were to rotate.

The rotation issue.

145 Mr Robinson told us [¶37-39] that two technicians (again "Phil Leap" and Andrew Rowe) were brought in to do cable harness fitting for a particular day in June 2019 and were both exhausted and drained by the work. He said they did not come back even though the claimant's working pattern was supposed to have been changed to a 2-days on and 2-days off rotation and the claimant continued as before. He does not say who told him the rotation was to be put in place.

146 Mr Mason also told us [¶16] that he had been told about the rotation of the claimant by the claimant in June 2019.

147 Mr Collins told us [¶8-13] that in June 2019, he was told that he would be doing a 2-day on and 2-day off rotation with the claimant by Mr Wood and Mr Terrell but that never happened and he carried on working as before. He told us he remembered that "Phil Leap" was brought in for a day in June 2019, to learn the work from the claimant and Mr Rowe assisted "Phil Leap".

148 We refer above to "Phil Leap" as such, because the respondents make a point that throughout their witness statements the claimant's witnesses referred to Mr Heap as "Mr Leap" and their failure to correct that error suggests not only that they gave little scrutiny to their witness statements but that their witness statements did not represent their own accounts but instead had been prepared for them. The respondents argue that the acknowledgements by Mr Heap and Mr Mason that their witness statements were presented to them prior to them being spoken to by the claimant's representatives supports that. The respondents therefore argue that little weight should be given to the witness statements of the claimant's witnesses. We address this below (203-206).

149 All the parties before us appeared to accept that Mr Heap was a 'floater', whose role was to cover absent staff. Further that following the removal of the night shift Mr Rowe moved

to be a technician on Aston's Martin prototype (pilot) team and that he was brought in so the claimant could learn rotation.

150 Mr Heap [¶32] told us that he and Mr Wood had told the claimant that Mr Collins had been chosen to rotate with the claimant on his workstation. Mr Heap told us he undertook the claimant's role one Friday in June 2019, but both he [¶34] and Mr Rowe [¶40] felt the claimant's role was too much for them to do. Mr Rowe also confirmed that the claimant's role was too demanding [¶5, 7 & 9].

151 In his witness statement Mr Jones told us that before the claimant started undertaking his new role following the line changes [¶4] that Mr Rowe and Mr Heap were providing training to the claimant on fitting the cable harness. Mr Jones stated elsewhere that he understood (although he did not state how) that the claimant [¶6] had raised a concern during his training about the demands of the role and his ability to carry this out and that as a result part of the role had been moved to the neighbouring station.

152 When the email exchange with Mr Fox was raised with him Mr Jones accepted that he had incorrectly referred to training and instead provided a different account, namely, Mr Heap covered for the 'claimant while he was training on the other role but that in order to check if the tasks that the claimant was expected do could be done in the *TAKT* time Mr Rowe was asked to trial the claimant's job as Mr Rowe had undertaken harness fitting for some years and was seen internally as an expert on it.

153 Mr Jones told us that when it became apparent that Mr Rowe could not do the claimant's job in the *TAKT time* it was decided to remove the forward harness from the claimant's role and instead pass that to Mr Robinson. The rationale for that was the forward harness was the heavier harness. Mr Jones told us the other harnesses that formed part of the claimant's role, the cabin and antenna harnesses (as he described them) were retained.

154 Mr Robinson accepted that the front harness was moved to him from the claimant's workstation. He said that had been given to the claimant by mistake.

155 Mr Heap told us he too had suggested that the claimant's role should be split between different stations.

156 Mr Jones was asked why no mention of that had been made in his statement and why the rotation suggested by Mr Fox had not been put into place. He told us that rather than rotate the technicians and cause each stress to each for 2 days, the better approach was to review the job. Mr Howarth repeated the principle that underlay that view explaining from an ergonomic perspective rotation did not remove the stresses that the role placed upon individual(s) but instead spread that between two individuals. Instead, the preferred solution was to address the content of the role. Additionally, Mr Howarth gave detail of some of the practical issues at play with rotation. For example it meant other individuals needed to be trained to undertake a job and that created issues when holidays or absences arose. Thus, for those reasons Mr Howarth suggested that rotation was only to be used if no other alternative could be found. That was supported by Mr Heap.

157 Having reviewed the evidence we heard that following Mr Fox's suggestion it was planned that Mr Collins and the claimant would rotate their roles. We find that Mr Heap was a *'floater'* who was brought in to cover the claimant's workstation while the claimant learned new tasks to facilitate his role being rotated. We find it was not intended Mr Heap would take over from the claimant and work permanently at the claimant's workstation. We find the plan to rotate the claimant was revisited when Mr Heap and Mr Rowe, a technician who was experienced fitting harnesses could not undertake the claimant's role in the *TAKT* time.

158 We find as the emails at the time demonstrate, that was because it was concluded that the issue was one that rotation could not solve. We find that instead it was decided that the claimant's role needed to be changed and one of the harnesses from the claimant's station should be moved to Mr Robinson's workstation. As a result the plan to rotate the claimant's role with that of Mr Collins was abandoned and that change having been made the claimant continued in his existing, albeit revised role, at the same workstation.

159 Whilst his change of account casts doubt upon the weight we should give to Mr Jones's evidence on that issue, Mr Jones' revised account of what did occur is supported by what Mr Heap, Mr Rowe, Mr Robinson, Mr Howarth (see (67)) and also in part, the claimant, told us. The issue of his change of account aside Mr Jones was a highly credible witness who for the reasons we give below (219-222) was genuinely concerned for the claimant's welfare and was someone whom the claimant thought (and continues to think) highly of.

160 We heard no evidence from any of the witnesses that the change of plan not to rotate the claimant and Mr Collins was communicated to the claimant (or Mr Collins) and that was not done. Mr Howarth told us orally it was unusual to explain proposals to the technicians on the line until at least a solution had been identified and agreed, as expectations would be raised. Rotation having been mentioned to the claimant, he considered that to be a final decision whereas that was not the case for the reasons we give above.

161 We accept as a result of the rotation plan the claimant ***"felt very happy and uplifted" [***DK #1¶83] "***This gave me some hope***." [DK #1¶85] and that when it was not actioned ***"This failure, caused me to sink into a deep mental despondency and depression."*** [DK#1¶95] and ***"I turned to drinking alcohol excessively."*** [DK #1¶96]

Was a formal ergonomics assessment was undertaken in June 2019?

162 Mr Howarth [¶9] told us that Aston Martin could not locate any evidence of a formal ergonomic assessment having been carried out between September 2018 and the one he carried out in September 2019. He accepted some issues were raised in October 2018. We find based on the limited evidence available to us that on balance these emanated from the September 2018 assessment.

163 Mr Howarth told us whether what Mr Fox did in June 2019 was an 'assessment' depended on how one termed an assessment. He said that he went to the production line every day but not all his visits lead to formal reports; but neither did Mr Fox attending and observing but no report emanating mean no action was taken.

164 We find that Mr Fox had been involved in observing and assessing from an ergonomics perspective the content of the claimant's role in June 2019 and as a result of his involvement the claimant's role was changed to move the front harness from his workstation to another.

165 We find that an issue having arisen and a change having been made should both have been formally recorded. No record of either was made. That is not satisfactory. Why that was so is alluded to by Mr Howarth's explanation that the handover to him was not ideal because in our view it emanated from Mr Fox, an undergraduate student on a placement, being asked to cover a role for several months on his own and without the appropriate supervision.

166 Nor was a record made that an issue was outstanding. We find that was because Aston Martin felt the issue had been resolved by the removal of a harness from the claimant's role.

167 Contrary to the claimant's assertion we find a formal ergonomic assessment was not carried out in June 2019 and thus a formal ergonomic assessment not having been done its results could not have been withheld from the claimant as he alleged. That aside the respondent did not share with the claimant the results of the "informal assessment" that was carried out by Mr Fox as embodied in the email chain we saw.

Agency staff reduction

168 Mr Wassell told us in broad terms there were 50-60 production staff and two dozen janitorial staff provided to Aston Martin at Gaydon by Hamton in or about summer 2019.

169 We address below (390-392 & 398-401) the changes to staff supplied by Hamton thereafter.

170 The claimant accepted in oral evidence that by Summer 2019 he had been made aware by Mr Terrell that redundancies were afoot and he asked Mr Terrell for a reference in the event he was let go. In his claim form he also said [21-22 [ET1¶43]] ***"During one of these intermittent conversations with Denzil Benjamin and Andy Wassell … Denzil discretely and privately responded to the Claimant: "I hear that from a lot of staff. I don't understand why Aston Martin are pushing staff so much seeing as [they are] cutting production in October. * Do we have a data for this comment - in 2019?"*** It appears that the date that occurred was intended to be completed by the claimant but no date was inserted.

171 That aside the claimant did not dispute when asked if he knew early in September 2019 (that is a couple of weeks before he lodged his grievance) he knew he was going to be redundant, instead he merely reminded us that all his whistleblowing was before that.

172 On 6 September 2019 Mr Wood emailed Mr Terrell a series of contractor scores [314]. The sheet attached [315] related to 10 staff. Mr Wood told us they related to *T&F* section one. A wider scoring chart relating to all contractors [331] was also before us.

173 In brief the way those scoring charts read was that low scores meant an individual was more likely to be retained. The highest possible score was 60 (12 categories each of which were scored 1-5).

174 The claimant along with several others scored 48. Of the 49 or so staff identified [331] fourteen were marked in green which indicated they were retained. Accordingly, approximately 35 were to be released.

175 The highest score for a retained member of staff on that sheet was 40. There were approximately nine members of staff who scored between 41 and 47 (inclusive), that is to say they had a lower score than below the claimant but were not retained.

176 Mr Benjamin's diary for Saturday 7 September indicated that Darren Ostler [483] one of Aston Martin's production line managers had told certain Hamton operatives that 10 to 15 technicians would be retained and that the rest would go. That entry was for what was ordinarily a non-working day. The adjacent diary page for the 6th is partially complete but by no means full such that Mr Benjamin's note of the 7th could not have represented a carry forward from the previous day's note. Notwithstanding that, given the other evidence in support we accept that that was an accurate note indicating the state of the technicians knowledge at that time.

177 On balance the evidence before us led us to conclude that:-

177.1 there were to be reductions of the number of contractors required at Gaydon (hence the reference to "redundancies"), that the claimant was one of the Hamton staff whose assignment was to be terminated and that there were at least 9 other

staff who ranked higher than him in terms of the scores they achieved and thus likelihood of retention who were not retained.

177.2 that the selection process had been or at least was in the process of being carried out by Saturday 7 September; a view that was reinforced by Mr Benjamin's diary for 11 September [484] which included a note ***"Phil Cooper's number & send a copy of letter I send out to employees about contracts terminated",***

The events of August/early September

178 The claimant alleges that in or around August/September 2019 he asked for a copy of the ergonomics report he asserts was undertaken in May or June by Mr Fox from Mr Howarth.

179 Mr Howarth's witness statement [#1¶29] and an email he sent on 7 October to Andy Barnett, Aston Martin's Manufacturing Director [316-317] (see (182)) suggest that the claimant's request for a copy of the previous report occurred on or around Thursday 26 September. We address that at (269 following).

180 The claimant alleges Mr Howarth responded

> ***"80. …. 'I have to choose my words carefully as a new assessment has been done on your process. The report done in May has been archived and we are therefore unable to give it to you.'***
>
> ***81. The Claimant responded: "is this due to company policy or some kind of law, or have Aston Martin ' chosen not to give me the report." '***
>
> ***82. Trevor responded: "Aston Martin have chosen not to give you the report." He added that: "your case has bypassed the production manager and everybody else and has gone straight to second in charge." From his tone and language. he was trying to explain to the Claimant that, the work health and safety matter was too serious to be openly shared with him and the senior levels of the company wanted to, keep it away from him."***

181 As result the claimant states [ET1¶53 & 84] that he broke down on 11 and 23 September 2019 in full view of colleagues. We return to that in a moment (see (199)).

182 Mr Howarth told us [#1¶30] that his email of 7 October 2019 [316-317] arose from a request for details of Mr Howarth's involvement with the claimant by Andy Barnett, Aston Martin's Manufacturing Director via his own manager. Mr Howarth's email of 7 October [316-317] refers to having a discussion with the claimant on 11 September that his witness statement omits any reference to. We address that at (209) following.

183 Those points aside on Monday 9 September 2019 Mr Howarth emailed Mr Wood and Mr Gareth Hughes (another Group Leader (Wood ¶15, Howarth #1¶13 & claimant #1¶118)) [168-169] about the claimant's station. ***"I was on line 1 today, and I noticed the cabin harness tech is having difficulty fitting the harness due to it's stiffness. He wears wrist straps and is reporting pain in his wrists due to the effort / forces involved."***

184 An ergonomic assessment emanated from that visit. Both the date of the assessment and why the assessment was carried out were in dispute. We address when the assessment was undertaken at (239). As to the reason it was undertaken Mr Howarth states it arose because an annual assessment was due; the previous assessment having been done in September 2018. The claimant asserts, and it was put to Mr Howarth that it was done because he called Mr Howarth over because of the problems he was encountering. That is partially odds with the claimant's contentions elsewhere that he did not know who to raise health and safety concerns to (it transpired from Mr Howarth's oral evidence, although Mr Howarth did not expressly state this in his witness statement, that Mr Howarth was a health and safety representative).

185 Given the September 2018 ergonomic assessment of the claimant's workstation was due for review by 21 September 2019 and the 2019 ergonomic assessment was released a day or two after the review date, we conclude that irrespective of how the claimant perceived this, on balance, the September 2019 assessment was done by Mr Howarth as part of Aston Martin's annual assessment review process and that was the reason he was on the production line the day he met the claimant.

186 Returning again to Mr Howarth's email of 9 September [168-169] Mr Howarth made several suggestions to make the harness more flexible and reduce the difficulty for the technician including a higher temperature setting on the harness heater box and/or a longer soak time for the harness. To facilitate those suggestions in the email Mr Howarth also queried if a heater box he had noticed that was not in use on another production line could be moved to the claimant's production line so the soak time could be doubled (by the two harness heaters working in parallel). Mr Howarth also suggested that the cabin harness technician (the claimant) was rotated and he trial using a wax bath at the start and end of each shift although Mr Howarth did not say that he suggested using the wax bath to the claimant during his line visit on 9 September 2019.

187 Whilst Mr Howarth did not mention this in his email of 9 September, in his witness statement [#1¶11] he stated :-

187.1 the claimant's role fitting the cabin harness required a large amount of time to be spent kneeling or crouching inside the vehicle cabin, and he recommended that a kneeling mat was provided, and

187.2 that DC tooling was used, and that a torque calculation was required to be completed/shown for the station.

188 Within that witness statement Mr Howarth stated that the rotation suggested in his email should be undertaken so that no technician did this process for more than 50% of their time.

189 Mr Wood responded to Mr Howarth's email early the next day (10 September) [172] stating it would be worth asking the manual engineering team and subject to approval by Simon [Coffin] and Gabriella [Melichian] agreeing with the course suggested by Mr Howarth. Ms Melichian was one of Aston Martin's Senior Manufacturing Engineers.

190 Three hours later Mr Howarth emailed Gabriela Melichian copying in Mr Wood, Mr Gareth Hughes and Mr Simon Coffin. Mr Howarth asked for Ms Melichian's help concerning the harness on the claimant's station copying her in on an earlier email (although that was not attached to the email before us).

191 Mr Howarth stated that he would be carrying out an annual ergonomic review for the station and would have to score it red for two reasons:-

191.1 The manual handling of the harness bag from the storage rack into and out of the heater box and then into the car, and

191.2 the repetitive nature and force required to route and secure the harness.

Mr Howarth proposed solutions to both issues.

192 As to the former problem he suggested some form of a mechanised assistance be provided for lifting and moving the harness bags, that the heater box be moved to minimise manual handling and access around the heater box be improved (which in turn might remove the need for the mechanised assistance).

193 As to the latter he repeated his suggestion about softening the harness and redeploying the heater from the other line but also asked that the temperature be reviewed and for the deployment of 1 or 2 wax baths.

194 Mr Wood [¶26] told us that as part of the ergonomic review it was noticed that the claimant at times was working out of station and when he was stopped from doing so the station was taking too long to complete (*'overcycling'*). On 10 September Mr Wood emailed Mr Darren McClelland (from Aston Martin's MBO team) to look at the timings for the workstation and mentioned there was an ergonomic issue with the station.

195 The workstation was timed on 25 September and the claimant was found to be working within the *TAKT* time [338-341] (although we should add that *TAKT* time was subsequently increased from 24 to 29 minutes as part of a subsequent line balance (see (267))).

196 Ms Melichian responded to Mr Howarth just before the end of that working day (10 September) saying a discussion had taken place on 9 September and that a quotation would be sought for a mechanical assistance to move the harness bag and/or to adjust the height of the bottom of the heater cabinet to reduce the lift required. She asked Mr Wood to make a rota for the job so that different technicians should be rotated every week. She also indicated that it had been agreed to move the heater box, recommended a thermostat temperature, stated that both heater cabinets should be used and that Mr Howard's suggestion to deploy 1 or 2 wax baths was a good idea.

11 September 2019 onwards

197 A series of emails on the 11 & 12 September show that arrangements were being made so a second harness heater unit could be accommodated on the production line [174-177]. Those emails and subsequent events (see (225)) lead us to conclude that Aston Martin were actioning Mr Howarth's suggestions.

198 The claimant in his witness statement complains when discussing the emails of 9-12 September [168-177] at [¶133] of his witness statement that ***"At no point, on or around these email dates], was I spoken to and informed of any changes. … breaking down on 11th September 2019 and 23rd September 2019 – totally unaware of the above mentioned email communications going on about me."*** We return to this at (248).

199 The claimant states [ET1¶53 & 84] that he broke down on 11 and 23 September 2019 in full view of colleagues. His *details of complaint* continued :-

> ***"87. … When he broke down for the first time on 11th September 2019, he started crying and told Sam Jones: 'I've had fucking enough. [They're] killing me.'***
>
> ***88. Sam Jones. Jamie Robinson and Lawrence Brown witnessed this.***
>
> ***89. The Claimant attempted suicide at home on the night at 11th September 2019.***
>
> ***90. The Claimant collected his belongings and went to his car on that occasion to go home. The Claimant had walked out. under the snow-balling pressure of the elbow dangerous and injuries conditions. After an absence of 20-minutes. however; the Claimant returned to work. the same day, as he was too concerned about losing his job and the financial impact this would have on his family."***

200 We return to the incident on 23 September 2019 at (233) but as to the allegation concerning 11 September 2019 Mr Robinson stated [¶41-43] that during the day-shift on 11 September he saw the claimant "break-down" whilst working on his work-station. He stated the claimant started crying, stopped working, left the work area and went away to the car park, with the intention of going home but instead of doing so returned after

around 15-20 minutes, and resumed his work. Mr Robinson continued by saying the claimant had clearly had enough of the strain and distress of the work, he spoke to the claimant who was feeling fed up and the claimant spoke of the pain in his body. Mr Robinson did not state how he came to the view the claimant intended to go home; that is whether that was an assumption by him or the claimant had told him of that.

201 Mr Mason told us [¶17] that he remembered the claimant breaking-down twice in September 2019, when he started crying but he could not remember the exact dates.

202 Mr Heap [¶55] told us ***"I remember on one occasion in September 2019, when he sent me a text message, stating that he had taken an overdose. I believe a copy of this at page 209 of the bundle of documents."***

203 The document at [209] is a WhatsApp message from Mr Heap with to the claimant. Following scrutiny of the content of that message (a discussion about Liverpool FC, which they both supported) the parties agreed it was created around 30 January 2020 (this was reference to comments within it). That reinforces our view (see (148)) that Mr Heap who told us his statement had been initially prepared by the claimant's representatives prior to speaking to him about it, gave little scrutiny to his witness statement. That may be explained by his desire to play no part in this hearing (as is suggested by the need for the witness order) but that also applies to several of the claimant's witnesses who referred to Mr Heap as Mr Leap despite some of those witnesses having working with him for some time.

204 Mr Heap and Mr Mason told us they had spoken only to the claimant not his representatives before the first draft of their witness statements were prepared (see (148)). Some of the claimant's witnesses also give evidence that conflicts with that of the claimant (see for example (145-150)). Having heard from those witnesses and viewing those disparities and errors in the round we conclude that those witnesses did not intend to be inaccurate but rather that they applied little scrutiny to their witness statements.

205 Further for the most part the claimant's witnesses were unable to give any precise detail about crucial events such as the dates the claimant raised the first Health & Safety complaints, protected disclosure or specifically what was said in either. Whilst Mr Mason referred to a discussion with Mr Terrell where he suggested using the *'slave seal'* [¶15] he made no reference to what was said to Messrs Benjamin, Wood and Terrell on the 30 September instead addressing what the claimant said to the team [¶18-21 & 25]. Mr Rowe [¶25], Mr Heap [¶45 & 57-58] and Mr Robinson [¶26] similarly gave little detail.

206 For the reasons given in (203-205), save where supported elsewhere we give the claimant's witnesses' accounts little weight.

207 Whilst Mr Benjamin made no mention of this in his witness statement, Mr Benjamin's diary [485] suggests he had a discussion with the claimant on or about 11 September about the effects the claimant was finding the job he was doing was having on him physically (see (249.1)). In his witness statement [¶12] Mr Benjamin stated the claimant had not raised with him that he had attempted suicide on 11 September.

208 The absence of any reference in the albeit limited medical records provided [373 following] casts further doubt on the claimant's account that on 11 September he tried to take his own life. The records we had before us identify two instances where the claimant had had contact with health professionals; on 30 September 2019 where the entry is for 'stress at work' and 1 October 2019 for 'drugs overdose' and 'seen by psychologist'. Prior to them the next record we could locate is 'ankle sprain' on 28 March 2018.

209 In his subsequent email of 7 October [316/317] recounting his involvement in matters Mr Howarth stated that he had spoken to the claimant on 11 September about the ergonomic issues with his process explaining that several actions were being taken to make improvements, and also recommended he use the wax hand bath in the trim shop.

210 Mr Howarth recorded in that email that the claimant said he had tried the wax bath some time ago, but only got temporary relief from it, so hadn't used it since. Mr Howarth explained that he stressed the importance to the claimant to keep using it regularly, as the benefits would increase the longer he did so. He went on to record that Mr Wood agreed that the claimant could use the wax bath at the start and/or end of each shift and that he (Mr Howarth had recommended that *T&F* production should consider purchasing a second wax bath to use across both *T&F* lines, as there were other technicians reporting similar pains in their hand and wrists.

211 Mr Howarth made no mention of that discussion taking place on 11 September in his witness statement. Instead at [#1¶28] he stated that discussion took place on or around [Thursday] 26 September 2019 and relays those events in almost identical terms to the way he records them as having occurred on 11 September in his 7 October email.

212 Mr Jones told us:-

> ***"20. Whilst working with Dharminder l was aware that he at times found the role hard. I would support him when he needed it and would also talk to him on breaks. At times I did know that he was down but this wasn't specifically work related. Dharminder did not raise specific health and safety concerns to me other than as described in this statement.***
>
> ***21. I recall an incident where l was aware that Dharminder was having a bad day at work. I was aware that Dharminder did sometimes need a bit of support with his role and I would help him. I cannot recall the date of this specific incident. but it was sometime in September. and I remember one day where Dharminder put his tools down and walked off the assembly line. I carried on with his job whilst he was gone. He came back around 20 minutes later. and I asked if he needed me to carry on helping him. but he said that he would be OK and just had a moment. This was the only time I was aware that he had done this. and l was not aware that he had a breakdown or collapsed. If he had done, as it is a busy factory where people work within feet of each other this would have been noticed.***
>
> ***22. From around September onwards Dharminder did talk to me about his mental health and l was under the impression that he had difficulties at home and was also drinking a lot. He would message me in the evenings (I have deleted these messages to clear storage on my telephone). He didn't however discuss specifics at work and I didn't think I needed to raise anything internally as I didn't think that his issues were work related."***

213 Mr Jones made no mention of knowledge of a suicide attempt in his witness statement. It was put to him that the claimant was clearly distressed and crying. He told us he could not say if the claimant was crying because he only saw him leave but accepted the claimant looked distressed. He told us he asked the claimant if he wanted to speak to anyone when he returned but he said no and that he wanted to continue.

214 Mr Jones was also asked by Ms Crew if he saw a change in the claimant over time. Mr Jones told us that having only really known the claimant since June he could not comment on the claimant's demeanour before that but he did notice a change in the claimant towards the end of the period that they worked together. Mr Jones told us that the claimant had spoken to him about it outside work and that he understood that the claimant, as Mr Jones put it, ***"had quite a lot going on outside of work"*** and the claimant was unhappy generally not just

at work. He told us that a lot of the texts that he received from the claimant were sent late at night.

215 Mr Jones to his credit appeared reluctant to expand upon the personal issues that were affecting the claimant at that time insofar as they were personal. Certain conditions the claimant alleges he was suffering from were set out in his schedule of loss [100] and thus Mr Jones was asked to comment upon them. Mr Jones identified that he was aware of two of the conditions the claimant described mainly Sleeplessness and Excessive alcohol consumption but that the claimant had also referenced reduced socialising and sport and leisure activities with family and friends although Mr Jones could not verify that.

216 Of the claimant's witnesses only Mr Heap mentioned the claimant attempting to take his own life. The claimant's brother stated that was not something the claimant had told him about because that was not the nature of the relationship they had and his brother was a very private person. He only became aware the claimant was drinking heavily when the claimant's wife told him later.

217 However, the claimant's witnesses referred to the change the claimant exhibited. Mr Rowe referred to the claimant coming back early from breaks [¶21] so he could get on with his work. Mr Robinson said [¶40] us that he observed the claimant became more and more detached and isolated over the course of 2019, that the claimant stopped engaging with colleagues and no longer spoke to anyone during breaks. Mr Heap told us [¶53] that over time the claimant became distressed and had started to cry on a number of occasions. He said when they were having a cigarette break together he would give him a hug, to support him. Mr Mason told us [¶12] that from 2018 onwards that the claimant had gone from a very happy and jolly member of the team at the start, to a very withdrawn and non-engaging person who had stopped talking and interacting, and during 2019 became more and more closed. Orally he told us not only of the change in the claimant's personality but that he saw the skin was peeling off the claimant's fingers and hands and there were grazes on the claimant's arms. Mr Mason told us both orally and in his witness statement [¶14] that the claimant spoke a number of times to his group leader (Mr Wood) but also to Mr Terrell, about these problems and the claimant was becoming more and more frustrated that nothing was being done to change his work or lessen his work. Mr Mason stated [¶15] that it was during one of those conversations with Mr Terrell that the *'slave seal'* could be used to make the claimant's work less problematic. It was common ground such a suggestion was made [DT#1¶12, SJ¶7&8, Wood¶11] albeit not who this emanated from.

218 Despite Mr Wood in his witness statement referring [¶15] to the email he received on 9 September 2019 from Mr Howarth concerning the problems the claimant was experiencing in fitting the harness, the only other reference to like matters he makes are to the claimant's complaints concerning bruising in June. We address how we find those concerns were dealt with starting at (178) above.

219 The claimant told us orally that Mr Jones was an excellent person and if he had been his manager the events he complained about would not have happened. It was put to Mr Jones by Ms Crew that he had a good relationship with the claimant to which he agreed. The claimant's text messages to Mr Jones [370-371] reinforce that was so:-

> ***"... Sam you['re] a good man and I never had even [one] issue with you. You supported me and that I can never forget, that's why [I] am contacting you bro. You['re] in my case as someone who supported me not only as my LT, but you 'man managed' me and gave me support on the track and even mental support on break. You['re] a friend for life 'not just the Christmas' :):):) ..."***

220 It was suggested to Mr Jones that the claimant continued to raise concerns even after the front harness had been moved from his role. Mr Jones accepted the claimant had complained the job was difficult but told us that was something that he heard on regular basis but that that had been looked into it, reviewed and it had been decided it was doable.

221 Mr Jones also accepted that it was very possible that may have been expressed by the claimant in terms "***this is f…ing killing me"*** because colourful language like that was very often used on the floor.

222 In addition to those texts supporting Mr Jones' assertion that he helped the claimant, the claimant accepted that was so. Further it was put to Mr Jones that the claimant had not been disciplined or dismissed when he left the line. Mr Jones told us that management had not become aware of that because he had covered for the claimant. We took Mr Jones's reply to mean that he did not tell management because he was concerned for the consequences for the claimant if they had discovered this.

223 We find that at least by the time his employment was terminated that the claimant's demeanour had changed but Mr Jones for one had concluded that was because the claimant "had quite a lot going on outside of work" and the claimant was unhappy generally not just at work. We find that the claimant having problems sleeping, an alcohol problem (that not being in dispute) and the late nights texts that Mr Jones received from the claimant all supported the conclusion Mr Jones had come to.

224 We return again to the claimant's GP visits below (524) but with retrospect we find that it was clear that the claimant has suffered significant mental health difficulties. That aside we find that the claimant having asserted that his suicide attempt was in September, some four months before the WhatsApp exchange with Mr Heap in January 2020, that the content of that WhatsApp message exchange with Mr Heap was a retrospective attempt by the claimant (who had already commenced early conciliation by that time) to bolster his case and does him no credit.

225 On 12 September Mr Howarth emailed a number of Aston Martin staff including Mr Jones, Mr Wood, Ms Melichian and Mr Coffin [173] telling them that Mr Wood had undertaken the line side changes to allow the use of the second heater unit, that was scheduled to be moved to the production line the next day, congratulated them all on their good work and stated that he was very pleased with the outcome. He also asked Mr Wood and Mr Terrell to implement rotation of the claimant's role and went on to relay benefits rotation gave to both the technician and the business (which included allowing time for the technician's joints and muscles to rest and recover, the technician to learn other processes (which was good for the technician's knowledge base and skills matrix), improve the technician's morale and retention and that also provided a more flexible workforce giving greater options for absence cover). He continued with a warning ***"As the current tech is experiencing pain in his hand/wrist from the repetitive fitting/routing of the harness, this is a musculoskeletal disorder waiting to happen, with the resulting potential lost time through injury / time off sick, and maybe even a claim against the company. My job is to prevent this happening as much as possible."***

226 The next event sequentially appeared to have occurred on Monday 16 September. Mr Jones told us [¶15] that ***"… Dharminder approached me and showed me a picture of his hand. He had taken this when he had come out of the bath or shower. This showed some damage to his fingers. I advised him to change his gloves to the same that I wear as the normal gloves make my hands sweat. … I also advised him to see his GP."*** These and certain other photos of the claimant were in the bundle [233–238]. That day Mr Jones emailed Aston Martin's occupational health advisor Karen Petherick if it was possible if she could arrange an

appointment for her to see the claimant describing the problems as damaged skin to the claimant's fingers and swelling in his hands and wrists [183].

227 Whilst there was a reference in the bundle to skin surveillance checks being carried out by Aston Martin's occupational health staff and the email concerned (19 June [162]) mentioned the claimant by name that email explicitly stated that no technicians at the time required skin surveillance but that questionnaires needed to be completed for three technicians on what appeared to be a routine respiratory health surveillance review.

228 Mr Rowe [¶23] and Mr Heap [¶47] told us that they and many of the team had noticed, how the claimant's hands were always shaking, and his hands were swollen and bruised and the skin around his fingers was scraped.

229 Ms Petherick responded querying with Mr Wood and Mr Jones if the claimant worked with chemicals. She was told he did not. She responded stating that she was on leave that week but given the claimant didn't work with chemicals she asked Mr Wood if he agreed that it was unlikely to be work-related and suggested (albeit this was phrased as a question) that the claimant saw his own GP. The email also gave her rationale for that approach; namely that there was not a huge amount that she could do as she said the claimant may need a prescription which she could not provide and that he may even need blood tests so that it was definitely a matter for his GP.

230 We were told because the claimant was engaged by Hampton that he was not eligible for the support of Aston Martin's occupational health advisor. Mr Wood put it thus:-

> ***"33. Agency workers would not usually visit AML's Occupational Health (OH) department but in September 2019 our OH nurse, Karen Pickering. was involved in looking at his hands. These emails are at pages 178 - 183. I also spoke to her and told her that we were making changes together with the ergonomics team. Dharminder however did not want to speak to me or Karen about it."***

231 That and Ms Petherick's reply however did not stop Mr Jones pursuing the point so on 19 September that is 3 days after the exchange above Mr Jones responded attaching the photographs [180-181] at 07:29:-

> ***"Morning Karen sorry to bother you whilst your on leave even tho[ugh] he do[esn't] not work with chemicals I would say his all injuries are work related and are a direct result of his day to day work I will send you some pictures of his hand so you can see the skin damage my other concern is I took a look at his hands yesterday (18-9-19) at dinner time and when they are relaxed they tremor quite a lot.***
>
> ***I believe he has seen his doctor and was told the problem was his hand are not having a chance to heal due to his day to day work . I am aware that D[h]arminder is not AML staff and there for dose not fall under your liability but if his work is causing lasting damage I feel it is better for us to act then to"***

232 Taking into account the date of his first email to Ms Petherick, the persistence and way Mr Jones responded to those matters, together with the speed and content of his replies we find that the first time the issue with the skin on the claimant's fingers was raised by the claimant with Mr Jones was on 16 September.

23 September

233 Returning to the claimant's account of events in the details of complaint he raises an issue about 23 September 2019 thus:-

> ***"53. Additionally, the Claimant had broken down in tears on 11th and 23rd Septemb[e]r 2019. in full view of an occupational health representative and two***

health and safety representatives; :and colleagues and the above mentioned two managers.

...

91. He broke down. again. a week later. This was on 23rd September 2019. This was when the Claimant was spoken to by the occupational health representative in the presence of the health and safety representative. This was all witnessed by several colleagues on track 1, and also Alan Wood, the Group Leader.

92. Towards the end of September 2019. the Claimant spoke to his GP. about his continuing work injuries and work conditions and how much he was distressed by it. He broke down in front of his GP in tears, feeling helpless and completely broken. The GP offered to place him on sick leave. But, the Claimant feared that going on sick leave would risk him not being able to gain a full-time contract with Aston Martin. The Claimant decided that sick leave was not a suitable option."

234 Notwithstanding what we were told that Aston Martin occupational health were not technically there to provide support to Hamton workers (230), on 23 September Ms Petherick emailed Mr Jones and Mr Wood to say :-

"I came over to the line today and spoke to Dharminder.

He has seen his GP but there is no medical diagnosis or treatment planned. I checked his fingers and they look much better.

I then spoke with Alan Wood and he has said that he is looking at the job with the Ergonomic team. Dharminder then had the opportunity to chat to us both about his job but he declined."

235 In his witness statement the claimant [¶137-138] stated he did not recall Ms Petherwick and Mr Wood going over to talk him on 23 September 2019. He went on to say that had they done so he would have been anxious and ready to speak to them about his problems.

236 In contrast in his claim form, which he adopted in his witness statement, having stated that he broke down on 23 September [28 [ET1/91]] the claimant continued ***"This was when the claimant was spoken to by the occupational health representative in the presence of the health and safety representative. This was all witnessed by several colleagues on track 1, and also, Alan Wood. the Group Leader."***

237 Mr Heap told us [50-52] that sometime in September 2019 that he filled in for the claimant whilst the claimant was to speak to Ms Petherick from Occupational Health and a female colleague (who he later became aware was a Health & Safety officer). He stated the claimant spoke to them for 5 minutes, became distressed and began to cry before leaving the work area, and going the toilets. He stated the claimant returned to his workstation after some minutes.

238 Given the inconsistent accounts the claimant gives and one of those accounts being at odds with the version provided by Mr Heap and Ms Petherick we find there was a discussion between the claimant and Ms Petherick on 23 September and that Aston Martin were trying to engage with him. Ms Petherick's email indicating that she had looked at the claimant's fingers, identified that he had spoken to his doctor and that no action was being planned but the claimant did not wish to discuss that with her or Mr Wood further is consistent with Mr Heap's account they had a 5 minute discussion. Given the inconsistencies between the claimant and his witnesses and within his own account we accept Ms Petherick's account of events as set out in her email of 23 September.

239 Mr Howarth's ergonomic assessment of the claimant's workstation was also dated 23 September [184-186]. His evidence [¶10] was that he carried out that assessment on the 9 September. He was asked about the apparent inconsistency over dates. He told us that

23 September was the date the report was 'released' (i.e. that it had been approved) for use on Aston Martin's computer system. He acknowledged that that date was potentially misleading given the in situ part of the assessment was done before that, and the report was written up later. He told us that the assessment form has subsequently been revised to address that.

240 The 23 September 2018 report [184-186] gives '***expiry dates***' for the availability of the written process for the task as 25 June 2020 and the written risk assessment as 15 September 2020. Neither document was before us. The report of 21 September 2018 [146-148] gives both those dates as "Sep-19". If they too expired after 12 months, that suggests the written process for the task had been re-written in June 2019 which tallies with both when the line change took place and Mr Fox visited the line. That assumption aside the existence of the old and new expiry dates for the risk assessment the earlier being September 2019 and 15 September 2020 the latter, led us to conclude that the revision if the report was one of the ancillary tasks that needed to be undertaken before the report could be finalised and the new expiry date being a year hence suggested that Mr Howarth or a colleague had undertaken the risk assessment between 9 and 23 September.

241 In contrast if as the claimant implicitly suggests the in situ part of the assessment was not done on 9 September, the claimant does not refer when Mr Howarth returned to undertake that.

242 Those matters collectively being so we conclude that the practical part of the assessment was undertaken on 9 September but that the ergonomic assessment was not finalised until later and not released until 23 September.

243 The ergonomic assessment of 23 September, identified 3 elements of the tasks the claimant undertook - the cabin harness, wheel arch harness and boot harness. The various muscle groups were scored individually against each of those harnesses. Four were assessed as red, one green and the remainder amber (yellow). In his summary Mr Howarth identified the overall status as red, due to high stresses on back and wrists/hand/fingers and he recommended job rotation so that no technician did this process for more than 50% of the time. The target date for remedial action to be undertaken was week 44.

244 Mr Terrell's later email of 1 October [193] (see (327)) recorded that he and Mr Howarth had agreed to commence rotation in a line balance that was due to occur in week 42 (the week commencing Monday 14 October). That was also supported by Mr Benjamin's diary entry made on the 25 September in relation to a conversation with Mr Wood on 24 September (see (249.2)).

245 Mr Jones in his witness statement [¶11] told us he did not read the resulting ergonomic assessment report but was aware of the issues raised and the plan to rectify these concerns. Mr Jones went on to say that the claimant asked him if he could see the report and so Mr Jones referred him to his 'EASE' screen (where the report would be available once as Mr Howarth indicated it had been 'released').

246 Mr Jones went on to acknowledge [¶12] that whilst the assessment recommended a job rotation, that was not implemented because the job was likely to be changed ***"shortly"*** due to a line balance and he helped the claimant with his work whenever that was needed pending the changes to be implemented in the line balance that was scheduled for 14-18 October 2019 (see (266)). The claimant acknowledged that Mr Jones helped him from time to time (see (219-222)) and so we accept that the line balance was pending and that Aston Martin did not implement rotation in late September and instead Mr Jones assisted the claimant when necessary.

247 That aside the other recommendations made by Mr Howarth were implemented as the emails we refer to at (196 & 225 amongst others) and witness evidence shows (e.g. the installation and use of a second heater (see Mr Jones [¶13]).

248 The claimant alleges that neither the report of 23 September nor any its recommendations were ever discussed with him [¶148 & 151]. He makes a similar allegation concerning the changes that were being discussed in the emails of 9-12 September [168-177] (see (198)). We address these matters below at (269-**282**).

24/25 September 2019

249 Mr Benjamin's diary entry for 25 September [485] addresses incidents that it suggests occurred on three separate days:-

249.1 Firstly, an incident two weeks before i.e. around the 11 September, where the claimant had complained he was finding the job too hard on his body. The entry records Mr Benjamin asked the claimant if he had spoken to his Group Leader, Mr Wood and that Mr Benjamin promised he would order some knee pads.

249.2 The diary note then states that Mr Benjamin had spoken to Mr Wood the day before i.e. 24 September referencing what the claimant had raised a fortnight prior and that Mr Wood had told Mr Benjamin there were things in place regarding the process, that after the forthcoming line balance that it would be on a rotational basis and that Mr Wood would order some knee pads, extra fans etc.

249.3 Finally, the note makes a number of entries for the 25 September. Firstly, that the claimant had told Mr Benjamin that he wished to lodge a grievance against Aston Martin, that Mr Benjamin had advised against it as Aston Martin was putting thigs in place to improve the process and finally that Mr Benjamin again spoke to Mr Wood on 25 September who said the claimant had not told Mr Wood about his issues with the job. A note made on the facing page of the diary in the page for 24 September but clearly referring to the note being in relation to 25 September recorded Mr Benjamin had received the grievance forms to give to the claimant but the claimant had lost them so he gave him another grievance form. The diary page for 25 September had been filled up whereas there was space on the page 24 September. Given they were facing pages we find the additional entry for 25 September made on 24 September clearly recorded it related to 25 September. We find that entry suggested the claimant had raised with Mr Benjamin his wish to raise a grievance before 25 September because he had been given and lost the forms by then.

250 In his witness statement that was exchanged before the diary was identified as relevant and located, Mr Benjamin made no reference to the discussion on or about the 11 September but did refer [¶15] to a discussion on 24 September with the claimant about the difficulties the claimant said was experiencing in his work specifically that his knees were hurting. Mr Benjamin stated that he initially spoke to Mr Wassell about getting some knee pads and that he then spoke to Aston Martin and they had agreed to order additional knee pads for the claimant (as Mr Benjamin stated he had been told there were already kneeling pad in place on all relevant workstations).

251 Mr Benjamin's witness statement made no reference to the assurances the diary entry records that Mr Benjamin gave to the claimant about the process changes that were to be put in place following the line balance.

252 Mr Benjamin's witness statement [¶16] went on to state that the following day (25 September) the claimant told Mr Benjamin that he wanted to raise a grievance and that

the claimant had already discussed things with Mr Wood. Mr Benjamin's witness statement relayed that he gave the claimant the grievance forms but then had to pass on further copies of the grievance forms on 27 September because on 26 September, the claimant had told Mr Benjamin that he had lost the first set.

253 The way that is pleaded to by Aston Martin is this

> ***"18 …. At the same time, the First Respondent's representative in the Aston Martin plant, Mr Benjamin, notified Mr Jones that the Claimant wished to raise a grievance against Aston Martin. As grievances tend to be raised only by employees and not agency workers, Mr Wood contacted Aston Martin's Human Resources department for direction and accordingly the Claimant was advised to raise the grievance with his employer, the First Respondent."***

254 Despite that Mr Wood explicitly denied [¶37] having a conversation with the claimant or anyone else about a grievance and expressly stated that the claimant did not mention to him, that he was going to raise a grievance.

255 We find that Mr Benjamin was subsequently asked to provide a note of events, by Mr Terry Vincent, Hamton's Operations Director. We can find no mention of when or how the request for that note came about in the witness statements of Mr Benjamin or Mr Wassell. We return to that at (337, 338 and 348 following).

256 Mr Benjamin's emailed response was sent at 09:46 on 2 October [200]. It records as follows:-

> ***"After speaking with Dharminder he said his knees where hurting, I said I will enquire to see if I can get some knee pads this conversation was on the 24.09.2019, I asked Andy Wassell if we had knee pads, Andy informed me that we had none in stock, I also asked Rob Beresford he said he will have a look to see if he could find some, but we had no joy, so I went back onto the shop floor to ask Alan Wood the group leader for that section, I asked if he had knee pads for Dharminder , he said he was not aware that he wanted some but that he will order some for Dharminder.***
>
> ***25.09.2019 Dharminder had said that he wanted to put in a grievance against AML, when I asked him if he had discussed it with his GL to see if he could help his situation he said that he did discuss it so I went and asked Alan Wood if he spoke with Dharminder he said that Dharminder never mentioned anything to him however he did say that there are things in place to improve that particular process. I then went back to the office to get the grievance forms, and handed them to Dharminder .***
>
> ***26.09.2019 Dharminder asked if he can have another copy of the grievance forms as he had lost them, myself and Andy Wassel felt it was best to go and see Dom Terrell to inform them that Dharminder wanted to put in a Grievance against AML, so before it escalated we wanted to sit down and make sure that we are doing all we can. I handed another copy of the grievance form to Dharminder on the Friday [27 September].***
>
> …"
>
> [The next part of that email is extracted at (293-295)].

257 Messrs Wassell, Benjamin nor Wood make any mention of the discussions between Messrs Benjamin and Wood on 25 September and only Mr Terrell [#1¶42] made any reference to the discussions between Messrs Benjamin, Wassell and Terrell on 26 September.

258 That absence is all the more surprising in Mr Benjamin's case because he mentions in his witness statement the discussions he had with the claimant on 24 & 25 September [¶15 & 16] but not his discussions with Mr Wood on 25 September and Messrs Benjamin, Wassell and Terrell on 26 September.

259 Mr Benjamin was asked about the absence of any mention by him or Mr Wassell of their meetings with the Aston Martin managers. Mr Benjamin explained those meetings took place before the claimant escalated matters and Hamton wanted to ensure they could do everything they could to help. He referred us to Mr Terrell referencing their meeting but did not substantively explain why he personally made no mention of them. Mr Wassell told us orally and in his statement (see 344) the claimant's grievance was a surprise because the only issue that Hamton was aware of was the kneepad request and they thought that had been addressed so when the claimant requested the grievance forms again Mr Wassell wanted to speak to a more senior manager to find out what the grievance was about.

260 Mr Wassell accepted there was no mention of the meeting he had with Mr Terrell in his witness statement but explained that was because it was not a planned meeting and lasted only a few minutes. Again, given its relevance that did not substantively explain why there was no mention of it.

261 The late production of Mr Benjamin's diary further heightens our concerns in that regard (see (264-265)).

262 Given before us the claimant accepted that he did not as originally contended raise a complaint with Mr Benjamin in May/June we find it unsurprising that Mr Benjamin would seek to firstly check with Mr Wood, the claimant's Group Leader, if the claimant had indeed raised issues with him. Having drawn a blank with Mr Wood and the claimant having again spoken to Mr Benjamin on 25 September, again we find it unsurprising that Mr Benjamin spoke to Mr Wassell and they decided to check with Mr Terrell what the position was. Indeed, we would find it remiss if Hampton, who on its case knew nothing about the claimant's concerns, had done nothing to discover why the claimant wanted to raise a grievance, both from the context of their duties to the claimant, but also because of the duties Hamton had arising out of its contractual relationship with their client, Aston Martin.

263 Whilst the claimant suggests that having complained to Mr Benjamin and informed him that he intended to raise a grievance it was suspicious that Hamton's witnesses made no reference to either of the discussions with the Aston Martin managers, it is significant in our view that the claimant gave no detail of the discussions with Mr Benjamin on or about 11 September and those on 24 to 26 September. Nor did he argue those discussions constituted health and safety complaints or protected disclosures. Given he gave no detail of the content of those discussions at best what could be said is that the respondents were aware the claimant was intending to raise a grievance. Whilst it is probable they could anticipate what that grievance was about it given what the claimant had told Mr Benjamin (249.1) and Mr Jones it cannot be said they knew what it was going to refer to.

264 Given the disparities between Mr Benjamin's note of 2 October and the contents of his diary entries we find he did not consult his diary when he prepared the note of 2 October. Those disparities and its late production call into doubt the veracity of the diary.

265 When asked why he had not produced his work diary Mr Benjamin told us he did not think it was relevant because he did not put much in the diary. He then said he had forgotten about his diaries and it was only when he was being asked questions prior to giving evidence that he raised the existence of the diary of his own volition. Given Mr Benjamin had left Hamton's employ and thus it was possible he had forgotten about it, by virtue of it including information adverse to the respondent (including the claimant's intention to lodge a grievance) and its contents being supported elsewhere, we find the diary was a contemporaneous or near contemporaneous record of events and it was only when matters were explored with him prior to trial that he recalled its existence and relevance.

266 The assurances Mr Benjamin's diary records he gave to the claimant on 24 September lead us to conclude that by that date Aston Martin had decided what action it intended to take to address the recommendations of the ergonomic assessment of the day before (23 September) and that whilst it had decided to put in place a rotation policy for the claimant's workstation it only intended to do so after the line balance that was scheduled for 14-18 October (see (392)). In the interim we find Mr Jones was tasked with assisting the claimant.

267 That rotation plan was subsequently reviewed and did not take place. Mr Howarth explained [#1¶27] that as result of discussions, changes were made to the claimant's workstation and that next to it so the amount of hand intensive work on each was reduced compared to previously and the harness routing operations were split roughly 60/40 between them (that is roughly a half of the harness process was removed from the claimant's workstation), rather than having 100% all on one workstation.

268 Mr Howarth acknowledged that this was to be rolled out as part of a bigger exercise, namely the line balance [#1¶28] in which the *TAKT* time was also increased from 24 to 29 minutes. Mr Howarth told us the ergonomic assessment of workstation 3040/2 was reviewed again on 24 October 2019 [203-206] and as a result of the changes the ergonomic assessment severity rating was reduced from red to amber, which was as low as they could reasonably practically achieve at the time.

26 September

269 In his email of 7 October [316/317] and his witness statement Mr Howarth gave slightly different accounts of events on 26 September.

270 In the email Mr Howarth stated the new ergonomic assessment and its red severity status was raised at the T&F monthly Health & Safety committee meeting on 26 September and he attached a PowerPoint of that to the email to which we were not referred. He stated he then checked on the claimant to see if was using the wax bath to provide relief for his hands and wrists. Mr Howarth told us the claimant said that he was not, so Mr Howarth repeated his recommendation that he should keep up with it before then going on to inform the claimant that the new ergonomic assessment was on the EASE system, and that as the severity was increased to red, definite actions were being taken to contain and correct the concerns raised.

271 Mr Howarth also recorded in the email that the claimant asked him if he could provide him with the previous ergonomic assessment document, as his solicitor had asked for it, that he didn't question why (as that was the claimant's private affair), but having consulted with his safety manager, Sophie Huckstep and the production manager, Mr Terrell, both told him that archived (out of date) documents couldn't be provided and it had been superseded by the new assessment available on the EASE system.

272 Mr Terrell did not recall [¶23] discussing that with Mr Howarth but agrees that was the appropriate response and with the rationale.

273 Mr Howarth makes no mention in his witness statement that he told the claimant on 26 September that the new ergonomic assessment was on the EASE system, its severity was increased to red, actions were being taken to contain and correct the concerns and its status was raised at the Trim & Fit monthly Health and Safety committee meeting.

274 In his witness statement [#1¶28] Mr Howarth told us that he did discuss the use of the wax bath with the claimant on or around 26 September 2019, but the claimant reported that he did not get any relief from this. Mr Howarth recorded he advised the claimant to try using this for longer, but the claimant said that he did not want to. Mr Howarth then

told us he explained to the claimant how the wax bath worked, that repeated use of the wax bath over time would provide more relief than the claimant may have experienced just trying it once, that other technicians found it very useful for prevention and relief of pain in their wrists and hands and he had secured the agreement from Mr Wood for him to have time at the start of each shift to use it. Mr Howarth went on to say that he checked on two or three further occasions if the claimant had started using the wax bath and he said he hadn't.

275 The way Mr Howarth explains use of the wax bath in the witness statement suggests that was the first time Mr Howarth spoke to the claimant about the wax bath's benefits. That is at odds with what Mr Howarth said in his email of 7 October about their discussion on 11 September where Mr Howarth stated that he checked on the claimant to see if was using the wax bath, he wasn't, so he "***repeated his recommendation to the claimant that he should keep up with it***" and what Mr Howarth said in the email of 7 October as to one of the reasons for him going to see the claimant on the 26 September namely to check if the claimant was getting any benefit from using the wax bath.

276 Save with respect to Mr Howarth's assertion he checked with the claimant on two or three further occasions about the use of the wax bath his witness statement account of the events of 26 September is relayed in his email of 7 October [316/317] as occurring on 11 September.

277 In his email of 7 October [316/317] and his witness statement [¶29] Mr Howarth told us in similar but not identical terms that on 26 September the claimant asked to be given the previous ergonomic assessment document, as his solicitor had asked for it. We set out above (178 following) how the claimant alleges Mr Howarth came to be asked for a copy of the ergonomic assessment for his workstation.

278 Mr Jones was asked if the claimant had referred to him having instructed solicitors. He told us the claimant had regularly mentioned a solicitor his family used in the context of bringing a claim. He initially told us that was over a 3 to 4 month period. When it was suggested that meant it would have been almost throughout their working relationship he clarified that to say they had started after a month or so and it was a persistent comment. That would date the commencement of those comments to the start of July which equates to a 3 month period but still falls within the 3-4 months he estimated. In his witness statement Mr Jones [¶28] stated he was also aware the claimant was planning to submit a grievance before he did so and they discussed who that should be to. Orally he told us that was discussed on several occasions.

279 Notwithstanding the disparities in Mr Howarth's witness statement and the email of 7 October overall he was a highly believable but also frank and highly credible witness. The claimant for the reasons we summarise at (402) was not a reliable witness and save where supported by other witnesses or documents we place little weight on his account.

280 Having considered the evidence in the round we find Mr Howarth undertook an ergonomic assessment of the claimant's workstation on 9 September and spoke to the claimant at that time. On balance we find Mr Howarth also spoke to the claimant on 11 September and explained the changes that would be made as a result of the assessment. Whilst Mr Howarth made no mention of that in his witness statement, his email of 7 October did refer to that and that accords with the claimant's account that he became upset on the 11 September. Yet further support for a discussion taking place between them on 11 September is that Mr Howarth told us he recommended the use of a kneeling mat ([#1¶11] and (187)). The claimant's first request for kneeling pads on 11 September (see (249.1))

281 The claimant did not dispute that the use of the wax bath was suggested and the claimant's reluctance to use the wax bath and gloves is mentioned by several witnesses and the claimant himself. We find it was unlikely that Mr Howarth suggested to the claimant to use the wax bath two or three more times after 26 September because that was the claimant's penultimate working day. The chronology of events in Mr Terrell's email to Mr Benjamin of 1 October [193] recorded that it was on 24 September that it became apparent the claimant was not using the wax bath for hygiene concerns.

282 It was put to Mr Howarth in cross examination that the claimant had not used the communal wax baths because they made his hands softer and therefore more vulnerable but also because of hygiene issues concerning the use of the wax baths given the cuts to his hands. Mr Howarth told us he had explained to the claimant that any hygiene concerns due to the cuts to his hands did not arise because the wax baths contained paraffin and toxins needed water to survive. He told us to the address any softness to Technician's hands from the use of wax baths that Kevlar gloves were used to provide protection in the form of a second skin. Further he told us that he had explained to the claimant that using the wax bath only once or twice as the claimant had said he had done would not have assisted is only benefit from if you used it daily for a week or so.

283 Those matters aside it follows that if that was correct there must had been an earlier discussion concerning the use of the wax bath before the 24 September. Viewing matters in the round we find on balance the suggestion about use of the wax bath was first made by Mr Howarth on either 9 or 11 September and repeated on two or three occasions thereafter.

284 Whilst the precise date the claimant requested a copy of the ergonomic assessment is unclear from the claimant's account both the claimant and Mr Howarth agree there was such a discussion. Mr Howarth told us about the pitfalls of relaying the contents of any assessment to employees in terms of raising expectations when the outcome of the process was out of his hands. Whilst his discussions with the claimant are potentially at odds with his comments about pitfalls, the claimant's account supports Mr Howarth's account that such discussions occurred about the wax bath and in relation to the claimant' requests for the archived ergonomic assessment.

285 We find the evidence suggests they spoke again on or about the 26 September as a result of the T&F Health & Safety meeting and the ergonomic assessment having been finalised on Monday 23 September, that Mr Howarth updated the claimant on the changes the respondent was proposing to make and to tell the claimant the assessment was available on his EASE screen. We find that their discussion on 26 September was when the claimant asked for a copy of the previous assessment.

The events of 30 September 2019

286 The claimant's account of the events of 30 September 2019 are set out in his details of complaint at various points.

286.1 At [ET1¶29-31] he alleged he gave Mr Benjamin and Mr Wassell his written grievance, they showed no interest in addressing or investigating his concerns and merely stated he should carry on with his work.

286.2 At [ET1¶48] he stated that at around 9 am he spoke to Mr Wood to say he was unwilling to continue with same injurious work, wanted to make a formal complaint and was going to hand his written grievance to Mr Benjamin immediately.

286.3 At [ET1¶95-101]) he stated that he arrived at work to start his day shift at 6.30 am. He alleges he spoke to Mr Jones and said that he was 'downing his tools' until he spoke to Mr Benjamin, who was thus asked to come and see him. He states that Mr Benjamin and Mr Wassell arrived and he told them both that he could not continue due to its harmful and unsafe nature (which he described as a protected disclosure) and that his GP had advised him to cease continuing with this work. He relayed that he had been raising his concerns continuously including in May 2019 and that he was unable to continue, mentioning an ongoing deterioration to his physical and mental health caused by the work. The Claimant alleges he handed the written grievance document to Mr Benjamin and that Mr Wood and Mr Terrell were present during a conversation between the Claimant, Mr Benjamin and Mr Wassell. The claimant stated that conversation with Mr Benjamin lasted for approximately 5 minutes and during it Mr Benjamin told him that either he carry on with his work or else it would be seen as a refusal to work by Aston Martin. He alleged no concern was shown for his health and safety concerns by the Hamton or Aston Martin personnel present, nor for the written grievance.

287 The claimant's witness statement [¶157-171] gives a further different time that he started shift (6 am) and makes no mention of speaking to Mr Jones, merely stating that he spoke to Mr Benjamin at 9:30 am and handed to him his written grievance. He accepted orally that was incorrect and that occurred earlier than that. In contrast to the details of complaint attached to his claim form in his witness statement he makes no mention of Mr Wood, Mr Terrell or Mr Wassell being present and gave no detailed specifics of the events of that day. He orally accepted a lot more happened that morning than his witness statement set out. He did however allege that Hamton made no attempt to consider and investigate his grievance complaint, made no contact with him to discuss or interview him and instead, they proceeded straight to dismissing him from 3rd October 2019 on "the excuse" that he was refusing to work. He stated that 'excuse' was completely untrue.

288 In re-examination the claimant accepted the section of Mr Benjamin's email extracted at (294) below fairly reflected events of that day.

289 The description the claimant gave in his claim form is for the most part agreed by Mr Jones:-

> ***"29. On 30 September 2019 Dharminder attended work and approached me to say that he needed to speak to Denzil. Dharminder asked me to pass on a message to Dom Terrell ... to tell him that he would not pick up his tools until he has spoken with Denzil [Benjamin]. My response to Dharminder was to tell him that I could pass on this message. but that in my opinion, it was not the wisest thing to do. However, Dharminder asked me again to pass on this message, and said that he was not working until he had spoken to Denzil. I then contacted Dom and let him know***
>
> ***30. Alan Wood and I then carried out our usual morning briefing together to the team. Dharminder interrupted at the end of the meeting, to announce that he was leaving and shook hands with his colleagues. I do not recall that he said the reason why he was leaving but that he kept his head down and just said goodbye to everyone. Dharminder's behaviour confused me as I didn't know what he was doing or why."***

290 The only account in Mr Wood's witness statement of the events of that day starts [¶35] when he refers to the morning briefing where he stated the claimant informed him that he was refusing to start work on the production line, interrupted the meeting to inform him that he was leaving, shook hands with what seemed to be a select few colleagues and said goodbye. Mr Wood stated he called Mr Terrell to say that the claimant had left and believed

he would have also called Mr Benjamin but could not recall the specifics of the conversation. It was put to him that the claimant did not say he was permanently leaving and not returning. He told us the claimant's words were that he was leaving.

291 Mr Benjamin's witness statement [¶17] refers to a call from Mr Wood but does not name Mr Jones. His account also differs slightly:-

> ***"17. … I received a call at around 06:15am on Monday 30 September 2019 from an employee of AML to say that there was an issue on the shop floor and I received another call from Alan Wood shortly afterwards. As I was in the middle of doing the wages for that week I ask if it could wait. I was told it couldn't and I therefore went to the shop floor with Andy Wassell. My account of what happened is given on page 200 in an email to Terry Vincent dated 2 October 2019 and the paragraph dated "30.09.19". Just prior to leaving, and after he had shaken my hand, Dharminder handed me his grievance letter [191]. I did not have further conversations with him after this point and before he left the site."***
>
> ***"18. … Dharminder was shaking his colleagues' hands and he told us he was not willing to do that job anymore, he was leaving and had only come to say goodbye to his fellow workers. It seemed odd to me that he seemed to have come onto site, just to say that he was not willing to work. As I have said in my email at page 200 Dharminder was adamant he was not going to carry on working as he said he had "had enough and that he was leaving". I thought that Dharminder was effectively telling us that he would not be coming back and I understand Andy thought the same thing.***
>
> ***21. … at no point during the conversation on 30 September which so far as I remember took around 5-10 minutes did he give more details about why he was refusing to work, other than his doctor had told him to stop work. I did try to speak to him as I have said above but he did not seem interested and continued shaking the hands of other operatives"***

292 As to the point about the claimant's doctor, in cross examination Mr Benjamin stated the claimant told him that his doctor had advised him to down tools. Mr Benjamin warned the claimant that he didn't want him to walk off site and that if he did so he would be sacking himself to which the claimant responded he was going and had had enough.

293 In his email to Mr Vincent of 2 October [200] (see (255-256)) that Mr Benjamin refers to [¶17] he recorded those events thus:-

> ***" [Continued from (256)] …***
>
> ***30.09.2019 Monday morning, at 06.15 am I received a phone call from Sam Jones saying that there was an issue on the shop floor, 5 min later I received another call from Alan Wood saying there was a issue with Dharminder I told Alan That I was doing the wages and if it could wait, he said not really, so I said I would be down straight away, and as l was on my way I received another call from Dom Terrell to say that Dharminder was refusing to work I told him I was on my way, I went into Andy Wassell office and explained that Dharminder was refusing to work that's when Andy said he would come with me, as I approached the cake stand DB11, I saw Dharminder standing there with his coat on, I asked Dharminder what was wrong he said that he was not willing to do that particular job no more, I than told him to think about what he was doing as refusing to work was not the best way forward given the present climate at Aston Martin but Dharminder was adamant he was not going to carry on working, …"***

294 As we say, in re-examination the claimant accepted the next section of Mr Benjamin's email of 2 October fairly reflected events of that day, namely:-

> ***"… he told me that he had had enough and that he was leaving he told me his doctor told him to down tools, I told him his doctor cannot tell him to down tools regardless, he said he only came in to say goodbye to fellow workers, he gave me the grievance form and shook my hand and continued to shake hands with co workers after that."***

295 Mr Benjamin's email of 2 October concluded by stating that the following day (1 October) the claimant's brother handed to Mr Benjamin a doctor's note stating that the claimant was being signed off work for a month. The email concluded without any form of sign off from Mr Benjamin leading us to question if the email is complete.

296 In his witness statement Mr Benjamin told us he tried to dissuade the claimant, but he wasn't listening. Mr Benjamin continued [¶29 bullet 3] ***"… Once, I had come to see him, at no point did he say that he was going back to work or that he was not "downing…tools" after we spoke. At no time did he take his coat off or go to start work. He did not ask to move to another location and I clearly understood he was refusing to work and had no intention of doing so when he came onto the site that day. …".***

297 The claimant was asked about Mr Benjamin stating if the claimant left site it would be construed that he was ***"sacking"*** himself and the reference to the ***"present climate".*** We took to mean a reference to the upcoming redundancies as the claimant accepted he was aware of the same. The claimant accepted he was told that would be seen as a refusal to work.

298 In his email Mr Benjamin stated he went to get Mr Wassell. In his witness statement he made no mention of going to get Mr Wassell merely that he went down to the shop floor with Mr Wassell. When he was asked about that disparity he told us he went to get Mr Wassell because he had already been involved.

299 Whilst at first sight that was a minor disparity, its significance is magnified because Mr Wassell's written account differed slightly to that of Mr Benjamin's email [200]. Mr Wassell states [¶15] he was with Mr Benjamin when Mr Benjamin was contacted to say there was a problem on the production line and so they went to the production line together. He told us they then spoke to the claimant**,** Mr Terrell and Mr Wood.

300 Mr Wassell's oral account was that he was in early, Mr Benjamin came to his door and asked him to come down to the production line with him because he thought something was happening. Mr Wassell told us he would normally leave Mr Benjamin to deal with things but ***"an employee refusing to commence his shift was more serious than someone forgetting their safety shoes so as the senior manager I thought I should attend".*** His oral account therefore differed to his witness statement.

301 Mr Wassell then stated

> ***"16. Dharminder still had his coat on, had not started work and was shaking hands with his colleagues. He did not explain why he had come onto site, only to refuse to carry out his tasks other than to say, he would not carry out his role and had only come to say goodbye. It seems strange to me that if he had through his role was placing him at risk, that he would not have telephoned to say this, or tried to discuss it with me or with Denzil. Both Denzil and I thought he was saying that he was not coming back."***
>
> ***17. Denzil tried to speak to Dharminder and to reason with him. He said that if he walked off the job, he would be in breach of his contract and might be let go, and he tried to talk him out of leaving. Dharminder just repeated that he had only come to say goodbye. As he left. he handed Denzil a grievance document (page 191). This document does not mention Hamtons at all, or that he had previously complained to any Hamtons' manger about his working conditions."***

302 The Claimant told us he was not downing tools permanently, resigning and not coming back. When asked why he had his coat on and was shaking hands with colleagues if he was not saying goodbye to them, he told us he was not saying goodbye but instead they were wishing him well, the context being, that he was unwell and they were wishing him a speedy recovery.

303 Mr Wassell was asked in cross examination if the claimant said that he was resigning and not coming back. He responded by stating the claimant had said that he had had enough and he was leaving.

304 The claimant, a number of his witnesses, Mr Wassell and Mr Benjamin state that as the claimant left he handed Mr Benjamin a grievance document [191]:-

> ***"In May 2019 when the current Line Balance Was Implemented Within a days I spoke Dom (Production Manager) less to face in order to formally whistle blow regarding the last that my Process was injurious to my physical wellbeing. I told him the following:***
>
> > ***- I had already suffered severe & chronic bruising & swelling to my upper arms on both sides. which was causing the chronic muscular a joint pains, as Well as chronic back pain.***
> >
> > ***- It was impossible to collect. warm. prep & fit the cabin harness within the TAK time. as well as fitting 2 other harnesses. as part of my overall process which also included other tasks.***
> >
> > ***- That my injuries would get worse if my process was not changed immediately to made much lighter.***
>
> ***I recently broke down twice and let the building as l was so emotional. On one occasion I planned not to come back. I have been altered no counselling or any type of therapeutic, emotional or physical support, despite all the above.***
>
> ***Dom and Alan my GL have been fully aware of all at the above and privy to all of the above.***
>
> ***My grievance is that despite the above and various opportunities both before and after to relieve me or assist me, or support me. no such assistance whatsoever was afforded me proactively.***
>
> ***Neither have any elements of my process been passed onto other technicians & neither were occupational health sent to see me until I contacted them myself recently. Therefore it is my assertion that Aston Martin have knowingly and willingly allowed and then continued to allow me to carry out employment duties that were and are injurious to my health."***

Events in the aftermath of the Claimant leaving site

305 Later that morning at 9:42 Mr Rowe messaged to the claimant a picture of one of the production line display boards showing by that time there had been downtime on the claimant's workstation (3040) of 37 mins 58 seconds [192]. Later in that exchange of messages the claimant indicated he was awaiting a call from his doctor.

306 Mr Rowe was asked about the production line being stopped for 40 minutes. He told us it would be unusual for the line to be stopped for that length of time. It was put to him that if it had been delayed for that long and he was responsible for that would he expected to have been dismissed. He said no because of his service and that he was highly regarded. He stated if another employee did that they would not be dismissed but also accepted that he didn't know what the outcome would be.

307 Mr Wood told us [¶36] he had no absence cover planned on that day so the claimant's departure caused a problem so they could ensure that production could continue.

308 Mr Terrell stated

> ***"38. On 30 September 2019 I was informed by Alan Wood that Dharminder had attended work for his day shift, but then walked off site after saying goodbye to everyone. I then called Denzel Benjamin at Hamtons and told him what had happened. I can't recall exactly what I told Hamton but I think I am most likely to have said that we don't need him back as he was going to be released as explained above. I can however be clear that none of my actions were motivated by Dharminder having raised concerns about injuries to himself, his working conditions or health and safety. It was only motivated by his choice not to work and the fact he had left, I believe, of his own choice."***

309 There are a couple of potential problems with that account:-

309.1 Firstly, Mr Wassell states that Mr Terrell was present on the production line and given Mr Benjamin knew what had occurred because he also was there, why did Mr Terrell call Mr Benjamin to tell him what had happened, and

309.2 In his statement Mr Terrell could not recall exactly what he told Hamton.

310 As to the second point Mr Wassell said this

> ***¶20. Following his walking off site, it was communicated to Hamtons by Dominic Terrell that Aston Martin were not prepared to continue to have Dharminder on assignment. The factory at Gaydon operates as two separate halves with one half manufacturing the AM6 and the other, the DB11. As Dharminder had walked off site, operatives from the other side of the factory had to be called over to provide cover and catch up production. Dharminder's departure caused delay to the production schedule and the line did not start running until around 7am. I was informed Hamtons would receive a letter of dissatisfaction. I understand such a letter amounts to a claim that Hamton are in breach of contract.***

311 Mr Wassell does not state who he was told that by. Thus, there is apparent confusion over who gave and what the instruction to Hamton (if any) from Aston Martin was and the rationale behind that.

312 Whilst we were told that it was normal practice that a letter of dissatisfaction would be sent in such circumstances, it was agreed that was not done here.

313 Mr Benjamin told us [¶24] that two individuals were brought in to help catch up as the line had fallen behind. He alleges that the claimant would have been fully aware of the degree of disruption and cost he was causing by attending work, and then refusing to carry out his duties.

314 Whilst Mr Benjamin makes no specific reference to a call from Mr Terrell in his witness statement he did cross reference his email of 2 October [200] (see (293)) and also said [¶25] ***"As a result of his decision to leave the line, the decision was made by AML that Dharminder would have to be taken off assignment because of the disruption to the production line and schedule, caused by his actions"***.

315 Mr Terrell told us orally that in a later call Mr Benjamin asked him if the claimant was needed back to which he replied it was silly to get him in for two weeks. He told us for a number of days thereafter he was under the impression he had quit. It was put to Mr Terrell that Mr Benjamin had made no reference to the claimant not being needed anymore as the rationale to which Mr Terrell repeated he did not need the claimant to return and nor was a replacement required as they intended to back fill the claimant's role.

When it was suggested to him that Mr Wassell had told the Tribunal that no notice of dissatisfaction had been served, he did not dispute that and instead repeated that he had said that a replacement was not needed because of the looming reduction in volumes.

316 Mr Wood told us that the claimant was not replaced because of upcoming changes to production and the reduction in agency staff [¶35].

317 That account by Mr Terrell gave rise to further issues. It referenced a further telephone call neither had mentioned previously and further that Mr Terrell believed the claimant had quit for a number of days and Mr Terrell providing a entirely new rationale.

318 We considered if the telephone call occurred before Mr Benjamin went down to the production line. We discounted that because

318.1 That was at odds with Mr Terrell stating that the instruction was relayed in a later call and

318.2 Had Mr Benjamin had already been told by Mr Terrell the claimant had been taken off assignment, Mr Benjamin's warning if he left site he would be treated as having dismissed himself, which the claimant accepted had been said (297), was contradictory.

319 We return to our findings about when and why the claimant was dismissed at (360 following).

Events of 1 October

320 The next day, 1 October 2019 the claimant's brother, Jagroop, handed to Mr Benjamin a doctors note dated 30 September [190] which indicated the claimant was signed off work from 30 September to 31 October 2019 [190]. The claimant states he was signed off by his GP on 30 September.

321 As we state above the claimant does not accept that he downed tools permanently, was resigning and not coming back and that his sick note supports that. Instead the claimant alleges he was expecting his grievance to be investigated and steps taken to improve his working conditions.

322 Mr Benjamin [¶27] refers to making a call to the claimant on 2 October and also to a call log of that call [196]. The electronically generated body of the call log indicated it was made "yesterday" at 14:41. The date the call was made is not specifically recorded stated within the electronically generated body of the call log but a handwritten annotation on the call log made by the claimant is marked "2.10.2019" and timed at "03:04". The log of that call and annotation were not introduced into evidence by the claimant. Whilst the strict rules of evidence do not apply in the Tribunal (he did not explain the basis for believing that was the date of the call.

323 Mr Benjamin made no reference in his statement to the call. He told us he tried to call the claimant, but the claimant did not answer. He did not explain why he made the call. Mr Benjamin did not state he had left a message. Mr Jupp suggested that a message had been left. The claimant told us orally he did reply, although he did not say when, why he did not refer to it in his witness statement or explain why the phone log does not record that. That leads us to conclude a call was made by Mr Benjamin to the claimant.

324 Given the time of the printout was "03:04" was early in the morning, was dated "2.10.2019" and referred to "yesterday", we conclude that Mr Benjamin attempted to call the claimant at 14:41 on 1 October (not 2 October) and the date applied to the call log in

the bundle was incorrect. That is reinforced by our findings at (328) concerning the email from the claimant of 2 October.

325 At some point on 1 October Mr Benjamin and Mr Terrell met in Mr Terrell's words ***"to discuss Dharminder's grievance"***. There was no note of that meeting before us and Mr Benjamín made no entry of it in his diary. We were told that was at Hamton's request.

326 We set out our findings on how that meeting came about and our consequential findings at (348 following & 379 following).

327 Following that meeting Mr Terrell emailed Mr Benjamín at 15:45 that day to set out a timeline of events [193]. That timeline made no reference to the events of 30 September despite Mr Terrell acknowledging [¶42-44] following his meeting with Hamton on 26 September he was aware it was a possibility that the claimant was going to lodge a grievance (and his timeline refers). Mr Terrell told us he did not know any details of the grievance until he met with Hamton on 1 October.

Events on 2 October

328 In an email sent by the claimant at 2:28 on 2 October [198-199] to Mr Benjamin the claimant stated he would only correspond with Hamton in email or in writing thereafter going forward. That suggested to us that the claimant's email was potentially in response to an attempt to contact him which is further support for Mr Benjamin's telephone call to the claimant taking place on 1 October not the 2 October. That was put to Mr Benjamin who told us he thought the call was on 1 October and the call log [196] was wrong.

329 In his email the claimant also raised a number of complaints concerning how he and his grievance had been dealt with that day and amongst other matters asserted:-

329.1 That he did not refuse to work, stating he had told Mr Jones ***"am downing my tools"*** until he saw Mr Benjamin, and once that had been arranged he was no longer "downing [his] tools" because his demand to meet with Denzel had been accepted and arranged,

329.2 He stated he explained to both Hamton representatives (Mr Benjamin and Mr Wassell) that he was going home sick as his doctor had wanted to sign him off with work related stress 2 weeks before, and

329.3 That he had mentally broken down twice on the track and was offered no mental health support.

330 Mr Benjamin responded in his witness statement to the points the claimant raised in his email. We have addressed above (292-297) the point the claimant makes about ***"downing…tools"***.

331 In his email of 2 October the claimant also asked amongst other matters why his employment had been terminated. We conclude from that email that he was aware he had been dismissed by the time it was sent (02:28 on 2 October).

332 We also had before us a screen shot of an exchange of messages with Mr Mason that were annotated in manuscript apparently by the claimant; "2.10.2019" and "16:15" [201]. Whilst that too was not introduced into evidence by the claimant or Mr Mason and again the points we make at (322) apply in relation to the same.

333 Given later in that exchange of messages with Mr Mason refers to a message from the claimant ***"when I left yesterday",*** his departure being 30 September, it follows that the latest message in that exchange must have taken place on 1 October (if that had been a later date the time/date stamp on the message would have indicated that was so).

334 One of the messages within that chain from Mr Mason to the claimant timed at 15:18 said that Mr Mason had heard the claimant had been sacked. The claimant's failure to express any surprise in that exchange of messages again supports the view the claimant was aware that he had been dismissed by that point.

335 We find that message from Mr Mason and the call from Mr Benjamin to the claimant were made on 1 October and the claimant's email in the very early morning of 2 October [198-199] was made in response to the call from Mr Benjamin.

336 We find those matters and the contents of the claimant's email of 2 October [198-199] indicate the claimant was aware by 15:18 on 1 October at the latest that Mr Mason understood that he had been dismissed.

337 Returning to the contents of the claimant's email of 2:28 on 2 October [198-199] Mr Benjamin told us that on its receipt he contacted Mr Vincent who told him to *"leave it with him"*.

338 At 09:46 on 2 October, [200] Mr Benjamin emailed Mr Vincent [200] to provide his account of events. We set out the contents of Mr Benjamin's email, at (256 and 293-295). Mr Benjamin could not recall when he was asked for that account by Mr Vincent and gives no detail why he provided that. Nor was that issue explored with Mr Benjamin any further. We conclude that Mr Benjamin's email to Mr Vincent setting out his account of events [200] was provided at Mr Vincent's request and that request was made early on 2 October. We return to that below (348-355).

339 Later on 2 October 2019 Mr Wassell [¶21] wrote to the claimant [194-195] to inform him that his employment was terminated with effect from 3 October 2019.

> ***"Re: Your refusal to work/Submission of a Grievance***
>
> ***As you are aware, on Monday 30'" September shortly after the start of the day shift production, Denzil Benjamin, Hamton Production Manager at AML's Gaydon Site received a call from your group leader Alan Wood explaining that you had refused to commence your allocated work on the production line, causing a hold up in production.***
>
> ***When he arrived at the start of the D811 line, he asked you what the issue was.***
>
> ***You explained that you were no longer willing to carry out the task allocated to you and you referenced stress caused by the process.***
>
> ***Denzil explained that this was not the right way to address any issues you had, and that it would be ' viewed as a refusal to work by the client's Management team.***
>
> ***You replied that you were not going to start work, and that you had only attended to say goodbye to your work colleagues, and that you were leaving.***
>
> ***I understand Denzil attempted to talk you out of this, but you left site unauthorised.***
>
> ***Due to this behaviour the client has instructed us to take you off of assignment with immediate effect and that they would no longer be prepared to have you on assignment at AML in view of the disruption your actions potentially caused to the production line, and schedule. As Hamton do not have alternative work available locally and which can be offered to you, we have no alternative but to terminate your employment with Hamton with effect from 3 October 2019. You will receive a payment in lieu of your two weeks' notice period.***
>
> ***Any further monies owing to you along with your P45 will be forwarded on to you in due course.***

In addition, when leaving you handed Denzil a letter stating that it was a written grievance. As your employment has been terminated as outlined above, this grievance would no longer be covered by the Hamton grievance process from the date of the end of your employment (3 October 2019).

Prior to your employment ending we did, however, carry out some investigations into the points raised and these enquiries show that issues you have raised have been dealt with and addressed, and that appropriate management support and guidance was provided. The information obtained indicates that you did not on all occasions follow the advice provided for you or accept further offers of assistance for example that AML's occupational health. You have been spoken to about these issues."

340 The claimant's employee termination form was prepared and signed by Mr Benjamin on Wednesday 2 October 2019 [197 & [DB¶28]. We were told that was a standard process whenever Aston Martin instructed Hamton to take a Hamton staff member off assignment. The existence of what appears to be a pre-prepared standard form supports that.

341 Mr Wassell accepted orally that the claimant's termination of employment was not actioned as a resignation [197] but that the decision to take the claimant off assignment was made by Mr Terrell [¶20]. Mr Wassell told us that instruction was given verbally but he could not recall who to or at what time. As to when, he was able to tell us that Hamton's decision to dismiss was made on 2 October following receipt of Mr Terrell's email [193] which was sent at 15:45 on 1 October after the meeting that day between Mr Benjamin and Mr Terrell (see (327)). Mr Terrell's email was thus received at the end of the normal working day (see (53)) and that provides a explanation why it was not actioned until the next working day.

342 Mr Wassell also told us [¶20] he was informed that Hamton would receive a letter of dissatisfaction from Aston Martin and that was treated as an assertion that Hamton were in breach of contract. He does not say who said that or who that statement was made to.

343 There was no record of any letter of dissatisfaction before us nor was there any paper or electronic record confirming Aston Martin's decision. Nor does Mr Terrell's email of 1 October confirm that decision [193].

344 Mr Wassell told us [¶21] the reason for the dismissal was that ***"… Aston Martin had instructed us that [the claimant] was no longer permitted to be on assignment with Aston Martin as a result of the disruption caused to the production schedule. Hamtons did not have any alternative, available employment which he could be offered. The decision to end his employment had nothing to do with the fact he is Panjaabi-Sikh or because he had raised concerns about his work in the grievance document he handed to Denzil. … As I have said so far as I know, other than asking for knee pads he had not raised any concerns with Hamton before 30 September 2019."***

345 Mr Benjamin stated [¶25] that Aston Martin made the decision to take the claimant off assignment as a result of his decision to leave the line and the disruption this caused. Thus, neither he nor Mr Wassell state who the decision was communicated to.

346 Mr Benjamin told us he could not recall the time and date when Hamton were told the claimant was being taken off assignment by Aston Martin, he did not believe it was as a result of a discussion between him and Mr Terrell, it was more likely to be between Mr Terrell and Mr Wassell, but could not be sure.

347 Mr Terrell accepted he made that decision [¶38] but could not recall exactly what he said to Hamton, who to or when but he thought it was most likely that he said *"we don't need him back as he was going to be released".*

348 Mr Wassell told us that even though that instruction to terminate the claimant's assignment came from his client (Aston Martin) he still needed approval and took advice before he dismissed. He accepted he made no mention of that in his witness statement explaining that was because it was not relevant. We disagree. Mr Wassell told us orally that the advice he received was from Mr Vincent and that had prompted him to ask for clarification from Mr Terrell that the claimant's grievance had been dealt with. As we state above that confirmation came through in the afternoon of 1 October in Mr Terrell's email [193].

349 Mr Benjamin makes no mention of the meeting with Mr Terrell and whilst he mentioned several times in his witness statement the email to Mr Vincent of 2 October [200] he could not recall when Mr Vincent asked for his account, and he gives no explanation how that came to be prepared. As we say above, Mr Benjamin in oral evidence told us he contacted Mr Vincent to report the content of the claimant's email of 2 October to Mr Vincent.

350 Mr Benjamin's diary makes no reference to any instructions he was given that led to his meeting with Mr Terrell on 1 October, his email to Mr Vincent of 2 October [200] or to the instruction given to him to terminate the claimant's assignment.

351 Mr Benjamin, Mr Wassell and Mr Terrell therefore all fail to address highly relevant matters in their witness statements or provide an adequate explanation why they have not done so.

352 Viewing the evidence as a whole we find on balance that Mr Vincent became involved as the email from Mr Benjamin to him [200] demonstrates. We accept that before dismissing any member of staff that Mr Wassell routinely checked with Mr Vincent and obtained his approval first. The documents support that that was so here.

353 We find that given the meetings between Mr Benjamin and Mr Wassell with Mr Wood and Mr Terrell on 24 & 25 September and the claimant's subsequent departure from site and grievance of 30 September, that those events were reported to Mr Vincent who instructed Mr Benjamin to find out what knowledge Aston Martin had of the claimant's complaints and what steps they had taken to address them. We find that Mr Vincent had been informed the claimant had departed from the site and raised a grievance and wanted to know what that related to before he took any further steps.

354 We find that Mr Vincent's instruction led to the meeting between Mr Benjamin and Mr Terrell on 1 October, Mr Terrell's subsequent email of 1 October [193] and Mr Benjamin's email to Mr Vincent of 09:46 on 2 October [200] providing Mr Benjamin's account of events.

355 We find that only following their receipt and consideration by Mr Vincent did he sanction the claimant's dismissal which was actioned later on 2 October.

356 The claimant stated he received that 'dismissal' letter on 3 October 2019. Given no suggestion is made that was emailed or communicated in other ways we accept that was so. We find the claimant was dismissed with effect from 3 October 2019 by Hamton with a payment in lieu of 2 weeks' pay [ET1/61 & 103]. As we state above it was confirmed in the list of issues that no notice pay, wrongful dismissal or holiday pay claims were pursued before us.

357 On Friday 4 October 2019 Mr Benjamin emailed Aston Martin to inform them that the claimant had been taken off assignment. [DB¶31 & 202]

358 Despite both respondents being aware the claimant was intending to lodge a grievance, Mr Wood, Mr Benjamin and Mr Wassell all failed to indicate in their witness statements

they were aware the claimant had indicated he wished to pursue a grievance by 25 September or their involvement in the meetings on 24 & 25 September or 1 October. Those failures and various other matters some of which we refer to in the following paragraph led us to apply considerable scrutiny to the chronology of events, the rationales of the respondents and the various individuals involved about their rationales for acting in the way they did. Hence this judgment is considerably longer than ideal.

359 Those matters include but are not limited to Mr Benjamin introducing his diary only at a late stage and it including comments that both support and are odds with his and the account of others, the various inconsistencies in Mr Wassell's evidence and that elements of Mr Wassell's account of 30 September were not only different to his colleague, Mr Benjamin, but the other witnesses (see (298) and following), Mr Benjamin's failure to mention in his witness statement the reference in his diary to the discussion he had with the claimant on or about 11 September that the claimant was finding the job he was doing too hard on his body (see (249.1)), the wholly unsatisfactory way that Mr Wassell addressed the investigation of the claimant's grievance (see our conclusions on this issue at (557-573)), the absence of direct reference to explain the involvement of Mr Vincent by Mr Wassell and Mr Benjamin, the vagueness as to who gave and received the instruction to Hamton that the claimant was to be taken off assignment by Aston Martin, that he was not going to be replaced, the absence of a written record of Aston Martin's rationale for that, the delay in the notification of the claimant's dismissal being formally communicated to him until 2 October (that is only after he had lodged a sick note on 1 October), the change of stance of Mr Jones concerning whether Mr Heap and Rowe were training the claimant following the line changes and when use of the '*slave seal*' occurred, Mr Howarth's failure to refer to his discussion with the claimant on 11 September in his witness statement and the various other matters we refer to at (269-275), the absence of any record of Mr Fox's assessment of the claimant's workstation in June 2019 and the lack of any detailed record being provided about what the claimant's role entailed over time amongst other matters collectively and Mr Wood's repeated reference in his witness statement to being aware (or not) of matters but not the basis for that (lack of) awareness.

360 Whilst Mr Collins was not present on the 30 September because his son was born that day and he was on paternity leave, of the remining witnesses only the claimant, Mr Rowe and Mr Mason make mention of Mr Terrell being on the production line at the time his grievance was handed to Mr Benjamin by the claimant. Mr Terrell stated that having been told the claimant had quit he went down to the production line but only after he had arranged for someone from the other production line to ***"fill in for the claimant"***.

361 Mr Rowe told us [¶24] that after the claimant stopped working on 30 September 2019, he was called to fill his role straight-away. He said he saw that the claimant speak to Mr Terrell and Mr Wood. That suggests that both Mr Terrell and Mr Rowe arrived before the claimant left.

362 Virtually all the witnesses stated, Mr Rowe included, that they saw the claimant shaking hands with colleagues. Mr Rowe could not recall if the claimant was still wearing his coat but told us the claimant told his colleagues he needed a break and he would be back. He did not say if that was in the earshot of management. Mr Rowe told us he could not hear what the claimant said to management.

363 Mr Mason [¶18] told us that around 30 September 2019 the claimant decided that he could not carry because of the pressure he was under. At [¶19] Mr Mason told us the claimant said to the team that he could not carry on; due to the pain and injuries it was causing to his body and the mental stress. He told us the team were all already aware that the

claimant was under a lot of stress and pressure. Mr Mason told us orally he was expecting the claimant to return in a few weeks because he was going off sick.

364 Mr Heap stated the claimant told him that he was feeling very hurt and in pain due to the work, that he felt extremely unwell, and he was going to see his doctor. Mr Heap stated the claimant did not say he was going for good, and all the staff thought he would be coming back. Other than the claimant (286) and Mr Benjamin (291 & 292), Mr Heap [¶6] is the only witness who made any mention of the claimant seeing his GP. Mr Heap talked of the claimant going to see his doctor rather than the claimant having already done so.

365 Whilst Mr Jones makes no mention of Mr Benjamin, Mr Wassell or Mr Terrell being present that could be explained by him stating that he and Mr Wood carried on with the morning briefing whilst the claimant spoke to Mr Benjamin. Mr Jones was asked what he understood by the claimant's statement that he was leaving. Mr Jones accepted he had not assumed that the claimant had meant by that that was leaving for good. He told us he was not aware of the claimant's mindset or his intentions. We accept that Mr Jones was confused as to the claimant's intentions. He was entitled to be; the claimant's long term intentions at that point in our judgment were ambiguous.

366 The witnesses called by the claimant thus made it clear the claimant told them had had enough and he couldn't go on. The claimant's actions of shaking hands with his colleagues (which was not in dispute as what had happened) gave the impression that he was leaving work that day and would not be returning for some time, if at all. We find the interpretation made by Aston Martin management and specifically Mr Terrell was that the claimant had come into work to hand in his grievance and had no intention of working. That was extremely disruptive and caused a delay to the line of just short of 38 minutes. We heard that could have resulted in a notice of dissatisfaction from Aston Martin to Hamton and/or disciplinary action against the claimant.

367 Given the claimant accepted the extract of Mr Benjamin's email of 2 October at (294) was a fair account of what happened on 30 September, we find that the claimant attended Gaydon on 30 September 2019 with no intention of working that day, but to hand in his grievance to Mr Benjamin and say goodbye to his colleagues (see (294 & 374)) We find he asked to see Mr Benjamin, who was doing the wages at the time and so was reluctant to see the claimant. We find Mr Jones tried to dissuade the claimant from insisting on seeing Mr Benjamin and warned him about the consequences. Whilst the claimant did not expressly accept that Mr Jones tried to dissuade him before Mr Jones called Mr Terrell, the claimant's account of that day was lacking in detail and so we prefer Mr Jones' account which is supported in general terms by that of the claimant (see (286-288)) and also indirectly by Mr Benjamin's warning in similar terms to the claimant (see (297) & below at (368)). We find the claimant persisted in his view that he would not pick up his tools until he had spoken with Mr Benjamin and given Mr Benjamin's earlier reluctance to come to the production line, Mr Terrell was called by Mr Jones.

368 We find that Mr Jones having relayed that message to Mr Terrell the outcome was inevitable. We find on the basis of his own account the claimant knew that was so because he told us agency staff were afraid to raise issues for fear of not getting a permanent contract or being released from their assignment. Whilst the claimant's account that he repeatedly raised issues with his managers is at odds with that, our finding that Mr Jones did not tell managers when the claimant walked off shift in early September and instead covered for him was because of the consequences for the claimant. That was further reinforced by Mr Benjamin's warning that if the claimant walked off site he would be ***"sacking"*** himself and the ***"present climate"*** (see (297)), which the claimant accepted had been said. Whilst Mr Benjamin's comment suggests that had the claimant re-considered

the consequences may have been different, we find in this case those warnings were too late because by the time Mr Benjamin had arrived Mr Terrell was aware the claimant's actions had delayed production, was arranging cover for the claimant and that was against the backdrop of the impending 'redundancies'.

369 Those matters lead us to conclude that the claimant was or ought to have been aware that the termination of his engagement was inevitable from his actions in delaying production.

370 If the claimant had wanted to lodge a grievance, he could have sent that via email, post or his brother. If the claimant was not fit for work as he alleges, he could have called in sick. Even if he had called in sick but wanted to say goodbye to his colleagues it would appear he could still have done so without causing the disruption to the shift that he did.

371 The claimant [¶113] told us production output was the main priority concern for Aston Martin. Mr Rowe [¶31] that there was an overwhelming pressure to meet targets and maintain production to maximum levels.

372 Viewed objectively and in the absence of an explanation for him behaving in the way he did we find Aston Martin were entitled to form and did form the view, that given the disruption he had caused (extra hands had to be brought in to catch up) his assignment should be terminated.

373 To that end the claimant in evidence accepted that he was treated no differently to any other member of staff would have been in such circumstances and whilst that relates to a different issue, nevertheless is reinforcement for that view.

374 We find the claimant attended Gaydon that day to hand in his grievance and given the impending 'redundancies' (see (378)), to say goodbye to his colleagues because he was aware it was more likely than not he knew he would not be returning. We find he had no intention of working that day.

375 In acting in the way he did he disrupted production and it was that disruption to production of 38 minutes downtime (highlighted in the WhatsApp message from Mr Rowe [192]) in the light of the claimant being one of the Hamton staff whose roles had been identified as to be curtailed (177) in the impending 'redundancies' and that led Aston Martin to curtail his assignment with immediate effect.

376 We find that as soon as the claimant decided to attend site with no intention of working on 30 September and thus cause disruption to production his fate was sealed.

377 We find that on balance that decision was reached by Aston Martin by the time Mr Terrell went down to the production line, he having had to arrange cover for the claimant. We find given the contradictory accounts the claimant gave about timings that day (287) that he left sometime between 6:30 (when the morning briefing finished) and about 07:15 (when production started after the 40 minute delay). Given various witnesses indicate Mr Terrell was present whilst the claimant was on site we accept that Mr Terrell had gone down to the production line before the claimant left site.

378 We find the claimant was aware of the pending redundancies (170); he had had asked Mr Terrell for a reference (168) and Mr Benjamin's diary indicated Mr Ostler had told certain Hampton operatives that redundancies were afoot (176).

379 The accounts of the claimant and his witnesses were that his grievance was only given to Mr Benjamin as the claimant was leaving (304). We found above that was sometime between 6:30 and 7:15 am. Neither the claimant nor any of his witnesses suggest that Mr Benjamin, Mr Wassell or the other managers read the grievance before the claimant left the site. We find that Mr Benjamin, Mr Wassell and Hamton were not aware of the detail

of the grievance whilst on the shop floor. Given our determination that a decision had been made to curtail the claimant's assignment with immediate effect before the claimant left the site, we find that it follows the content of the grievance could not and was not conveyed to Aston Martin before it made the decision to terminate the claimant's assignment.

380 We find Mr Terrell only became aware of detailed contents of the claimant's grievance when he met with Mr Benjamin to discuss it on 1 October. There is no suggestion that was relayed to him or Aston Martin before then and that accords with his account.

381 We find the details of the claimant's grievance and its contents played no part in that decision whatsoever.

382 Whilst that was not formally communicated to the claimant until 3 October, we find that he and others were aware a decision had been taken to dismiss him before that point.

382.1 Whilst other witnesses such as Mr Heap [¶62] told us they later learnt that the claimant had been sacked, they did not say when that was, we found above that Mr Mason's message to the claimant to say he had been informed the claimant had been sacked [201] was sent on 1 October at 15:18. The claimant expressed no surprise at that and similarly in the claimant's email of early in the morning of 2 October (see (331 & 334)).

382.2 In an email of 7 October 2019 to Andy Barnett, Aston Martin's Manufacturing Director [316-317], Mr Howarth recorded he had been informed by Alan Wood that the claimant had left the business. Mr Wood made no mention of this in his witness statement.

383 We find that was not formally communicated to the claimant until 3 October because Mr Vincent wanted to ascertain if there was any basis for the claimant's grievance. Thus, when we found (336) that the claimant was told mid-afternoon on 1 October by Mr Mason that Mr Mason was aware the claimant had been dismissed by Aston Martin that was a reference to him being taken off assignment by Aston Martin.

384 The claimant alleges [¶159] Hamton failed entirely to follow its own grievance policy and procedure [116–121] and it made no attempt to consider and investigate his grievance complaint [¶160, 166-167].

385 Mr Wassell refers to how the claimant's grievance was addressed and why:-

> ***"24. As Dharminder's employment ended, his grievance was not taken forward. This decision was not made as retaliation for him handing over the content of his grievance letter which is what I have understood is being suggested at paragraphs 127(b) and 128(b) of the particulars of claim (pages 33 and 34) but because of the instruction to take him off assignment. However, I confirm my understanding is that the issues he had raised in his grievance document, had already been considered by AML. AML informed me changes were made to the line to make the job easier for him (pages 170-172, 193 and 208)."***

386 We find that that the claimant's assertion that Hamton made no attempt to consider and investigate his grievance is not correct, Hamton did speak to Mr Terrell to identify if there was any basis for the complaint. The claimant is however correct to say that Hamton did not meet with him to discuss and/or interview him as good practice requires.

387 We find the claimant's assertion that Hamton did not attempt to contact him is also incorrect, he accepted Hamton did so (see (323-324)). Notwithstanding the content of the claimant's email of 2 October at 02:28 [198-199] (see (328) following) good practice indicates that Hamton should have attempted to do so not least to identify if there was an issue that needed to be addressed. As the claimant states [¶169] he was still an employee

at the time he lodged his grievance and we were not pointed to any part of Hamton's grievance procedure that suggests it ceased to apply upon termination.

388 The claimant is also not correct in his assertion that he received no response at all to his complaint. He did. However, as Mr Wassell told us orally, his investigation was based on the information received from Aston Martin and given he considered Aston Martin had acted in a right and proper manner, Aston Martin had dealt with the grievance and there was no point investigating further. He told us he accepted what Aston Martin had told him. His rationale was that he trusted implicitly what 'his client' said, and he told us he tended to believe them in absence of documentary evidence and did not believe they would fabricate something.

389 The problem with that approach is that Hamton did not look for any such evidence, ask the claimant for it, or attempt to drill down into the claimant's complaints via a meeting so it could properly investigate the matter with Aston Martin. Instead, Mr Wassell took Aston Martin at its word. Mr Wassell in our judgment failed to understand the fundamental attributes required of a grievance officer and did not exhibit the standards to be expected of a manager of his level.

Subsequent events

390 Mr Howarth explained that his role encompasses all of Aston Martin's sites and he is responsible for ergonomics for all staff. He is thus in a good position to identify the numbers of employees, agency and non-production staff across the whole of Aston Martin. He estimated in terms of orders of magnitude that in July 2019 that had been in the region of 3,000-3,500 staff of which about 1,000 were production staff.

391 We heard there was a substantial reduction of production line workers supplied by Hamton in October 2019. Mr Wassell told us that 30 or so staff were made redundant in October 2019. That marries with the 30 or so identified [331] (see (172-174)).

392 We had before us a template letter (with no names completed) dated 11 October [305] that stated that the individuals it was to be addressed to were not to attend work in the week of 14-18 October 2019 (when we heard a line rebalance was scheduled to take place), that they would be taken off assignment from 21 October and whilst Hamton tried to find alternative work for them they would be initially be placed on half pay for 4 weeks, dropping to nil pay thereafter.

393 We find that a line balance entailing changes in staffing is what occurred. Mr Rowe told us [¶28-29] that after the claimant left, changes were made to the claimant's role. Mr Wood told us [¶27] that formed part of a review of a planned change to all the production line change in response to sales requirements.

394 A further ergonomic assessment was before us dated 24 October 2019 [203-206]. Mr Howarth told us [¶31] that that reflected the changes made as a result of the previous assessment's recommendations. As our summary (59) identifies various further harnesses were removed. As a result the claimant's workstation's ergonomic severity was reduced from red to amber, which Mr Howarth stated was as low as reasonably practical for these processes.

395 Mr Wood stated [¶27] whilst job rotation was looked at as part of that October line balance. in light of the other steps taken in relation to the claimant's role it was not considered necessary to undertake job rotation.

396 We find over time various adjustments were made or considered to attempt to assist the claimant undertaking his role. These included use of gloves and a the rubber *'slave seal'*, to

provide protection from cuts/scratches, use of wax baths to provide comfort to his hands/arms from the stresses this role placed on them and provision of another wax bath, an extra heater so the soak time and temperature of the heater for the harness could be increased to make it more flexible, increasing the shelf height of the heater so the harness had to be lifted by a lesser amount, a form of mechanical assistance lifting the harness, moving some of the tasks allotted to his workstation to other workstations and ultimately increasing *TAKT* time. We draw from those matters that the role was demanding but also that when issues came to light Aston Martin genuinely sought to resolve them where it was possible to do so.

397 We relay above (5) the dates of early conciliation and presentation of the claim.

398 Mr Wassell told us when Gaydon recommenced production following lockdown in summer 2020 the remaining 25-30 Hamton production staff did not return. We were told two of the former production operatives were reassigned to janitorial roles as Hamton continued to provide waste and janitorial services, although nine janitorial roles were lost at that point.

399 Hamton's contract with Aston Martin terminated in June 2021 and the remaining 16-18 janitorial staff transferred to the new contractor.

400 We were told that Gaydon was the only site in the Midlands at which Hamton operated. Its next nearest site was in Essex. We accept there were thus no roles local it could offer to the staff whose assignments were terminated by Aston Martin prior to the termination of Hamton's contract with Aston Martin.

401 Mr Howarth told us that at the time of the hearing, in terms of orders of magnitude that Aston Martin's staffing complement was around 2,500.

The claimant

402 There is a widescale lack of detail given by the claimant as to what was said or done and when as to critical matters. The claimant was also inconsistent over the accounts he did give and those inconsistencies spread across the breadth of the claimant's various accounts (and at times within the same account). Further the claimant accepted orally that he did not give a full account about many of the various versions of events he gave, or those accounts were incorrect and/or at odds with the documentary evidence and/or accounts of (other/his) witnesses. Accordingly, save where supported elsewhere we place no weight on his account. To illustrate the range and depth of them we relay here a non-exhaustive selection:-

402.1 the claimant's allegation he provided a sick note to Mr Benjamin when Mr Benjamin did not work at Gaydon at the time (Mr Benjamin's predecessor was Mr Mark Johannsen) (55-56),

402.2 the claimant's acceptance he was aware of contents of the PCM board (139 & 144.1) yet orally told us he never read anything on the wall signage because he was too busy trying to keep up with his work and had not [DK#2¶15] been given any hand-outs or copies of any written booklets or guidance documents on health and safety or other aspects of work seen [335-351,358-368 & 376-395] and whilst he had completed a 'test' on his induction training he had been given the answers

402.3 the claimant orally accepting he had not made the first disclosure/health and safety complaint to Mr Benjamin in May 2019

402.4 the varying accounts the claimant gave over the line changes and when the first disclosure/health and safety complaint was made to Mr Terrell,

402.5 his assertion he did not know how and was afraid to complain for fear of losing his role, in contrast with his own account and that of his and Aston Martin's witnesses that he did complain to Aston Martin,

402.6 that he did so was evidenced by his account being his request of Mr Howarth to assess his workstation (184-185) and what we found were his discussion with Mr Benjamin with regards the grievance forms on 24 & 25 September (249 following),

402.7 the difference both within his account and with Mr Rowe, Mr Heap, Mr Collins and the respondent's witnesses about whether Mr Rowe and Mr Heap were there to replace him or to facilitate rotation (136-157),

402.8 his various assertions than no action was taken in relation to amending his role or providing aides notwithstanding his acceptance that at least one harness was removed and certain aides were provided (even if he found them of little help),

402.9 the claimant's inconsistent accounts of his meeting with Ms Petherick and them also being at odds with that of Mr Heap (233-238),

402.10 the retrospective attempt to bolster his case via the WhatsApp message exchange with Mr Heap (207),

402.11 the claimant making no mention of his visits to see Mr Benjamin in September 2019 in his witness statements,

402.12 the claimant's assertion he went to see a GP prior to 30 September and being advised by the GP to cease work despite there being no record of such a visit in the medical records he has provided, and

402.13 the variations concerning timings and his lack of a full account of events on 30 September (286-288).

THE LAW

Employment relationship

403 The Claimant submits it is necessary to imply a contract of employment with Aston Martin. We sought to clarify how that was so and the primary basis he relied upon was *James v London Borough of Greenwich* [1].

404 In *James* the authorities were reviewed extensively by Elias P in the EAT and he gave guidance how to approach such matters [54-60]. The CA upheld the decision of the EAT stating :-

> ***"23… the question is whether some contract, pursuant to which work is being provided between the worker and the end user, can properly be implied according to established principles. The judgments of this court in Dacas and Muscat were cited and analysed. It was correctly pointed out (paragraph 35) that, in order to imply a contract to give business reality to what was happening, the question was whether it was necessary to imply a contract of service between the worker and the end user, the test being that laid down by Bingham LJ in The Aramis [1989] 1 Lloyd's Rep 213 at 224***

[1] *[2008] EWCA Civ 35, [2008] IRLR 302, [2008] ICR 545*

'…necessary …in order to give business reality to a transaction and to create enforceable obligations between parties who are dealing with one another in circumstances in which one would expect that business reality and those enforceable obligations to exist.' "

405 Mr Palmer referred us to the comments of Mummery LJ in *James* (CA):-

> ***"49.…In the agency worker cases the issue is whether a third contract exists at all between the worker and the end user. The relevant question in such cases is whether it is necessary, in the tripartite setting, to imply mutual contractual obligations between the end user to provide the worker with work and the worker to perform the work for the end user."***

406 The Claimant referred at [103] to *Angard Staffing Solutions Limited v Royal Mail Group & Kocur [2020] ICR 1541 (July 2020).* That case is about whether the agency workers were "temporary" workers within the scope of Agency Workers Regulations 2010 when they worked indefinitely for the end user. It does not assist in the current case save that it makes the well-recognised point that the tribunal must look at the reality of the relationship between the parties.

407 As can be seen from the list of issue it was agreed that the Claimant was a worker and thus entitled to bring detriment claims against either respondents.

Detriment and Dismissal Complaints - application

408 When the Employment Rights Act 1996 ('ERA') was drafted Parts V and Part X ERA provided for substantially self-contained, albeit largely parallel, regimes protecting employees respectively against detriments and dismissals.

409 Parliament and statutory draftsman have appreciated over time that dismissal would itself constitute a detriment and could thus bring a claim under each. Thus, ss. 44-47 include a provision in more or less identical terms:

> ***"s.44(4). … this section does not apply where the detriment in question amounts to dismissal (within the meaning of Part X)." [2]***

410 That in part stems from the law providing for automatic unfair dismissal and consequent remedies for breaches of Part X. That aside there is a divergence in the compensation provisions of Parts V and X ERA. The reference to "loss" in what is now s.123 (1) (covering Part X) refers only to pecuniary loss and thus excludes injury to feelings [3]. However, there is EAT authority, that "loss" in s. 49(2) has a wider meaning which does extend to injury to feelings; and such awards are almost invariably made in whistle-blower cases. [4] (see also *Osipov [27] [5].)*

411 In 1999 a new Part IVA was introduced into the ERA giving protection to whistle-blowers. Unlike Parts V and X ERA that protection was not limited to employees, s. 43K ERA gave us the extended meaning of "worker" in s.230(3) that applies to Part IVA.

412 Accordingly, a new s.49(6) ERA was inserted :-

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[2] Until 2002 s.197 ERA provided that subject to certain conditions employees on fixed-term contracts who were dismissed on a proscribed ground could not bring claims under Part X. Apart from s.45(4) (which did not include a reference to s.197 ERA) each of the exemption provisions equivalent to s.44(4) originally excluded from its ambit "dismissals" pursuant to s.197 such that fixed term employees could rely on the "dismissal" as a detriment.

[3] *Dunnachie v Kingston-upon-Hull Council [2004] UKHL 36, [2005] 1 AC 226*

[4] See HHJ Ansell in *Virgo Fidelis Senior School v Boyle [2004] UKEAT 0644/03, [2004] ICR 1210*

[5] *International Petroleum Ltd & Ors v Osipov & Ors [2017] UKEAT 0229/167*

"Where –

(a) the complaint is made under section 48(1A),

(b) the detriment to which the worker is subjected is the termination of his worker's contract, and

(c) that contract is not a contract of employment,

any compensation must not exceed the compensation that would be payable under Chapter II of Part X if the worker had been an employee and had been dismissed for the reason specified in section 103A."

413 The CA considered the effect and rationale behind sub-section (6) in *Osipov* [27 and note 3] namely

413.1 it was to ensure that the worker could not recover any more than if he or she had been an employee dismissed on such grounds by virtue of the statutory cap which originally also applied to compensation for claims under section 103A. Underhill LJ mused that did not explain why s.49(6) was retained when the cap was removed [6] unless the draftsman did not notice that it was no longer necessary or decided to retain it on the basis that the principle was correct and that there might be idiosyncratic cases where it would be valuable for it to be expressly stated.

413.2 that it was intended to prevent a worker whose contract was terminated on whistleblower grounds from recovering compensation for injury to feelings, since such compensation would not be available to an employee who was dismissed on the same grounds. Whilst that possibility cannot be excluded – and it may in any event be one effect of the sub-section, whatever the original intention – Underhill LJ doubted whether the draftsman in 1998 was consciously considering the question of compensation for injury to feelings.

Detriment

Health & Safety

414 So far as is relevant to the issues here, at the material time [7], s.44 ERA provided:

(1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that—

...

(c)being an employee at a place where—

...

(ii) there was such a [health and safety] representative or safety committee but it was not reasonably practicable for the employee to raise the matter by those means, he brought to his employer's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety,

(d) in circumstances of danger which the employee reasonably believed to be serious and imminent and which he could not reasonably have been

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[6] s. 124(1A) ERA

[7] With effect from 31 May 2021 s.44 ERA has been amended to repeal (what were) sub-s. 44(1)(d) and (e) ERA and they instead form part of a new section 1A that applies to workers (following *R (on the application of the Independent Workers Union of Great Britain v Secretary of State for Work and Pensions and others* [2021] ICR 372).

expected to avert, he left (or proposed to leave) or (while the danger persisted) refused to return to his place of work or any dangerous part of his place of work, or

(e) in circumstances of danger which the employee reasonably believed to be serious and imminent, he took (or proposed to take) appropriate steps to protect himself or other persons from the danger

[but see (415)]

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

(3) An employee is not to be regarded as having been subjected to any detriment on the ground specified in subsection (1)(e) if the employer shows that it was (or would have been) so negligent for the employee to take the steps which he took (or proposed to take) that a reasonable employer might have treated him as the employer did.

(4) This section does not apply where the detriment in question amounts to dismissal (within the meaning of Part X).

415 It was not in dispute before us that following *Balfour Kilpatrick Ltd v Acheson [2003] IRLR 683* at [54] that the words "***or to communicate these circumstances these circumstances by any appropriate means to the employer"*** need to be read into subsection(1)(e).

416 As to the interpretation of s. 44(1)(c) ERA on behalf of Hamton Mr Jupp:

416.1 accepted the health and safety representative or safety committee does not have to be those of the employer, simply that they are in the workplace, and

416.2 argued the meaning of reasonably practicable in the context of s.67(2) of the Employment Protection (Consolidation) Act 1978, does not mean reasonable, which would be too favourable to employees, nor physically possible, which would be too favourable to employers, but means something like 'reasonably feasible'. He referred us to Asda Stores Ltd v Kauser EAT 0165/07, where the Honourable Lady Smith determined [17]: ***'the relevant test is not simply a matter of looking at what was possible but to ask whether, on the facts of the case as found, it was reasonable to expect that which was possible to have been done'.***

417 As to the interpretation of s. 44(1)(d) ERA the focus is on whether the employee's belief as to what was happening in the workplace at the time the employee elected not to attend, or to walk out was objectively reasonable not what the employer or others thought about the danger. The question is whether based on the employee's state of knowledge at the time, the employee "reasonably believed" that that danger was both "serious and imminent" [8].

418 Each of the elements of the statutory test needs to be analysed before a claim will be upheld [9].

Protected disclosures.

419 To qualify for protection a ***worker*** (this includes employees - see (411)) is required to make a ***"protected disclosure"*** [10]***.*** In order to be protected the disclosure must be a "***qualifying disclosure***", that is to say (so far is relevant) :-

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[8] *Edwards v Secretary of State for Justice [2014] 7 WLUK 909*
[9] Harvey DII.2.A [12]
[10] See Underhill LJ in *Beatt v Croydon Health Services NHS Trust [2017] EWCA Civ 401 at [24] following*

"s.43B(1) … any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following-

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

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

420 A qualifying disclosure will be a protected disclosure if it falls within the terms of any of ss.43C to 43H. We sought to clarify at the outset why it was disputed a protected disclosure had been made. The arguments raised were that

420.1 neither alleged disclosure qualified for protection on the basis that they failed to satisfy the public interest element of the test and

420.2 as to the alleged disclosure in May 2019 on the basis of a factual dispute as to what was said and if so if that was capable of being a disclosure.

No argument was advanced by either respondent on the basis of the identity of the person to whom the disclosure is made and/or that the conditions for protection in ss.43C to 43H were not satisfied.

421 On 25 June 2013, the Enterprise and Regulatory Reform Act 2013 amended sections 47B & 48(1A) ERA [11]. Section 47B now so far as relevant provides:-

"47B (1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.

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

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

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

on* the *ground that W has made a protected disclosure.

(1B) Where a worker is subjected to detriment by anything done as mentioned in subsection (1A), that thing is treated as also done by the worker's employer.

…

(3) This section does not apply where—

(a) the worker is an employee, and

(b) the detriment in question amounts to dismissal (within the meaning of Part X).

…" *[see also (441)]*

A Qualifying Disclosure

422 A disclosure of information requires facts (information) to relayed, as opposed to merely making an allegation [12], an expression of opinion or a state of mind [13] or statement of

[11] as a result of the decision of the CA in *Fecitt v NHS Manchester* [2011] EWCA Civ 1190, [2012] ICR 372
[12] *Cavendish Munro v Geduld [2010] IRLR 38 UKEAT/0195/09 [24]*
[13] *Goode v Marks and Spencer UKEAT/442/09 [36]*

position for the purpose of negotiation [14]. Thus, the words, ***"The wards have not been cleaned for the past two weeks. Yesterday, sharps were left lying around,"*** relay information whereas ***"You are not complying with health and safety requirements"*** is the making of an allegation and is not relaying information [15].

423 The dichotomy between "***information***" and "***allegation***" is not one that is made by the statute itself and Employment Tribunals have to take care to ensure they do

424 not fall into the trap of thinking that an alleged disclosure had to be either allegation or information, when reality and experience suggest that they are very often intertwined [16].

425 This does not, however, prevent them from falling within the terms of the section. As Sales LJ observed in *Kilraine v London Borough of Wandsworth* [17] the question is whether the statement or disclosure in question has ***"a sufficient factual content and specificity such as is capable of tending to show one of the matters listed in the subsection".*** He added that whether this is so ***"will be a matter for evaluative judgment by a tribunal in the light of all the facts of the case"*** [36].

426 A bare statement such as a wholly unparticularised assertion that the employer has infringed health and safety law will plainly not suffice; by contrast, one which also explains the basis for this assertion is likely to do so [18]. It is also irrelevant if the recipient was already aware of the information [19].

427 If a breach of a legal obligation is asserted, save in obvious cases the basis of the obligation the claimant believed the respondent to be in breach of should be identified and capable of verification by reference for example to statute or regulation [20]. Each of the complaints should be looked at individually rather than collectively to see whether it identifies (not necessarily in strict legal language) the breach of obligation (as opposed to guidance) on which the employee relies. [21]

428 An earlier communication can be read together with a later one as "embedded" in it, so that the two taken together, can amount to a protected disclosure even if taken on their own they would not fall within section 43B(1)(d) (*Goode* paragraph 37). Whether they do is a question of fact (*Everett Financial Management Limited v Murrell EAT/552-3/02 and 952/02* [46 & 47]) (see also *Norbrook Laboratories (GB) Ltd v Shaw UKEAT/0150/13* [22]). Whether they do is a question of fact [22].

429 A statement by an employee's solicitor that he believes he has been ill-treated, and that if not treated better he will resign and claim constructive dismissal, is not a disclosure of information but a statement of the employee's position. There is also a distinction between "to disclose" and merely "to communicate": if it were not so, there would have been no need for the extended definition of "disclose" in s. 43L (3). Accordingly, a statement of position for the purpose of negotiation is not a disclosure (see *Geduld)*. This approach was

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[14] see *Cavendish Munro*. This approach was also applied in *Goode*, *Norbrook Laboratories v Shaw UKEAT/0150/13 and Millbank Financial Services v Crawford [2014] IRLR 18 EAT.*

[15] see Lady Slade in *Cavendish Munro* where she explains the rationale for this and contrasts the statutory words in Part IVA ERA and the provisions in the Sex Discrimination Act 1975 and Race Relations Act 1976

[16] Langstaff P cautioned in *Kilraine v London Borough of Wandsworth UKEAT/0260/15 [30]*

[17] *[2018] EWCA Civ 1436; [2019] ICR 1850 at [35]*

[18] *Jesudason v Alder Hey Children's NHS Foundation Trust [2020] EWCA Civ 73 [20]*

[19] *Cavendish Munro [27]*

[20] Blackbay Ventures v Gahir *[2014] ICR 747 (EAT)* [98] & Eiger Securities v Korshunova *[2017] IRLR 115 (EAT)*

[21] *Fincham v HM Prison Service UKEAT/0991/01*

[22] *Everett Financial Management v Murrell EAT/552-3/02 and 952/02* [46 & 47]) see also *Norbrook* at [22]

also applied in *Goode*, *Norbrook Laboratories v Shaw* and *Millbank Financial Services v Crawford [2014] IRLR 18 EAT.*

430 It is irrelevant whether the recipient was already aware of the information [23].

Reasonable belief of the worker

431 The requirement the worker's *"belief"* must be *"reasonable"* imports an objective test [24]. The use of the word *"and"* requires the worker to reasonably believe the disclosure is in the public interest ***and*** to reasonably believe the disclosure tends to show one of the criteria in (a)-(f).

432 It is not necessary that the worker believes that the matters relied on definitely show the relevant *'state of affairs'* in s.43B(1), provided he reasonably believes that they "*tend to show"* that '*state of affairs'* existed [25].

433 In assessing that objective standard, the personal circumstances of the discloser, which are likely to include his knowledge of the employer's organisation as a well-informed insider and having regard to his/her qualifications are relevant. Thus the reasonable belief of an experienced surgeon may be entirely different view to that of a layperson [26].

434 The EAT summarised the approach thus position thus [27]:-

> ***"(2)… the first question for the ET to consider is whether the worker actually believed that the information he was disclosing tended to show the state of affairs in question. The second question for the ET to consider is whether, objectively, that belief was reasonable (see Babula at paragraph 81).***
>
> ***(3) If these two tests are satisfied, it does not matter whether the worker was right in his belief. A mistaken belief can still be a reasonable belief.***
>
> ***(4) Whether the worker himself believes that the state of affairs existed may be an important tool for the ET in deciding whether he had a reasonable belief that the disclosure tended to show a relevant failure. Whether and to what extent this is the case will depend on the circumstances. In Darnton HHJ Serota QC explained the position in the following way:***
>
> > *'29. … It is extremely difficult to see how a worker can reasonably believe that an allegation tends to show that there has been a relevant failure if he knew or believed that the factual basis was false, unless there may somehow have been an honest mistake on his part. The relevance and extent of the employment tribunal's enquiry into the factual accuracy of the disclosure will, therefore, necessarily depend on the circumstances of each case. In many cases, it will be an important tool to decide whether the worker held the reasonable belief that is required by s.43B(1).' "*

Was the disclosure made in the public interest

435 While the worker must have a genuine (and reasonable) belief that the disclosure is in the public interest, that does not have to be his or her predominant motive in making it otherwise the new ss. 49(6A) and 103(6A) would have no role.

436 In *Chesterton Global Ltd v Nurmohamed* [28] the CA said this about what was meant by "in the public interest:-

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[23] *Cavendish [27]*
[24] See Wall LJ in *Babula v Waltham Forest College [2007] ICR 1026 CA* [82]
[25] *Darnton v University of Surrey [2003] IRLR 133 EAT but see also see Wall LJ in Babula*
[26] *Korashi v Abertawe Bro Morgannwg University Local Health Board [2012] IRLR 4 EAT*
[27] *Soh v Imperial College UKEAT/0350/14* [42] approving the approach in *Darnton*
[28] *[2017] EWCA Civ 979, [2017] IRLR 837, [2018] ICR 731, [2018] 1 All ER 947*

"[31] Finally by way of preliminary, although this appeal gives rise to a particular question which I address below, I do not think there is much value in trying to provide any general gloss on the phrase "in the public interest". Parliament has chosen not to define it, and the intention must have been to leave it to employment tribunals to apply it as a matter of educated impression. Although Mr Reade in his skeleton argument referred to authority on the Reynolds defence in defamation and to the Charity Commission's guidance on the meaning of the term "public benefits" in the Charities Act 2011, the contexts there are completely different. The relevant context here is the legislative history explained at paras. 10-13 above. That clearly establishes that the essential distinction is between disclosures which serve the private or personal interest of the worker making the disclosure and those that serve a wider interest. This seems to have been essentially the approach taken by the Tribunal at para. 147 of its Reasons.

…

[34] Mr Laddie, for the Claimant, … suggested that the following factors would normally be relevant (I have paraphrased them slightly):

> ***(a) the numbers in the group whose interests the disclosure served – see above;***
>
> ***(b) the nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed – a disclosure of wrongdoing directly affecting a very important interest is more likely to be in the public interest than a disclosure of trivial wrongdoing affecting the same number of people, and all the more so if the effect is marginal or indirect;***
>
> ***(c) the nature of the wrongdoing disclosed – disclosure of deliberate wrongdoing is more likely to be in the public interest than the disclosure of inadvertent wrongdoing affecting the same number of people;***
>
> ***(d) the identity of the alleged wrongdoer – as Mr Laddie put it in his skeleton argument, "the larger or more prominent the wrongdoer (in terms of the size of its relevant community, i.e. staff, suppliers and clients), the more obviously should a disclosure about its activities engage the public interest" – though he goes on to say that this should not be taken too far.***

…

[37] Against that background, in my view the correct approach is as follows. In a whistleblower case where the disclosure relates to a breach of the worker's own contract of employment (or some other matter under section 43B (1) where the interest in question is personal in character[5]), there may nevertheless be features of the case that make it reasonable to regard disclosure as being in the public interest as well as in the personal interest of the worker. Mr Reade's example of doctors' hours is particularly obvious, but there may be many other kinds of case where it may reasonably be thought that such a disclosure was in the public interest. The question is one to be answered by the Tribunal on a consideration of all the circumstances of the particular case, but Mr Laddie's fourfold classification of relevant factors which I have reproduced at para. 34 above may be a useful tool. As he says, the number of employees whose interests the matter disclosed affects may be relevant, but that is subject to the strong note of caution which I have sounded in the previous paragraph.

Causation

437 The approach to causation was summarised by Simler P when the case of *Osipov* was heard by the EAT:

"82. It is common ground that "s.47B will be infringed if the protected disclosure materially influenced (in the sense of being more than a trivial influence) the employer's treatment of the whistleblower": see Fecitt v NHS Manchester [2012] IRLR 64, an approach that mirrors the approach adopted in unlawful discrimination cases and reinforces the public interest in ensuring that unlawful discriminatory considerations are not tolerated and should play no part whatsoever in an employer's treatment of employees and workers.

83.The words "on the ground that" were expressly equated with the phrase "by reason that" in Nagarajan v London Regional Transport 1999 ICR 877. So the question for a tribunal is whether the protected disclosure was consciously or unconsciously a more than trivial reason or ground in the mind of the putative victimiser for the impugned treatment.

84. Under s.48(2) ERA 1996 where a claim under s.47B is made, "it is for the employer to show the ground on which the act or deliberate failure to act was done". In the absence of a satisfactory explanation from the employer which discharges that burden, tribunals may, but are not required to, draw an adverse inference: see by analogy Kuzel v Roche Products Ltd [2008] IRLR 530 at paragraph 59 dealing with a claim under s.103A ERA 1996 relating to dismissal for making a protected disclosure."

438 As set out in *Harrow LBC v Knight* [2003] IRLR 140 ***"16. .... it is thus necessary in a claim under s.47B to show that the fact that the protected disclosure had been made, caused or influenced the employer to act (or not act) in the way complained of: merely to show that 'but for' the disclosure the act or omission would not have occurred is not enough..... [to] answer the question whether [the protected disclosure] formed part of the motivation (conscious or unconscious)"*** of the alleged statutory tortfeasor.

Section 47B(2)

439 Section 47B(2) was considered in *Osipov*[29] where the CA at [61] repeated the reasoning of now Simler LJ in the EAT

"154. The starting point is to construe all the words used in light of that intended purpose, including the words in brackets in s.47B(2)(b) which qualify the extent of the disapplication. The provision does not seek to exclude all claims for detriment amounting to dismissal as it could have done. Rather, that Parliament chose to limit the disapplication to those detriments amounting to dismissal within the meaning of Part X; in other words, to detriments amounting to unfair dismissal claims necessarily against the employer.

155. Furthermore, there is nothing in the express words of s.47B(2) that relieves a fellow worker or agent of his or her liability for a detriment amounting to dismissal not within the meaning of Part X. The distinction drawn by s.47B(2) turns on whether or not the detriment in question amounts to an unfair dismissal claim (because it is within the meaning of Part X) which must necessarily be brought against the employer. It maintains the distinction between claims against the employer of detriment other than dismissal falling under Part V, and claims for detriment amounting to dismissal within the meaning of Part X, which can only be pursued under s.103A in Part X. These claims are mutually exclusive. However, just as a worker who is not an employee has always been able to pursue detriment claims against the employer where the detriment in question amounts to dismissal (but cannot be pursued under Part X because the worker is not an employee) under s.47B in Part V, the amendments to s.47B introduced by the ERRA create a framework for individual liability of a fellow worker for detriments without restriction. There is nothing in the wording of s.47(B)(1A) that limits the detriments caught by the

[29] *Timis & Anor v Osipov & Anor [2019] IRLR 52, [2019] ICR 655, [2018] EWCA Civ 2321*

provision or that excludes from individual liability detriments amounting to termination of the working relationship.

156. This construction does not strain the meaning of the legislation, and to my mind creates a coherent approach. It puts employees in the same position as workers who never lose their right to make claims against individuals for detriments amounting to dismissal and ensures that employees are given the same protection as workers who are subjected to the most serious detriments and not put in a worse position than those workers. It is likely to be an unusual case where an employee will wish to pursue a claim and seek a remedy against a fellow worker for a whistleblowing detriment amounting to dismissal, rather than pursuing the claim against the employer, but I can see no principled reason for excluding it."

440 At [75] the CA said this:-

"... the construction of the language of section 47B (2) ... intended to exclude liability under the operative provisions of the section only where the identical remedy was available under section 103A; and thus that it would not exclude a co-worker's individual liability for the detriment of dismissal under sub-section (1A) (or, which follows, any vicarious liability of the employer under sub-section (1B)). ...

Detriments - Parts IVA & V generally

441 Sections 47B(3) provides that for the purposes of this sections 47B, 48 and 49, ***"worker"***, … and ***"employer "*** have the extended meaning given by section 43K.

442 By virtue of s. 48(1) ERA an employee may present a complaint to an employment tribunal that s/he has been subjected to a detriment in contravention of amongst other matters section 44(1). Section 48(1A) provides a like right to workers for contraventions of section 47B.

443 Section 48 also provides so far as is relevant:-

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

48 (4)For the purposes of subsection (3)—

(a) where an act extends over a period, the "date of the act" means the last day of that period, and

(b) a deliberate failure to act shall be treated as done when it was decided on;

and, in the absence of evidence establishing the contrary, an employer a temporary work agency or a hirer shall be taken to decide on a failure to act when he does an act inconsistent with doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done."

444 Accordingly s. 48 applies to protected disclosure and health & safety detriments.

445 By sections 48(4A) time limits are extended to facilitate conciliation before institution of proceedings and s. 48(5) any reference to employer in sections 48 & 49 include -

"(a) where a person complains that he has been subjected to a detriment in contravention of section 47A, the principal (within the meaning of section 63A(3)).

(b) in the case of proceedings against a worker or agent under section 47B(1A), the worker or agent."

Dismissal

446 Where the reason (or, if more than one, the principal reason) for dismissal is one of the matters set out in s. 100(a) to (e) or that the claimant made a protected disclosure ss. 100 and 103A ERA provide the employee ***"shall be regarded for the purposes of this Part as unfairly dismissed".***

447 If as here a claimant does not have qualifying service the burden is on the claimant to prove s/he fell within the statutory protection [30]. If the tribunal determines that reason or principal reason for the Claimant's dismissal was that the employee made a protected disclosure the qualifying period in s.108(1) does not apply and. the dismissal is regarded as automatically unfair and there is no need to assess the reasonableness of the dismissal, as would be required under s. 98(4) ERA.

448 The EAT [31]has set a two stage approach should be adopted concerning the application of s.100:-

> ***"25. Firstly, the tribunal should consider whether the criteria set out in that provision have been met, as a matter of fact. Were there circumstances of danger which the employee reasonably believed to be serious and imminent? Did he take or propose to take appropriate steps to protect himself or other persons from the danger? Or (if the additional words inserted by virtue of Balfour Kilpatrick are relevant) did he take appropriate steps to communicate these circumstances to his employer by appropriate means? If these criteria are not satisfied, section 100(1)(e) is not engaged.***
>
> ***26. Secondly, if the criteria are made out, the tribunal should then ask whether the employer's sole or principal reason for dismissal was that the employee took or proposed to take such steps. If it was, then the dismissal must be regarded as unfair."***

449 It then continued:-

> ***"27. In our judgment the mere fact that an employer disagreed with an employee as to whether there were (for example) circumstances of danger, or whether the steps were appropriate, is irrelevant. The intention of Parliament was that an employee should be protected from dismissal if he took or proposed to take steps falling within section 100(1)(e). "***

450 That approach was approved in Hamilton v Solomon And Wu Ltd [2018] UKEAT/0126/18 by Stacey J as she now is.

The reason (or principal reason) for the dismissal (s. 98(1) ERA)

451 This was classically assessed by reference to the set of facts known or beliefs held by the employer which caused it to dismiss the employee [32] and that includes information coming to the respondent's knowledge on the hearing of the appeal [33]. That formulation may not be perfectly apt in every case [34], the essential point remains a valid one; the "reason" for

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[30] *Smith v Hayle [1978] IRLR 413 (CA))* which concerned the provisions of TULRA 1974 and a trade union reason being advanced as an admissible reason. Lord Denning MR In the minority, said that the burden lay on the employer; the majority, Eveleigh LJ and Sir David Cairns, held that it lay on the employee to show that the tribunal had jurisdiction in view of the qualifying period hurdle. That majority ruling has held sway ever since. It was endorsed by the CA in *Marley Tile Co Ltd v Shaw [1980] ICR 72* and again in *Maund v Penwith DC [1984] ICR 143* and followed by the EAT in a number of cases and specifically in the context of s.103A in *Ross v Stobart [2013] UKEAT/0068/13* a view recently endorsed by the EAT in *Okwu v The Shrewsbury & Rise Community Action [2019] UKEAT 0082/19.*

[31] *Oudahar v Esporta Group Ltd [2011] UKEAT/0566/10, [2011] IRLR 730, [2011] ICR 1406*

[32] *Abernethy v Mott, Hay & Anderson [1974] ICR 323 CA* per Cairns LJ at 330B-C

[33] Browne-Wilkinson P in *Sillifant v Powell Duffryn Timber Ltd [1983] IRLR 91 (EAT) at [95]* approved by Lord Bridge in *West Midlands Co-Operative v Tipton [1986] IRLR 112 (HL)*

[34] see Hazel v Manchester College *[2014] ICR 989* (CA) per Underhill LJ at [23]

dismissal connotes the factor(s) operating on the mind of the decision-maker which cause him/her to take (or, as it is sometimes put, what "motivates") the decision [35].

452 Thus when considering the reason for a dismissal the Tribunal need generally look no further than at the reasons given by the appointed decision-maker. However, ***"... if a person in the hierarchy of responsibility above the employee determines that she (or he) should be dismissed for a reason but hides it behind an invented reason which the decision-maker adopts, the reason for the dismissal is the hidden reason rather than the invented reason ..."*** and "***it is the [Tribunal's] duty to penetrate through the invention rather than to allow it also to infect its own determination***" [36]

453 HHJ Auerbach has summarised the position following *Jhuti* thus [37]

> ***"78. Drawing it all together, I conclude that Lord Wilson (and his fellow Justices) were of the view, first, that the question of whether the knowledge or conduct of a person other than the person who actually decided to dismiss, could be relevant to the fairness of a dismissal, could arise, both in relation to the Tribunal's consideration of the reason for dismissal under section 98(1) and/or its consideration of the section 98(4) question; and that, in a case where someone responsible for the conduct of a pre-investigation did not share a material fact with the decision-maker, that could be regarded as relevant to the Tribunal's adjudication of the section 98(4) question. ..."***

Timing

454 An employment tribunal shall not consider a complaint of unfair dismissal unless it is presented to the tribunal [38]—

> ***"(a) before the end of the period of three months beginning with the effective date of termination, or***
>
> ***(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months."***

The Equality Act Complaints

Harassment

455 If an act is found to be harassment it cannot also be a detriment (and thus direct discrimination), but a finding an act is not harassment does not prevent that being direct discrimination complaint. Where harassment and direct discrimination are both argued, as here, harassment needs to be considered first [39].

456 A respondent harasses a claimant if the respondent engages in ***unwanted conduct related to*** a relevant protected characteristic (here race), and the conduct has the purpose or effect of either

(i) violating the claimant's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

457 We will refer to the matters in (i) and (ii) as ***'the proscribed consequences'***.

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[35] see also The Co-Operative Group Ltd v Baddeley *[2014] EWCA Civ 658* [41]

[36] Royal Mail Group Ltd v Jhuti [2020] ICR 731, [2019] UKSC 55 at [60,62]

[37] Uddin v London Borough of Ealing [2020] UKEAT 0165/19

[38] s.111(2) Employment Rights Act 1996

[39] s. 212(1) & (5) Equality Act 2010 (EqA)

458 In deciding whether conduct has the effect referred to each of the following must be taken into account -

(a) the perception of the claimant;

(b) the other circumstances of the case;

(c) whether it is reasonable for the conduct to have that effect.

459 That means having taking into account all the other circumstances the tribunal must find that a claimant perceived him/herself to have suffered the effect in question and it must be reasonable for the conduct to be regarded as having that effect [40].

460 We first remind ourselves that

> ***"... not every racially slanted adverse comment or conduct may constitute the violation of a person's dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other grounds covered by the cognate legislation to which we have referred), it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase."*** [41]

461 Langstaff P subsequently endorsed that view :-

> ***"12. The word "violating" is a strong word. Offending against dignity, hurting it, is insufficient. "Violating" may be a word the strength of which is sometimes overlooked. The same might be said of the words "intimidating" etc. All look for effects which are serious and marked, and not those which are, though real, truly of lesser consequence."*** [42]

462 Elias LJ in Grant v HM Land Registry [43] said this:-

> ***"13 ... When assessing the effect of a remark, the context in which it is given is always highly material. Everyday experience tells us that a humorous remark between friends may have a very different effect than exactly the same words spoken vindictively by a hostile speaker. It is not importing intent into the concept of effect to say that intent will generally be relevant to assessing effect. It will also be relevant to deciding whether the response of the alleged victim is reasonable.***
>
> ***...***
>
> ***47 ... Tribunals must not cheapen the significance of these words ["violating dignity", "intimidating, hostile, degrading, humiliating, offensive"]. They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment."***

463 Mr Jupp reminded us that:-

463.1 The expression 'related to' is to be given a broad meaning, [44]

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[40] Pemberton v Inwood [2018] IRLR 542, [2018] EWCA Civ 564 per Underhill LJ
[41] Richmond Pharmacology v Dhaliwal [2009] UKEAT/0458/08, [2009] IRLR 336 at [22]
[42] Betsi Cadwaladr University Health Board v Hughes [2014] UKEAT/0179/13
[43] [2011] IRLR 748 *CA*
[44] *Hartley v Foreign and Commonwealth Office* UKEAT/0033/15 (27 May 2016, unreported) at [23].

463.2 That aside the expression 'related to' does not extend liability to cases of harassment by third parties, where the employer is not itself motivated by discrimination, [45]

463.3 As s. 40(2)-(4) EqA has been repealed, Hamton cannot be liable for any conduct of Aston Martin.

463.4 Therefore, so far as Hamton is concerned only its conduct is to be considered.

Direct discrimination

464 Direct discrimination occurs where, a person is treated less favourably than another person has been or would be treated ***because of*** a protected characteristic. Here the protected characteristic is race. That exercise involves a comparison. The circumstances of the comparator and the person who has been discriminated against must be materially the same other than the absence of the protected characteristic [46]. ***'Would treat'*** means the comparator need not be an actual person.

465 The protected characteristic also need not be the sole or even principal reason for the treatment so long as it has significantly (that is more than trivially) influenced the reason for the treatment [47].

466 As with harassment, Mr Jupp argued per *Nailard* at [89] that an employer will not be liable for third party discrimination.

The burden of proof

467 It is unusual to find evidence of discrimination and therefore the Equality Act provides that in the absence of any other explanation, if there are facts from which the court could decide, that there has been a contravention of the Equality Act the tribunal ***must*** hold that the contravention occurred unless a respondent shows that the conduct or decision in issue was in no sense because of the relevant protected characteristic [48], that requires a consideration of the subjective reasons which caused the respondent to act as s/he did [49].

468 When considering whether a protected characteristic was a basis for less favourable or unwanted treatment, the whole has to be looked at. It might be said, for instance, that one cannot understand the scenes in a later act of a play without first having understood what has happened in earlier acts (or the events in later scenes) since they provide context for, and cast light on the overall picture [50].

469 Whilst those provisions are helpful where there is room for doubt, if the tribunal is in a position to make positive findings on the evidence one way or the other that is an end to the matter [51].

470 A difference in treatment alone is not sufficient to establish that discrimination could have occurred and passed the burden of proof to a respondent, similarly unreasonable conduct without more is not enough either. Context is important and adverse inferences may be drawn where appropriate from the surrounding circumstances of the respondent's conduct. Thus, as Mr Palmer reminds us, whilst less favourable treatment will involve a

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[45] *UNITE the Union v Nailard* [2019] ICR 28 at [92] to [101].
[46] s. 23 EqA
[47] Nagarajan v London Regional Transport *[1999] IRLR 572; [1999] UKHL 36; applied in Igen v Wong at [*37]
[48] *Ayodele v Citylink Ltd [2017] EWCA Civ 1913*
[49] see *Shamoon [*7] per Lord Nicholls.
[50] see Kansal v Tullett Prebon Plc UKEAT/0147/16 at [31] where Langstaff J also *referred to* Qureshi v Victoria University of Manchester [2001] ICR 863 and X v Y [2013] UKEAT/0322/12
[51] Hewage v Grampian Health Board [2012] UK SC 37*at [32]*

detriment, it is not always the case that treatment resulting in a detriment is as a result of discriminatory conduct .

471 Again as Mr Palmer reminds us *Glasgow CC v Zafar [1998] IRLR 36* indicates whether an explanation is adequate refers to whether it is regarded as genuinely non-racial, regardless of whether it results in unreasonable treatment.

472 In determining what if any inferences might be drawn from unreasonable conduct by an employer, Elias J as he then was went on to consider the distinction in *Law Society v Bahl [2003] IRLR 640, EAT 1056/01,* emphasising that whilst discriminatory behaviour is always unreasonable, unreasonable behaviour is not always discriminatory; the issue is whether there has been less favourable treatment on racial grounds. Elias J (as he then was) said ***"94. … it is not shown to be so merely because the victim of such conduct is black or a woman ……the fact that a victim is black or a woman, does no more than raise the possibility that the employer could have been influenced by unlawful discriminatory considerations".*** Elias J went on in paragraphs 96 to 100 to explain where unlawful discrimination might be inferred not from the unreasonable conduct but from the absence of any reasonable explanation for it.

Timing

473 Complaints under the Equality Act 2010 may not be brought after the end of —

> ***"s.123 (1)***
>
> ***(a) the period of 3 months starting with the date of the act to which the complaint relates, or***
>
> ***(b) such other period as the employment tribunal thinks just and equitable.***
>
> ***…***
>
> ***(3) …***
>
> ***(a) conduct extending over a period is to be treated as done at the end of the period;***
>
> ***(b) failure to do something is to be treated as occurring when the person in question decided on it."***

OUR CONCLUSIONS

Employment

474 As we state above the principal argument relied upon in relation to this issue by the claimant is that in *James v London Borough of Greenwich*. There Ms James brought a claim of unfair dismissal against the Council, having worked directly for it for a time. That employment had then ceased for four years before Ms James again began working for the Council via an employment agency. A couple of years later she moved to another agency who paid her a better hourly rate. Ms James worked for the end user for a number of years under their direction with no involvement from the agency and was treated like a permanent member of staff. There was no express contract between Ms James and the Council so to succeed in her claim she needed to persuade the tribunal a contract of employment should be implied between her and the Council. The employment tribunal found that she was not an employee of the Council and dismissed her claim. Ultimately the Court of Appeal held that it was not sufficient that the relationship looked like employee/employer.

475 The Claimant in part maintains that a contract should be implied because it was not possible for him to obtain a direct contract with Aston Martin. He also points to Hamton's failure to deal with his sickness absence or grievance save that it simply accepted the points made by Aston Martin, and his day-to-day management as well as issues such as holidays having to be approved by Aston Martin as pointing to Aston Martin in reality being the employer.

476 Here, there was a contract in place regulating the tri-partite relationship and whilst the claimant (save for his boots) wore a uniform provided by Aston Martin and worked under the control and direction of Aston Martin and its staff as to the work that he did, the station he worked at, his working day, shifts and breaks, he was paid by Hamton, his holidays which had to first be approved by Aston Martin were channelled by through Hamton, and there were other differences with the circumstances in ***James*** such as Hamton's staff were not under the 'care' of Aston Martin's Occupational Health staff (instead that appeared to be the responsibility of Hamton), Hamton permanently had representatives embedded on site, the claimant did not negotiate his pay directly with Aston Martin or tell us of any acts on his part that were inconsistent with the contractual position that he was employed by Hamton.

477 When the claimant lodged a grievance he did so to Hamton. Whilst he referred to "… ***it is my assertion that Aston Martin have knowingly and willingly allowed and then continued to allow me to carry out employment duties that were and are injurious to my health."*** [191] and (94) that is not necessarily inconsistent with the contractual position relied upon by the respondents, namely that the claimant's employment duties were owed to Hamton but day to day instructions as to his work came from Aston Martin. There was no express assertion in the grievance that he was employed by Aston Martin despite by the date of that grievance he had taken legal advice. Had he believed Aston Martin were his employer he could and should have addressed the grievance to Aston Martin. That further supports the view he believed he was employed by Hamton.

478 Crucially the claimant and all staff were aware of the distinction between agency staff and employees and that engagement via Hamton was the route to permanent employment with Aston Martin, as had been the case for the claimant's brother and almost all the staff who were asked that question before us. That was something the claimant acknowledged was still acting on his mind in the last few weeks of his engagement when he turned down a GP's note because he thought it might jeopardise his chances of a permanent contract [28 ET1¶92].

479 That distinction served a purpose; permanent staff had greater job security in the sense that when staffing reductions were required Hamton staff were informed their services were no longer required before Aston Martin staff. That gave Aston Martin flexibility in relation to staffing and its associated costs, to ride the ebbs and flows of customer demand for their vehicles. That flexibility is reflected in Hamton's contract with the claimant which provided (¶7.3) what was to happen if he was not on assignment (essentially he would be paid 50% of his highest weekly basic pay).

480 In our judgment the performance of all parties and the actuality of their relationships genuinely reflected and was consistent with the contracts between them and it is not necessary to imply a contract of employment between the claimant and Aston Martin.

Timing

481 It was not in dispute that unless any acts or omissions prior to 1 October 2019 formed part of conduct that extended over a period that elapsed after that date they would, absent any extension, be out of time.

482 It is the position of all parties that the claimant was dismissed. For the avoidance of doubt we find that was so.

483 We found that the claimant was employed by Hamton and whilst the claimant may have been aware of the decision of Aston Martin to remove him from assignment earlier we found that his dismissal by Hamton was not communicated to him until 3 October; the date we found he received his dismissal letter.

484 We find that given the claimant's contract was not terminated until 3 October, prior to that date he was required to continue undertaking his duties and thus any complaint concerning him being required to continue performing his duties including the fitting of cabling harnesses, the respondents failing to take any or any adequate remedial action to modify to alleviate the Claimant's working conditions, including rotating the Claimant from the process and/or concerning his grievance continued until that date.

485 Accordingly, in our judgment no timing issues arise.

The protected disclosure complainants

486 It is not disputed the claimant was a worker. Hamton and Aston Martin can both be potentially liable.

The first alleged protected disclosure

Hamton

487 The claimant accepted that no complaint was made to Mr Benjamin on or about 30 or 31 May 2019 as originally alleged by the claimant. Accordingly, we find there was no disclosure made to Hamton in May 2019 as alleged. That being so it was accepted any claim against Hamton in relation to the first alleged protected disclosure therefore fails.

Aston Martin

488 It is not accepted by that Aston Martin that the first alleged protected disclosure was a disclosure that qualified for protection. The first issue that arises surrounds what it is alleged that was said, who to and when, that formed the alleged disclosure.

489 The claimant made varying assertions when the first disclosures was made (stating firstly 30/31 May, then before the line balance in May/June, whereas his September grievance suggests this was after the line balance), who to (amongst other matters he gave differing accounts whether he made this to Mr Benjamin) and what it included.

490 Concerns also arise as to what that complaint (if any) included. It was not disputed that the claimant raised the bruising to his arms to Mr Terrell and Mr Wood during a line walk (see (99)). We found (114-115) that was on 14 June, the day of Mr Terrell's email to Mr Fox during the second week of the new working arrangements when the production line was running at 75%. Contrary to the claimant's oral assertion, he could not have known the detail what his role was to include after the line balance until he had been given the details of it and we heard that was on the first morning of the line balance.

491 Given the inconsistencies in the claimant's account, the vagueness as to what the claimant alleges he said and our concerns generally as to his account (see (402) above) we gave no weight to his account save where it was supported elsewhere.

492 We found (125) that the claimant raised with Aston Martin bruising and no more than that. Mr Jones' account (see (105)) and the content of the claimant's subsequent September grievance (see (94)) where he states what he alleges he raised in May 2019 supported that.

493 In order for there to be a public interest in those matters in our judgment there would need to be some form of wider impact asserted, other than one limited to solely the claimant's role and impact on him, for instance that the claimant had raised issues previously and they had not been acted upon, that the respondent did not take health and safety concerns seriously or some other element giving rise a wider impact.

494 The matters relayed are limited in our judgment to the claimant's personal role and if his role was not changed what the effect on him would be. Nor was the complaint that he made in June a complaint about the respondent failing to address a concern that the claimant had previously reported.

495 In our judgment that wider aspect, the public interest element, is absent from the June complaint, and that is supported by what his September grievance relays as to what he stated in June (or on his account May). We conclude his June complaint related solely to his personal role and the effect that Aston Martin requiring him to do that role without measures being put in place to assist had on him and included no wider public interest element. At best it referred to a concern that his injuries would get worse, rather than that he believed at the time Aston Martin did not take Health & Safety concerns or such like seriously. The June complaint was not in our judgment a protected disclosure.

The second alleged protected disclosure

496 It was accepted that, causation aside save for the reasonableness of the claimant's belief and public interest issue, the 30 September grievance was capable of being a qualifying disclosure.

497 We set out the contents of the 30 September grievance in full at (304). In our judgment in the September grievance the claimant was complaining that he had previously complained to Mr Terrell that his working was causing him bruising, injuries and medical problems and nothing was being done to remedy that or assist, had complained about that and nothing had been done:-

> ***"… I have been offered no counselling or any type of therapeutic, emotional or physical support. …***
>
> ***…. no such assistance whatsoever was afforded me proactively.***
>
> ***Neither have any elements of my process been passed onto other technicians & neither were occupational health sent to see me until I contacted them myself recently. …"***

498 The respondents argue those complaints are entirely personal about the claimant's own working conditions. We disagree; we find that was a complaint that at a wider level Aston Martin did not take Health & Safety complaints seriously nor address them properly or at all and thus potentially fell within both s.43B(1)(b) & (d).

499 The difficulty with the content of the claimant's complaint is that contrary to his September grievance the harness fitting he was required to undertake had been changed in June, the claimant accepted he had been supported by Mr Jones when he was finding the work difficult and other aids had been provided such as the '*slave seal*', gloves, wax baths, an additional harness heater sourced so the harness could heat up for longer and the temperatures of the heaters checked and their shelf height raised so the lift of the harness was reduced. Further, he accepted occupational health had ***attempted*** to discuss matters with him (the occupational health advisor's account at the time was that the claimant did not wish to speak to her substantively).

500 Those elements refer to the factual basis for the claimant's disclosure and on the claimant's own account were incorrect. For the statutory criteria to be satisfied the claimant's belief in them has to be a reasonable one based on his state of knowledge. This is not a question where he mistakenly believed something to be an offence when it was not (*Babula*) but where the facts he asserted that underlay his alleged protected disclosure were incorrect and had the claimant considered and reviewed them based on his own account before us would have concluded that to be so. in our judgment the claimant did not have a reasonable belief in them.

501 That being the case both protected disclosure complaints fail.

502 Notwithstanding, our determination on the protected disclosure above we address the alleged detriments and dismissal.

Detriments

Hamton

503 It was accepted the first protected disclosure was not made to Hamton.

504 We found Mr Benjamin was not aware of any intention on the claimant's part to make or that he had made a complaint, until 11 September 2019. We also found that prior to the discussions referenced in Mr Benjamin's diary (on 11, 24 and 25 September), that Mr Benjamin was not aware of the detail of the contents of the claimant's complaint. The lack of any reference by the claimant to the discussions that are relayed in Mr Benjamin's diary or to the dates or contents of those discussions and thus their contents supports Mr Benjamin's absence of awareness of any complaint prior to that time. That is reinforced by Mr Benjamin initially speaking to Mr Wood which we found was because he was unaware and wanted to know what the concerns was about, and when that drew a blank, the claimant asked again for a grievance form the following day, Mr Benjamin and Mr Wassell spoke to Mr Terrell. We found they made those enquiries because they wanted to know what the claimant's grievance related to because they were surprised by it

505 We found Mr Benjamin, Mr Wassell, and therefore Hamton, only became aware of the content of the information that underlay the content of the claimant's grievance when they received the claimant's grievance itself on 30 September 2019. Thus, of the various detriments:-

> ***(i) Requiring the Claimant to continue performing the fitting of cabling harnesses process;***
>
> ***(ii) Failing to take any or any adequate remedial action to modify to alleviate the Claimant's working conditions, including rotating the Claimant from the process.***
>
> ***(iii) Dismissing the Claimant with effect from the 3rd October 2019.***

chronologically, only those actions that occurred on or after the protected disclosure of 30 September could be said to be done on the ground of the claimant having made a protected disclosure to Hamton. We found that by the time Hamton became aware of the content of the protected disclosure Aston Martin had decided to terminate the claimant's assignment, there was thus no question the claimant was to be required to continue fitting cable harnesses ***because of*** the protected disclosure because his assignment had been terminated by then. The same applies with regard to failure to take remedial action or modification of the claimant's working conditions.

506 We found the claimant's employer was Hamton. Therefore for the reasons we give above, detriment (iii), dismissal, cannot constitute a detriment against it. Instead the remedy lies in dismissal which we address at (510) below.

Aston Martin

507 We found the disclosure in June did not qualify for protection because the reasonableness of the claimant's belief aside, there was no public interest within it. As to the second disclosure we found the information that underlay it only came to Aston Martin's attention at the meeting between Mr Benjamin and Mr Terrell on 1 October (see (325 and 380 following)).

508 As we state above by the time Aston Martin became aware of the content of the information that underlay the protected disclosure it had already decided to terminate the claimant's assignment. In our judgment, it cannot be said the protected disclosure (and the information that underlay it) had any influence whatsoever that decision. The same applies as above in relation to the requirement to continue fitting cable harnesses and remedial action or modification of the claimant's working conditions.

Dismissal

509 Addressing first the claim against Aston Martin, we found the claimant's employer was Hamton so a whilst a detriment complaint does lie against Aston Martin, a dismissal claim does not.

510 As to the claim against Hamton, as we state above by the time Hamton became aware of the content of the information that underlay the protected disclosure, we found Aston Martin had already decided to terminate the claimant's assignment. We found that was because of the disruption his actions had caused to the production line and that he was one of the members of Hamton staff whose assignment was to be terminated two weeks later in any event.

511 We found that Aston Martin's decision to terminate the claimant's assignment was taken before Aston Martin were aware of the information that underlay the claimant's complaint. We found that Hamton had no alternative work for the claimant and thus no alternative but to dismiss with effect from 3 October 2019.

512 There was thus no question in our judgment that the reason or the principal reason for the claimant's dismissal was caused by the protected disclosure and that claim also fails.

Health & safety complaints

513 Aston Martin submits that no claim lies against it under s. 44 ERA because the claimant was never its employee and the amendment found in s. 44(1)(A) extending protection to workers only applies where the last act alleged to be a detriment occurred after 31 May 2021. Similarly for the dismissal complaints (s.100 and s.103A ERA) [52].

514 We found the claimant's employer was Hamton. That being so the necessity for the amendment of s. 44 to extend protection to workers is support for Aston Martin's analysis. We agree. In our judgment no claim can lie against Aston Martin.

515 As to the first Health & Safety complaint given our finding that Hamton was his employer and the claimant accepted Hamton were not a party to the disclosure in May 2019, it follows that any detriment (or dismissal) could not have been done to him because of that first health & safety complaint (at least until the second witness statement made).

516 That being so we turn to the components of the second health & safety complaint.

[52] That is not argued in relation to the protected disclosure detriment complaints because they extend to workers. Instead Aston Martin argue the disclosures did not qualify for protection and there was an absence of a causative link in relation to both alleged disclosures.

Claim under s. 44(1)(c)(ii)

517 It is accepted by Hamton that the claimant's grievance of 30 September was made to it and that grievance identified circumstances which the Claimant believed were harmful. It disputes the reasonableness of that belief and the other elements.

518 As to the requirement that it was not reasonably practicable for the claimant to have drawn the matter to a health and safety representative or safety committee in his workplace the claimant alleges he was not aware of who those representatives were. He argued he did not look at the notice boards, the initial training he was given was deficient, he was not given the respondents' various manuals and he did not read the *EASE* screens because he was so overwhelmed with work.

519 In our judgment the claimant could have readily accessed this information. Like much of his evidence we found there were clear inconsistencies with the claimant's position. We found he made enquiries of Mr Benjamin (and Mr Jones) to identify how and to whom he should raise a grievance, similarly he could have enquired who Aston Martin's Health & Safety representatives were from Mr Benjamin, from Mr Wood or Mr Jones at the pre-shift meetings each morning or otherwise, when Mr Terrell was undertaking a line walk or even from his brother. Similarly, and in contrast, he repeatedly stated he did report matters to his managers and to Mr Fox and to Mr Howarth (who it later transpired, although he did not say this in his statement, that he was on Aston Martin's health & safety committee; that was yet another failure of the respondents to provide relevant information in witness statements). Further, both Mr Jones and Mr Howarth told us the claimant referred to his family solicitor in the context of making a complaint and seeking the ergonomic assessment. Again, the claimant could have taken advice on to whom to ask for that information.

520 Given those matters we find that it was reasonably practicable for the claimant to have identified who the respondents' Health & Safety representatives were in advance of 30 September (he had spoken to Mr Benjamin by the 11 September). That view is further reinforced by the claimant having taken legal advice by late September. Accordingly that complaint fails.

Claim under s. 44(1)(d)

521 On the respondents' case the circumstances of danger which the claimant reasonably believed to be serious and imminent circumstances had persisted since either the outset of his employment, the line change in May/June 2019 or from when the front harness had been removed in or about June and thus had persisted for some time. We thus asked Ms Crew to identify where the Claimant set out the basis for his belief that the circumstances were such that he was at serious and imminent danger.

522 She referred us to paragraph 111 of the details of complaint, although paragraph 110 is also informative:-

> ***110. Inside I was broken and falling apart under all the pressure and stress that I was going through due to the complete failure by Aston Martin, as well as Hamton as my formal employer, to deal with the pressing health and safety breaches which were directly impacting on me – physically and mentally.***
>
> ***111. By raising these health and safety concerns repeated, I was, also, whistle-blowing. I was flagging up the seriously harmful conditions in which I was being forced to work. These failures by Aston Martin, were in my understanding both a health and safety breach and a failure to comply with legal obligations by them to ensure health and safety was protected at the workplace for their workers and staff.***

523 The details of complaint also stated that:-

> ***"55. The Claimant had, In fact, taken advice from his GP prior to 10 September 2019 about his ongoing injuries and conditions of work. The GP had advised him to stop the work immediately.***
>
> ***…***
>
> ***59. The Claimant reached a point of final exhaustion on 30 September 2010 (day shift); following his GP's advice to not continue with the harmful work. He refused to carry on with the intensity and volume of work given to him all along.***
>
> ***…***
>
> ***92. Towards the end of September 2019. the Claimant spoke to his GP. about his continuing work injuries and work conditions and how much he was distressed by it. He broke down in front of his GP In tears. feeling helpless and completely broken. The GP offered to place him on sick leave. But. the Claimant feared that going on sick leave would risk him not being able to gain a full-time contract with Aston Martin. The Claimant decided that sick leave wee not a suitable option."***

524 In his second witness statement [#2¶87] the claimant stated that in September 2019, he visited his GP to discuss the impact on his health. Whilst he does not give the date, in the immediately preceding paragraph he detailed the events of 30 September. He later stated [¶89] that he visited his GP again in October 2019 for a further consultation where he was prescribed pain-killers, sleeping tablets and anti-depressant tablets.

525 As we state above (208) the claimant's medical notes [373 following] made no reference to the GP visit prior to 30 September. It was suggested that was an out of hours appointment and thus somewhere other than his own GP's surgery. No mention of that was made in the lengthy witness statement the claimant provided explaining the difficulties he had obtaining his medical notes as a result of the COVID pandemic. The claimant did not explain why not. Nor in our judgment in his witness statements did the claimant adequately explain why it was not possible in the (almost) 2 years since his engagement terminated, why he, or his solicitors on his behalf, have not obtained his full medical records given their relevance to the issues at hand nor has he provided medical evidence in support of the assertion he was acting on GP advice.

526 That is reinforced by Mr Jones' comments that the claimant had mentioned several times to him his family's solicitor in the context of bringing a claim.

527 Further, the claimant gives no specific detail of what, how or why he believed he was in circumstances of danger. The burden is on him to do so and he has not. Even if reading his evidence as a whole that could be inferred, by virtue of the last change being in June 2019 (see (521)) the claimant had thus worked in those circumstances for some time and no explanation is provided, given that was so, how or why he reasonably believed that was a serious and imminent danger to him physically, mentally or by some combination of the two. The burden is on him to do so and again he has not done so.

528 That issue aside, by the morning of Monday 30 September the claimant had prepared and intended to lodge the contents of his grievance. He had enquired about the means of lodging the grievance the week, before. Again, the claimant does not explain what had changed over the course of those days that had caused him to reasonably believe the danger to be serious and imminent. Again, it is for him to do so and he has not.

529 Those matters aside, taking paragraph 59 of the details of complaint to be what was in the claimant's mind at the time, we found he always intended to refuse to work on 30 September. Given that was so the claimant has not shown how the alleged circumstances of danger that day, whether physical, mental or some combination, were in any event, serious and imminent.

530 Even if the claimant reasonably believed there were circumstances of danger that day that were serious and imminent he is also required to show he could not reasonably have been expected to avert those circumstances. A reasonable means of averting the danger might have been for him not go into work that day. Again he does not explain why he did not avail himself of that option. That is reinforced yet further by the offer of a sick note two weeks before by his GP (see Mr Benjamin's witness statement [¶29]) which the claimant had declined because he said he felt that would place at risk the possibility of a permanent role with Aston Martin.

531 If the sole intention behind the claimant attending work on 30 September was to hand in the grievance he could have done so by email, in writing by post or via his brother. The claimant provides simply no explanation why he did not lodge the grievance via those alternative reasonable means and thus why by going in to lodge the grievance he was in circumstances of danger that were serious and imminent. The burden is on him to do so and again he has not done so.

532 For all those reasons that complaint also fails.

Claim under s. 44(1)(e)

533 In our determinations relating to the claim under s. 44(1)(d) we concluded that the claimant has not shown there were circumstances of danger or that the claimant held a reasonable belief that they were serious and imminent. Those circumstances equally apply to the s. 44(1)(e) claim and that being so the s. 44(1)(e) claim must also fail.

Detriments

534 Whilst they do not arise, for completeness we have gone on to address the detriment complaints relied on:-

534.1 Requiring the Claimant to continue performing the fitting of cabling harnesses process.

534.2 Failing to take any or any adequate remedial action to modify to alleviate the Claimant's working conditions, including rotating the Claimant from the process.

534.3 Dismissing the Claimant with effect from the 3 October 2019.

535 As to the claims against Aston Martin, given s.44 was limited to complaints brought by employees (as is evidenced by the need to amend the statute following *Fecitt* and the *Independent Workers Union* cases) and we have found Aston Martin were not the claimant's employer no claim therefore lies against Aston Martin.

536 As to the claims against Hamton, whilst the Claimant was dismissed for the reasons we give above, a dismissal of an employee pursuant to part X ERA by an employer cannot also be pursued as a detriment complaint against the employer pursuant to Part V ERA. We find the claimant was dismissed pursuant to part X ERA and thus a separate detriment complaint cannot not arise. We address the dismissal complaint at (539).

537 As to the other two detriments as we state above by the time Hamton became aware of the content of the information that underlay the protected disclosure Aston Martin had decided to terminate the claimant's assignment, there was thus no question the claimant

was to be required to continue fitting cable harnesses because of the protected disclosure because his assignment had been terminated. The same applies with regard to remedial action or modification of the claimant's working conditions. Those complaints therefore fail.

Dismissal

538 For the reasons we give above (535) no dismissal complaint can lie against Aston Martin.

539 We found the reason that the claimant was dismissed by Hamton because Hamton had been instructed to take him off assignment with immediate effect by Aston Martin. We found Aston Martin decided it was no longer prepared to have him on assignment in view of the disruption his actions had caused to the production line and because he was one of the members of Hamton staff whose assignment were to be terminated two weeks later in any event.

540 We found that Aston Martin's decision was taken before Aston Martin were aware of the detail that underlay the claimant's complaint and that having been made Hamton had no alternative work for the claimant and thus no alternative but to dismiss with effect from 3 October 2019.

541 Accordingly we conclude the health & safety complaints played no part whatsoever in that decision and that complaint also fails.

Equality Act 2010

542 Whilst that was not an essential component in his complaints at no point in his evidence did the claimant expressly state that during the course of his employment he raised any reference to discrimination or to him or others being discriminated against. Nor was there any mention of discrimination in the claimant's grievance, the discussions he had with Mr Howarth or Mr Benjamin in September (see Mr Benjamin's note [198-199] and Mr Benjamin's diary entries and the events of those days at (249) following). Those failures are relevant evidentially s to the claimant's view of the respondents' (in)actions at the time.

543 Underlying the claimant's complaints under the Equality Act he alleges that only he and Mr Robinson of a team of 15-25 technicians were not white British and only they were designated to do this particular type and load of work [ET1¶72]. Aston Martin in turn argues it's factory included workers from different racial groups, employed directly by it or engaged indirectly through agencies such as Hamton. It denied that the Claimant and Mr Robinson were the only workers asked to carry out their type of work, or undertake their load of work. In support we were referred to other workers who carried out the claimant's role. Further the colleague who worked on the opposite side of the line at his workstation was not alleged to be other than white British.

544 Aston Martin also argued workers are assigned roles on the basis of their skills and ability and in response to demand for work to be carried out in different areas of the factory. It was also denied by Aston Martin that racial background was a factor which determines the kind of work a person undertook at Gaydon [R2 ET3¶15].

Harassment

545 Turning to the acts of harassment:-

"(i) From on or about 30th/31st May 2019 the Claimant (and another non-white colleague, Mr Jamie Robinson) was required to continue to perform the process of fitting cable harness having complained that the process was detrimental to his health and safety. The Claimant says his white colleagues, Mr Adam Rowe and Mr Phil Heap, also complained about the process and they were not required to continue with fitting cable harnesses."

546 We address why the claimant came to be undertaking the harness role in May/June 2019 below at (575) following.

547 We found following the line change, which took place in June 2019, Mr Heap was brought in to temporarily cover the claimant's work to facilitate the claimant being trained on another role so that rotation could be implemented. Mr Jones told us and we accept (because this did not appear to be disputed that Mr Rowe was experienced in harness fitting) that Mr Rowe was instructed to perform the claimant's role to check if the role could be done and in the *TAKT* time.

548 We found that Mr Rowe and Mr Heap being brought in to undertake the claimant's role was temporary. That is supported by Mr Collins' account and also by the claimant telling us Mr Collins was selected to rotate with the claimant (see (137-151)).

549 We found that when it became apparent that Mr Rowe could not undertake the claimant's role in the TAKT time the claimant's assignment was changed and one of the harnesses removed.

550 Contrary to what the claimant alleged Mr Rowe and Mr Heap were not moved away from the claimant's role when they complained. That was done, as the claimant at other points in his evidence accepted, because it was never intended they cover his work permanently or rotate with him – it was intended he would rotate with Mr Collins.

551 In our judgment the claimant's perception of those events was incorrect and viewed objectively did not give rise to the *'proscribed consequences'.*

552 Whilst the Claimant was required to ***continue*** to fitting cable harnesses and that may have been unwanted by him, that was done because that was his role (see (575) following) and was in no sense assigned to him because of his race.

"(ii) From on or about June 2019 to 3rd October 2019, the Respondents failed to take any, or any adequate remedial action in relation to the complaints raised by the Claimant that the fitting of cable harnesses was detrimental to his health and safety, causing his mental health to deteriorate, in particular that on the 11th and 23rd September 2019 he broke down in tears at work in front of managers and colleagues."

553 The way this complaint is put is that '*the proscribed consequences*' arose because Aston Martin and Hamton failed to take remedial action. We found that was not the case.

554 Whilst the respondents' conduct may have been unwanted in the sense that the claimant continued to work on the same station without rotation or possible other actions being taken, we found not only was his role changed (see (394)) but other measures also undertaken (see (396)). Again, in that sense the claimant's perception of events was again flawed.

555 For the avoidance of doubt the claimant did not seek to allege a direct causal effect on his mental health by providing the necessary supporting medical evidence.

556 Whilst the claimant seeks to assert that was racially motivated having viewed the evidence in the round no such inference in our judgment should be drawn and we find that in no sense whatsoever was the failure of the respondents to taken any potential remedial action related to the claimant's race.

"(iii) The Claimant's grievance dated 30th September 2019 was not investigated adequately or at all"

557 At the time he raised his grievance the claimant was an employee of Hamton. In the absence of the grievance procedure [116] stating otherwise Hamton should have therefore followed their grievance procedure. We were not taken to such a provision. Mr Wassell was therefore wrong to say ***"As your employment has been terminated as outlined above, this grievance would no longer be covered by the Hamton grievance process from the date of the end of your employment (3 October 2019)".*** That runs contrary to public policy; the requirement to grieve (or appeal) matters prior to bringing a tribunal claim where the ACAS code applies and the uplift/reduction that can be made as a result.

558 Hamton's grievance procedure does not make explicit that a grievance meeting is required but that is implied by virtue of the reference to the right of representation by a union official or work colleague. The grievance procedure required a manager/supervisor to investigate and in the absence of agreement respond in writing within 7 working days' giving a full explanation of the decision and the right of appeal.

559 Whilst he told us he took advice from Mr Vincent before dismissing at no point did Mr Wassell refer to having considered (or being advised by Mr Vincent to consider) Hamton's grievance procedure and if he was complying with it. We find that stemmed from a lack of training and understanding of these matters.

560 Whilst Hamton did meet with Aston Martin to garner its version of events, Mr Wassell told us that Mr Terrell having provided to Mr Benjamin what Mr Wassell considered to be an acceptable explanation of events he had no reason not to believe Aston Martin. He told us that he trusted his clients implicitly and he tended to believe his client's version in the absence of contrary documentary evidence.

561 Having started from the premise he accepted Aston Martin's account unless the documents/other evidence showed otherwise in our judgment Mr Wassell failed to give a lack of the necessary scrutiny/independence required of a fair investigator to that investigation. That is reinforced by Mr Wassell's view the investigation had already been done by Aston Martin and no further investigation was required by Hamton and the cursory manner the grievance was addressed in Hamton's dismissal letter [194-195] see (339). ***"… we did, … carry out some investigations into the points raised and these enquiries show that issues you have raised have been dealt with and addressed, and that appropriate management support and guidance was provided. …"***

562 Mr Wassell's misplaced frankness led us to conclude it was highly unlikely he was being devious in what he told us about how he conducted the grievance 'investigation'.

563 Given the claimant's unwillingness to communicate with the respondent other than in writing we envisage it was unlikely an investigation meeting would have taken place in any event. Hamton's failure to invite the claimant to such a meeting or to make enquiries of him via writing meant it lost the opportunity to ask the claimant for the documentary or other evidence that Mr Wassell indicated he would have required to have displaced his acceptance of Aston Martin's response at face value. Hamton did not look further for any such evidence, or attempt to drill down into the claimant's complaints.

564 Those matters being so, there was a failure to investigate the grievance in the manner that a reasonable investigation would ordinarily require. That failure was unwanted by the claimant.

565 Hamton's failure to address that grievance in the way ordinarily required was in our judgment inherently capable of giving rise to the *'proscribed consequences'* because the failure to address the grievance properly could reasonably be considered to not treating the grievance or its maker with the required courtesy and respect and because that failure was related to a grievance, that treatment could be properly considered as giving rise to the proscribed consequences. Specifically, violating the claimant's dignity, and/ or creating an a degrading or humiliating environment.

566 We find that was the way the claimant perceived the grievance response.

567 We concluded the grievance investigation was superficial and was not genuinely focused on investigating the complaint. Nor did Hamton explain to the claimant his right of appeal.

568 By virtue of the non-genuine and superficial nature of the way the grievance was investigated we gave very careful scrutiny to the reasons why it was that Hamton acted in the way it did.

569 Whilst in our judgment those matters were at least in part undertaken in the way they were because Aston Martin had taken a decision to take the claimant off assignment we find the main reason why Hamton addressed the claimant's grievance in a non-genuine and superficial way emanated from Mr Wassell's lack of knowledge of Hamton's grievance procedure, his misconceived view as to the way grievances should be addressed and the lack of scrutiny he gave to decisions of his clients. We say clients because that is how he referred to them when he rationalised his response to the grievance.

570 Despite our considerable concerns, we are able to positively determine that the failure of Hamton to address the claimant's grievance properly or at all was in no sense whatsoever related to the claimant being a ***Panjaabi-Sikh*** nor white but instead because of Mr Wassell's lack of knowledge how to address them, his misconceived view of the way grievances should be addressed and the consequent lack of scrutiny he gave to decisions of his clients.

571 We find he believed because the claimant had walked off site and his employment had been terminated at the behest of Aston Martin that Hamton was not required to investigate the grievance any further.

572 We find that those failures and his view related to not only Aston Martin but his approach generally. That led us to conclude the non-genuine and superficial way he responded to the claimant's grievance was the way he would have responded to any grievance irrespective of the race (or colour) of the claimant or any other Hamton employee irrespective whether they had raised grievances, protected disclosures and/or health and safety matters.

573 Whilst it is understandable that Mr Wassell may have considered there were good business reasons to look after his clients and accept them at their word that does not detract from the good business reasons to protect his employers from the potential for claims arising from the failures of third parties that emanate from not properly scrutinising complaints when they arise. He also appeared to us to wholly misunderstand the principles that underlay good practice when it comes to addressing grievances or indeed in more basic terms; when asked if he understood what was meant by natural justice, he did not appear to know.

Direct discrimination

574 Addressing the allegations of direct discrimination in turn:-

"(i) The Claimant says that he was required to work in harmful and dangerous conditions over the whole of his employment from the 15th January 2018 to the 3rd October 2019."

575 The claimant gives no detail of how and why he asserts he came to be assigned to his workstation at the start of his employment of what he states was a harmful and dangerous role or how that was in any sense connected to his race. No specific assertion made by him setting out why he alleges he was originally allocated that role for reasons related to (or because of his race).

576 We found both the claimant's brother and he were offered roles by the respondents and his brother, a permanent role in what the claimant's brother described as double quick time. We attempted to identify the race and origins of the colleagues of the claimant to see if there was a trend that non white staff were assigned to his or other more demanding workstations. The claimant did not provide any detail that assisted in that task. We find no such inference should be drawn that that was so.

577 We were not told if there were redundancies of permanent or agency staff at the time of the track changes in June 2019. What is clear is that the claimant was retained. Prior to June 2019 we find the claimant was undertaking a role that included fitting harnesses, he was experienced in that type of work and thus allocated that work when Aston Martin reduced the number of shifts from 2 to 1. We find that made good business sense; to do otherwise would have potentially required him to have been (re-) trained in another role and potentially another colleague to undertake his role.

578 The principal basis underlying this allegation appears to stem from the Claimant asserting he was discriminated against because when Mr Heap and Mr Rowe (who were both white) complained about the work they had to do when covering for him they were moved, whereas he was not. For the reasons we give at (547-550) that was not so and Messrs Rowe and Heap were not appropriate comparators.

579 As to there being other factors at play from which adverse inferences might be drawn we considered Mr Robinson's treatment. He told us he raised no complaint at the time because he was an agency worker and afraid to put his permanent contract at risk. He did not explain the basis upon which he felt he had been discriminated against or why. We noted, that at no point, not even in the claimant's grievance was race raised by the claimant. The claimant also accepted any employee in same position would have been dismissed. We found the claimant having raised a concern following the June 2019 line change it was investigated and one of the harnesses removed.

580 In our judgment no inferences of any connection between his role and his race should be drawn and the claimant being given the role he was or that it was a physically demanding role was in no sense linked to his race; any employee white or non white, Sikh or non Sikh would have been treated in the same way.

"(ii) From on or about 30th/31st May 2019 the Claimant (and another non-white colleague, Mr Jamie Robinson) was required to continue to perform the process of fitting cable harness despite having complained that the process was detrimental to his health and safety."

581 As we summarise at (554) the tasks the claimant was allocated to do were changed and part of his role was given to Mr Robinson who worked at the next station on the production line.

582 We find the appropriate comparator was an individual working on 3040/2 who was not a Panjaabi-Sikh or alternatively, given Mr Robinson was not a Panjaabi-Sikh, a white production technician.

583 Whilst the Claimant was required to ***continue*** to fitting cable harnesses as we say at (552) that was done because that was his role and he was experienced in it and it was in no sense assigned to him or continued to be so because of his race.

584 In our judgment any comparator would have been treated in exactly the same way as the claimant (and Mr Robinson) and again the claimant was not subjected to less favourable treatment.

"(iii) From on or about June 2019 failing to rotate the Claimant from the process of fitting cable harnesses or otherwise to modify or alleviate his working conditions."

585 Whilst we found rotation was not implemented as initially canvassed that was because the claimant's role was, contrary to the allegation, changed and his working conditions were modified. Following the ergonomic assessment by Mr Howarth in September again rotation was suggested but decided against because of the upcoming line change and instead we found Mr Jones assisted the claimant. We found that was for business reasons (the upcoming line change and reduction of staff that was to ensue).

586 Again, the appropriate comparator was an individual working on 3040/2 who was not a Panjaabi-Sikh or alternatively, given Mr Robinson was not a Panjaabi-Sikh, a white production technician.

587 We find that comparator would have been treated in exactly the same way as the claimant was and would have been instructed to do the same tasks and given the same support. In our judgment the claimant was not subjected to less favourable treatment

588 Again, we conclude we should not draw any adverse inferences of discrimination and instead we conclude that the failure to rotate or modify his working conditions was in no sense linked to the claimant's race.

s.123 ERA / 'Polkey'

589 Notwithstanding our findings above we were asked to address the '*Polkey'* issue in any event. Whilst strictly the ambit of s.123(1) ERA is wider than '*Polkey'* we will refer to it as such.

590 The authenticity of the emails that verify the selection process that we refer to above at (168-177) that occurred at the start of September 2019 did not appear to be in question. Nor was it in question that a redundancy process was to be undertaken. The claimant accepted he was aware redundancies were afoot (170-171). That is also supported by Mr Benjamin's diary (176). The claimant's knowledge that a redundancy process was afoot is

not direct support for the selection process having taken place but it is indirect support. The emails themselves are. The date of the email (Friday 6 September) predates the claimant's grievance of 30 September and indeed Monday 9 September 2019 (see (183)) when the issue concerning the harness was raised by Mr Howarth.

591 The claimant was one of the higher scoring staff and there were 9 or so staff who scored below his score, and ignoring those who scored the same as him, whose scores were above the highest score of one of the workers who remained. Thus, even if other agency staff had left in the interim who were due to be retained we find it is highly unlikely that they would have left in sufficient numbers, such that the claimant would have been retained (see (173-175))

592 Our findings provide no support for the suggestion that Mr Wood's scores were influenced by any complaints by the claimant. We find they were not. Indeed the evidence before us was that when an issue had been raised in June Aston Martin had sought to address it.

593 We heard no evidence of any appeal process being at play against scores. That is unsurprising given Aston Martin could chose which of the agency staff were to stay and those that were to go. As a result the claimant and all the other agency staff had no input into that process and the outcome of who was to be retained was set out in the matrix.

594 We find in the light of those matters it was a certainty the claimant would have received notice of termination of his assignment with Aston Martin on 11 October, indicating he would be placed on half pay for 4 weeks from 21 October whilst Hamton tried to find alternative work for them, dropping to nil pay thereafter (see (392)).

595 Given the absence of other local sites that Hamton operated we find that the claimant would inevitably have been dismissed by Hamton on the expiry of that four week's half pay period.

SUMMARY

596 Accordingly, the entirety of the claimant's complaints are dismissed.

Signed electronically by me
Employment Judge Perry
Dated: **9 December 2021**

SENT TO THE PARTIES ON
09/12/2021
FOR THE TRIBUNAL OFFICE: Janisha Banga

Notes

The Employment Tribunal is required to maintain a register of all judgments and written reasons. The register must be accessible to the public. Shortly after a copy of all judgments and reasons are sent to the parties a copy will be published, in full, at www.gov.uk/employment-tribunal-decisions. The Employment Tribunal has no power to refuse to place a judgment or reasons on the online register, or to remove a judgment or reasons from the register once they have been placed there. If you consider that these documents should be anonymised in any way prior to publication, you will need to apply to the Employment Tribunal for an order to that effect under Rule 50 of the Employment Tribunal's Rules of Procedure. Such an application would need to be copied to all other parties for comment.

REVISED AGREED LIST OF ISSUES

1. This revised list of issues is served pursuant to the direction of Employment Judge Perry dated 6th September 2021.
2. By an ET1 presented on the 11th March 2020, the Claimant brought a number of claims. For the avoidance of doubt, the following claims are pursued:
    i. Race related harassment contrary to section 26 of the Equality Act 2010 ("EqA").
    ii. Direct race discrimination contrary to section 13 of the EqA.
    iii. Automatic unfair dismissal contrary to sections 103A and 100 of the Employment Rights Act 1996 ("ERA").
    iv. Being subject to a detriment for making a protected disclosure contrary to section 47B of the ERA;
    v. Being subject to a detriment under s 44(1)(b) and 44(1)(d) of the ERA.

Jurisdiction

3. Whether any claim relating to an act or omission on or before 1st October 2020 is out of time, and if so, whether it is just and equitable for time to be extended. The Claimant says any act or omission was part of a continuing act extending over a period ending on the Claimant's dismissal on the 3rd October 2019.

Employment Status

4. The Claimant brings his claims against both Respondents.
5. In terms of the automatic unfair dismissal claims, the Claimant says he was employed by the Second Respondent and that it is necessary to imply a contract of employment with the Second Respondent.
6. In the alternative, he brings his dismissal claims as detriment claims.
7. It is not disputed by the Respondents that the Claimant was a worker within the meaning of section 230(3) of the ERA**.**

Race-related Harassment – s 26 EqA

8. The Claimant is of Panjaabi-Sikh ethnic origin for the purposes of s 9 of the EqA.
9. Whether the Claimant was subjected to the following alleged unwanted conduct:
    (i) From on or about 30th/31st May 2019 the Claimant (and another non-white colleague, Mr Jamie Robinson) was required to continue to perform the process of fitting cable harness having complained that the process was detrimental to his health and safety. The Claimant says his white colleagues, Mr Adam Rowe and Mr Phil Heap, also complained about the process and they were not required to continue with fitting cable harnesses.
    (ii) From on or about June 2019 to 3rd October 2019, the Respondents failed to take any, or any adequate remedial action in relation to the complaints raised by the Claimant that the fitting of cable harnesses was detrimental to his health and safety, causing his mental health to deteriorate, in particular that on the 11th and

23rd September 2019 he broke down in tears at work in front of managers and colleagues.

(iii) The Claimant's grievance dated 30th September 2019 was not investigated adequately or at all

10. Whether the above alleged unwanted conduct was related to race.

11. Whether the alleged unwanted conduct had the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant.

12. Whether it was reasonable, taking into account the Claimant's perception and other circumstances of the case, for the conduct to have had the alleged statutory effect.

13. The Respondents deny the alleged unwanted conduct and that it was related to race and deny that it was reasonable for it to have the statutory effect alleged.

Direct Race Discrimination – s 13 of the EqA

14. Whether the Respondents subjected the Claimant to less favourable treatment because of his race by:

(i) The Claimant says that he was required to work in harmful and dangerous conditions over the whole of his employment from the 15th January 2018 to the 3rd October 2019.

(ii) From on or about 30th/31st May 2019 the Claimant (and another non-white colleague, Mr Jamie Robinson) was required to continue to perform the process of fitting cable harness despite having complained that the process was detrimental to his health and safety.

(iii) From on or about June 2019 failing to rotate the Claimant from the process of fitting cable harnesses or otherwise to modify or alleviate his working conditions.

15. The Claimant relies upon actual comparators of Adam Rowe, Phil Heap and Lawrence Browne and/or alternatively a hypothetical white colleague in not materially different circumstances.

Public Interest Disclosure Act (PIDA) Claims

Protected Disclosures

16. Whether the Claimant made a protected disclosure within the meaning of section 43B of the ERA.

17. The Claimant says he made the following protected disclosures:

1) On or about 30th or 31st May 2019 to Dominic Terrell/Denzil Benjamin and/or Alan Wood (the "First PID") that the process of fitting cable harnesses was detrimental to his health and safety. The Claimant says that he showed his injuries to arms and hands and disclosed the following information orally on the 30th or 31st May 2019 by words to the effect that:

i. he was already suffering bruising to his arms, damages to his hands causing him pain from fitting the cabin harnesses;

ii. the work overall was far too much and equivalent to two persons; and

iii. he was unable to carry on this work in light of the damage that it was doing to his body and that he was grossly overworked.

2) In writing in his grievance dated 30th September 2019 as set out at page 191 of the bundle, (the Second PID"), in summary, inter alia, that:

i. he had raised the matters set out in 17(1) above in May 2019;

ii. his mental health had suffered as a result;

iii. no action had been taken and that he had been required to continue with the process which had been detrimental to his health.

18. The Claimant says that the First and Second PIDs were qualifying disclosures within s 43B(1)(b) ("breach of legal obligation") and s 43B(1)(d) ("health and safety of an individual was being endangered") of the ERA.

19. Although the Second Respondent accepts that in or about June 2019, the Claimant complained of bruising to his arms and sore wrists, they deny the facts of the First PID. The First Respondent denies knowledge of any disclosure in May 2019. In relation to both the First and Second PID, the Respondents deny that the Claimant reasonably believed that they were made in the public interest.

Automatic Unfair Dismissal – s 103A

20. Was the sole or principal reason for the Claimant's dismissal the fact that he made a protected disclosure?

Subject to a detriment Claim – s 47B

21. Whether the Respondents subjected the Claimant to a detriment on the ground that he made the above protected disclosures by:

i. Requiring the Claimant to continue performing the fitting of cabling harnesses process;

ii. Failing to take any or any adequate remedial action to modify to alleviate the Claimant's working conditions, including rotating the Claimant from the process

iii. Dismissing the Claimant with effect from the 3rd October 2019.

Health and Safety Claims – s 44

22. The Claimant alleges that he brought to the Respondents attention by reasonable means circumstances which he reasonable believed were harmful to health as follows pursuant to section 44(1)(~~c b~~). Th e Claimant repeats the matters set out in paragraphs 17(1) and (2) above.

23. The Claimant accepts that there was a health and safety representative and safety committee at the Gaydon factory, but contends that it was not reasonable practicable for him to raise the above health and safety matters by those means due to not having knowledge of these persons nor access to them.

24. Further and/or in the alternative, pursuant to section 44(1)(d), on the 30th September 2019 the Claimant reasonably believed there were serious and imminent circumstances of danger, which he could not reasonably have been expected to avert, and in those

circumstances he took the action of removing himself from seriously harmful work conditions by refusing to return to his place of work to carry on the process of fitting cable harnesses.

25. Further and/or in the alternative, the Claimant alleges that pursuant to section 44(1)(e) on the 30th September 2019 he reasonably believed there were serious and imminent circumstances of danger, he took appropriate steps to protect himself by refusing to carry on the process of fitting cable harnesses.

26. Whether the Respondents subjected the Claimant to a detriment because he did the above by:

    i. Requiring the Claimant to continue performing the fitting of cabling harnesses process;

    ii. Failing to take any or any adequate remedial action to modify to alleviate the Claimant's working conditions, including rotating the Claimant from the process

    iii. Dismissing the Claimant with effect from the 3rd October 2019.

Automatic Unfair Dismissal – s 100

27. The Claimant relies upon the matters set out paragraphs 22 – 25 above for the claim under section 100(1)(c), (d) and (e).

28. Whether the sole or principal reason for the Claimant's dismissal was that he had made the above health and safety claims.

Polkey/alternative effective date of dismissal

29. Whether if the Claimant had not been dismissed with effect from the 3rd October 2019, he would have been dismissed in any event by reason of redundancy on or about November 2019 or June 2020.

10 September 2021