Case Number: 1601743/2020

EMPLOYMENT TRIBUNALS

Claimant: **Mr J Worthington**

Respondent: **Milking Solutions (UK) Limited**

Heard at: **By video** **On: 1, 2 & 3 March 2022**

Before: **Employment Judge R Harfield**
Members **Ms P Humphreys**
Mr B Roberts

Representation:
Claimant: In person, with the assistance of his partner, Ms Gasior
Respondent: Mr Probert (Counsel)

RESERVED JUDGMENT

It is the unanimous decision of the Tribunal that

- The claimant's complaint of "automatic" unfair dismissal on the grounds that the reason or principal reason for his dismissal was that he brought to his employer's attention circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health and safety (section 100 Employment Rights Act 1996) is not well founded and is dismissed;
- The claimant's complaint of "automatic" unfair dismissal on the grounds that the reason or principal reason for his dismissal was that he alleged that the respondent had infringed a statutory right (section 104 Employment Rights Act 1996) is not well founded and is dismissed;
- The claimant's complaint he was subjected to a detriment (denial of training opportunities and/or the loss of his home) by any act or deliberate failure to act by the respondent done on the ground that he brought to his employer's attention circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health and safety (section 44 Employment Rights Act 1996) is not well founded and is dismissed;

- The claimant's complaint of breach of contract that he was entitled to six months' minimum employment is not well founded and is dismissed;
- The Tribunal does not have jurisdiction to determine the claimant's complaint of breach of contract that he was entitled to two years' minimum residence in the flat he lived in at Troy View Farm and that complaint is therefore dismissed;
- The claimant's breach of contract complaint relating to unpaid expenses is well founded and the claimant is awarded the sum of **£209.09;**
- The respondent failed to provide the claimant within a statement of employment particulars under sections 1 to 3 of the Employment Rights Act 1996;
- When these proceedings were begun the respondent was in breach of their duty to the claimant under section 1(1) of the Employment Rights Act 1996. The Tribunal considers it just and equitable to award the claimant four weeks' pay under Section 38 Employment Act 2002. The claimant is awarded the sum of **£1538.00.**

REASONS

Introduction and issues to be decided

1. The claimant presented his ET1 claim form on 20 August 2020. He worked as a farm manager for the respondent from 24 January 2020 to 31 March 2020. A case management hearing took place before EJ Jenkins on 2 December 2020. The case was listed for final hearing in April 2021, but the final hearing was not effective and further case management was undertaken by a tribunal led by EJ Sharp.

2. EJ Sharp's order sets out a list of issues to be decided at the relisted final hearing. It records that considerable time had been spent with the claimant outlining the claims and why some matters the claimant was seeking to pursue were not within the jurisdiction of the tribunal, such as the condition of the flat the claimant lived in, harassment (in a generic sense), or the lawfulness of the flat rental arrangements. The case management order records that the claimant was reminded that only the claims outlined in EJ Sharp's case management order would be determined at the relisted final merits hearing. EJ Sharp's tribunal also refused an application by the claimant to amend his claim to bring a protected disclosure (whistleblowing) complaint.

3. The list of issues for us to decide, as set out in EJ Sharp's case management order, are therefore as follows:

   (a) Automatic unfair dismissal – the reason or principal reason alleged is that the claimant being an employee at a place where there was no health &

safety representative or committee brought to his employer's attention by reasonable means circumstances connected to his work which he reasonably believed were harmful or potentially harmful to health or safety (s100 ERA 1996); the claimant is relying upon the following disclosures –

(i) Emails on 2 March 2020 regarding the lack of first aid kits, health & safety posters and an accident book with Olivia the business administrator;
(ii) Emails between 2 – 6 March 2020 about the claimant working on a greenhouse alone, which he felt was a dangerous task;
(iii) A verbal conversation with Mr Kevin Graham on 9 March 2020 about working at height on a mezzanine floor, and the lack of CSCS cards for the construction team;
(iv) A verbal conversation (and texts) about the state of the sheep troughs, COSHH regulations and food safety standards on 13 March 2020;
(v) On or around 17 or 18 March 2020, Jake Morgan was believed to have Covid by the claimant and the claimant asked the respondent to confirm this as his partner was shielding.

(b) Automatic unfair dismissal – the reason or principal reason alleged is that the claimant alleged the employer had infringed his right to a written statement of employment particulars. It is immaterial whether or not the claimant had the right to such a statement or whether the right was infringed, but the claimant must have made it reasonably clear what the right being infringed was when making the allegation to the employer (section 104 ERA). The claimant must have made the allegation to succeed, not just to have asked for the statement.

(c) Breach of contract – the Claimant must establish on the balance of probabilities (more likely than not) that the following items are matters to which he is contractually entitled due to an offer being made by the respondent, an offer being accepted by the claimant, and consideration (what matter of value is given or forgone by the claimant to serve as consideration e.g. work?):

(i) 6 months minimum employment;

(ii) Two years minimum residence in the flat within the farmhouse at Troy View Farm (a relevant point will be who owned the property);

(iii) Reimbursement of purchases made by the claimant on the respondent's behalf;

(A fourth breach of contract claim was later withdrawn by the claimant as the sum was paid to him).

(d) Failure to supply a statement of employment particulars within 8 weeks of the start of employment – this should have included the relevant information from the Agricultural Wages Order 2019 required by s1 – 3 ERA, but there is no right to such a statement apart from the provisions of s 1 – 3 Employment Rights Act 1996 and s38 Employment Act 2002. The claimant is reminded that such a claim cannot be free-standing and requires him to succeed in another claim as set out in the relevant legislation.

(e) Detriment – the Claimant being an employee at a place where there where there was no health & safety representative or committee brought to his employer's attention by reasonable means circumstances connected to his work which he reasonably believed were harmful or potentially harmful to health or safety (s44 ERA 1996); the claimant is relying upon the following disclosures –

(i) Emails on 2 March 2020 regarding the lack of first aid kits, health & safety posters and an accident book with Olivia the business administrator;

(ii) Emails between 2 – 6 March 2020 about the claimant working on a greenhouse alone, which he felt was a dangerous task;

(iii) A verbal conversation with Mr Kevin Graham on 9 March 2020 about working at height on a mezzanine floor, and the lack of CSCS cards for the construction team;

(iv) A verbal conversation (and texts) about the state of the sheep troughs, COSHH regulations and food safety standards on 13 March 2020;

(v) On or around 17 or 18 March 2020, Jake Morgan was believed to have Covid by the claimant and the claimant asked the respondent to confirm this as his partner was shielding.

The claimant asserts the Respondent subjected him to two detriments due to the raising of the above health and safety concerns; namely denial of training opportunities and the loss of his home. The Claimant must prove these acts happened, that they are detriments (something which he would reasonably have preferred not to have happened) and that they happened (had a material influence on the respondent's decision to carry out the detriments) because he raised health and safety concerns.

4. We had before us a bundle of documents extending to 492 pages. Ultimately by consent we also admitted some additional documents relating to planning permission. We had written witness statements from and heard evidence from the claimant and his partner, Ms Gasior. For the respondent we heard oral evidence from, and had written statements from, Mr Graham and Ms Kelly Jackson-Graham. We also had an updated schedule of loss from the claimant. The claimant had also prepared a detailed chronology. The respondent objected to its admission as a joint chronology as its content was not agreed and was not neutral. The respondent did not, however, object to the chronology being put forward by the claimant as, in effect, written submissions, and we therefore had it before us on that basis. Mr Probert provided a written closing argument We also heard oral closing submissions from both parties. Those closing submissions are not set out in this Judgment, but we took them fully into account and are incorporated in the relevant parts of our decision making below.

5. The claimant had supplied some medical evidence for himself and his partner, seeking reasonable adjustments. These were discussed at the start of the hearing. Ms Gasior was permitted to stay in the same room as the claimant to offer support and physical assistance with paperwork albeit it was made clear that she could not intervene in the claimant's own giving of evidence. Ms Gasior was to give evidence first on the first day of the hearing as it best suited her medication needs. The claimant was to be given time to think where needed and said he would be likely to be in need of regular breaks. These were arranged to take place every hour and it was made clear the claimant could request more breaks if needed and requests for breaks were accommodated throughout the hearing. The claimant also brought with him to the hearing a Mckenzie friend and another individual from an advocacy organisation although they did not offer any active representative for the claimant. He represented himself, with assistance from Ms Gasior, who in particular, delivered on behalf of the claimant his closing oral submissions.

The relevant legal principles

Detriment for raising Health and Safety Concerns s44 Employment Rights Act 1996

6. Section 44 of the Employment Rights Act 1996 ("ERA") states:

> ***"44 Health and safety cases***
>
> *(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—
(i) there was no such representative or safety committee, or
(ii) there was such a representative or safety committee but it was not reasonably practicable for the employee to raise the matter by those means, he brought to his employer's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety…"

Dismissal for raising health & safety concerns s100 Employment Rights Act 1996

7. Section 100 of ERA states:

"**100 Health and safety cases**

(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissal if the reason (or, if more than one, the principal reason) for the dismissal is that –

(c) being an employee at a place where—
(i) there was no such representative or safety committee, or
(ii) there was such a representative or safety committee but it was not reasonably practicable for the employee to raise the matter by those means, he brought to his employer's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety…"

Dismissal for asserting a statutory right – section 104 Employment Rights Act 1996

8. Section 104 of ERA states:

*"**104 Assertion of statutory right***

(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissal if the reason (or, if more than one, the principal reason) for the dismissal is that the employee –…
(b) alleged that the employer had infringed a right of his which is a relevant statutory right.

(2) It is immaterial for the purposes of subsection (1) –

(a) Whether or not the employee has the right, or
(b) Whether or not the right has been infringed;

but, for that section to apply, the claim to the right and that it has been infringed must be made in good faith.

(3) It is sufficient for subsection (1) to apply that the employee, without specifying the right, made it reasonably clear to the employer what the right claimed to have been infringed was."

9. Section 104(4) defines what amounts to a relevant statutory right and includes where there is a complaint or reference to an employment tribunal relating to a failure to provide statement of particulars of employment under sections 1 to 3 of ERA.

The burden of proof in "automatic" unfair dismissal cases

10. In Ross v Eddie Stobbart Limited UKEAT/0068/13/RN the Employment Appeal Tribunal held that where an employee does not have sufficient qualifying service to bring an ordinary unfair dismissal claim, the burden of proof rests with the employee to establish, on the balance of probabilities, that the reason or principal reason for dismissal was because of the prohibited ground. The Employment Appeal Tribunal distinguished that position from that set out in Kuzel v Roche Products Limited which applies where the employee does have sufficient qualifying service. That said, the Employment Appeal Tribunal also endorsed the proposition that in practice in many cases the Tribunal can make findings of fact about what was operating in the mind of the decision makers and therefore, in practice, only a small number of cases will turn upon a burden of proof analysis.

Statement of Employment Particulars

11. The respondent concedes they failed to give the claimant a statement of his employment particulars within the required timescales under sections 1 to 3 ERA (which should also have incorporated those particulars identified in the Agricultural Wages (Wales) Order 2019.) Under section 38 of the Employment Act 2002 if the claimant succeeds in one of his other qualifying complaints the Tribunal must (unless there are exceptional circumstances which make an award or an increased award unjust or inequitable) make an award of at least 2 weeks' pay and may if it considers it just and equitable increase that to 4 weeks' pay (subject to the statutory cap on a week's pay).

Breach of contract

12. The Tribunal has jurisdiction to hear certain breach of contract claims under the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994. Jurisdiction for breach of contract claims otherwise

lies with the civil courts. Under article 3 the claim must arise or be outstanding on the termination of the employee's employment. Articles 3 and 5 provide that a claim cannot be brought to the employment tribunal where it is a claim for breach of a contractual term of the following descriptions –

(a) A term requiring the employer to provide living accommodation for the employee;

(b) A term imposing an obligation on the employer or the employee in connection with the provision of living accommodation.

Findings of fact

13. On the face of it in this case there are lots of factual disputes between the parties. The claimant in his witness statement sets out a detailed chronology of events during his employment from his perspective and much of it is not agreed by the respondent. However, we do not need to decide every factual issue in dispute or reach findings on all the matters of detail put before us. We only need to make findings of facts on the points we need to resolve for the purpose of answering the questions identified in the list of issues. It is that which we focus on here, as well as setting out some of the wider general background to set the scene.

14. Mr Graham is the owner and managing director of the respondent company which supplies milking machine parts. The assembly and supplying of those milking machine parts is the core business of the respondent. However, there are also two farms in the vicinity of the respondent's headquarters: High View Farm and Troy View Farm. There is a dispute between the parties as to who owns the farms. The claimant asserts they are owned by the respondent. Mr Graham says that he personally owns the farms although allows the respondent to make use of the premises. We accept it is likely they are owned personally by Mr Graham. There are no documents before us to say that the respondent company owns the farms, and the ownership details will be within Mr Graham's personal knowledge not that of the claimant. Moreover, the planning application document the claimant added to the bundle refers to the planning application being made personally in the name of Mr Graham.

15. The claimant was introduced to Mr Graham via his daughter Kelly Jackson-Graham, who the claimant met on a biofertiliser course in November 2020. Ms Jackson-Graham told the claimant that she was interested in permaculture for her own garden at home and also her parents' small holding. The claimant and Ms Jackson-Graham met again (with their families) at a Transitions Monmouth event and Ms Jackson-

Graham took them to High View Farm to see it and meet Mr Graham. Mr Graham showed the claimant and his partner, Ms Gasior, around. He told the claimant he had a flock of sheep and that he wanted principles of permaculture and eco farming applied to his farms, with orchards planted and growing systems installed. He spoke about other plans to expand the farms, for example, in relation to eco-camping. The claimant raised the prospect of preparing some management plans for Mr Graham. Mr Graham expressed an interest in employing the claimant to run the farms on a daily basis and to devise and implement the permaculture plans. The claimant said he had a job interview somewhere else, and he would think about it. He, Ms Gasior and Mr Graham then went to Troy View Farm for a look around.

16. It was left that the claimant would have a think. Mr Graham asked for a CV, which the claimant provided. Mr Graham said the claimant had useful experience but there were gaps in terms of sheep handling, car driving and farm machinery and suggested they meet again. That became an invite to spend some of a day on the farm working with him.

17. The claimant and Mr Graham had a further discussion about potential employment. There was some discussion about the claimant not having a driving license and Mr Graham said the claimant would have to acquire a new provisional license as soon as possible. They then went to Troy View Farm with Ms Gasior joining them to see the farmhouse which was divided into two flats. There was already a tenant in the ground floor flat. Mr Graham offered to rent the vacant flat to the claimant and Ms Gasior. It is not in dispute that Mr Graham made clear that it would only be available for up to a couple of years because he was planning to demolish the property and build a new family home.

18. The parties mulled it over some more. On 14 January the claimant messaged Mr Graham to say he would like to work for Mr Graham and that he realised he had a lot to learn, and the salary should reflect that. He said if he came to work for Mr Graham and to live on site and it did not work out for whatever reason then they could put some plan in place for that eventuality. The claimant and Mr Graham met again, and the claimant again spent some time working with Mr Graham. Mr Graham offered the claimant a salary of £20,000.

19. There is a dispute about what the claimant was told about a probationary period. The claimant says Mr Graham told him that there was a guarantee of 6 months minimum employment. Mr Graham said in oral evidence that he could not now recall the exact words that he used but that he did not give the claimant guaranteed 6 months employment and that he was talking about a 6 month probationary period. He says in his written witness statement that he said it would be 6 months because he had some

concerns about whether the claimant would successfully transfer his skills, and the claimant's lack of experience in some areas and lack of a driving license.

20. We preferred the respondent's position on this point. We accept Mr Graham had concerns about whether the claimant's skillset would work out. Mr Graham is also a seasoned businessman and we considered it unlikely that he would offer anyone 6 months guaranteed minimum employment as opposed to a 6 month probationary or trial period. 6 months' guaranteed employment would not have suited Mr Graham's purposes. We acknowledge the claimant's point that he was looking to have some contingency plan in place should the job not work out bearing in mind he and his partner were moving to the farm and he was forsaking management planning work to make the move. However, we do not consider that this meant that the parties had contractually agreed to a 6 month minimum period of employment. We consider it more likely that the claimant was reassured that if the job did not work out, then they would still be able to live at the farm until the redevelopment plans were taken forward. That was important to the claimant and Ms Gasior so that they could save money and buy their own place in due course. The claimant also was not giving up paid employment elsewhere to work for the respondent. He was looking for work and they were looking for somewhere to relocate themselves to and somewhere to live. It is possible the claimant may have misunderstood or misinterpreted what Mr Graham said about the probationary period, but we do not consider that it amounted to a guaranteed minimum period of employment of 6 months.

21. On 16 January the claimant messaged Mr Graham accepting the job offer and saying they would like the apartment, but that Ms Gasior wanted some more information on costs. Mr Graham responded with details of the rent and costs. It was agreed that the claimant would start his salaried role from 1 March, but he worked for the respondent on a casual basis from 24 January 2020 onwards. On 27 and 28 January 2020 the claimant attended a dairy sheep and goat conference, as Mr Graham had booked a place but considered it was better for the claimant to attend. On 6 February 2020 the claimant attended a lambing course.

22. On 10 February 2020 the claimant emailed Mr Graham about the damaged greenhouse saying they would need something to use soon to have a successful growing season. He said the greenhouse was currently a hazard because the replacement glass had been neglected and the wind would put stress on the remaining glass. The claimant then set out various options at length. Mr Graham said to replace the glass now with polycarbonate panes. Polycarbonate panes would not, however, fit so the claimant costed replacement glass or Perspex and Mr Graham said his

wife could get Perspex cut to size. Mr Graham measured up and got the Perspex ordered.

23. Mr Graham put the claimant in touch with Farming Connect which is a Welsh Government body that co-ordinates training opportunities and help with training development plans in the farm sector and can, depending on various qualifying criteria offer funding towards training. They also offer other kinds of potential support such as diversification grants. The claimant made contact with Farming Connect about various matters including potential training for himself and chainsaw courses for him and the construction team. The claimant prepared a report about registering the staff and applying for courses. A training meeting was due to take place on 20 February, but the meeting was postponed by Mr Graham until the next day. The claimant gave Mr Graham a printout of Farming Connect courses where he had highlighted the ones he was interested in attending.

24. On 24 February, Ms Roberts, the business administrator emailed the claimant at Ms Jackson-Graham's request setting out the courses Mr Graham had given a green light for the claimant to attend. She said Mr Graham had also authorised a chainsaw course but as a group course that she would do some research about. The claimant responded to explain the intricacies of the Farming Connect process and Ms Roberts responded to say she thought Ms Jackson-Graham meant finding a course outside of Farming Connect to avoid additional applications etc. She said she had been asked to look into external courses.

25. On 24 February 2020 the claimant told Mr Graham and Ms Jackson-Graham he was writing a seed sowing list and the company he recommended had low stock. Mr Graham said to place the order and request a pro-forma invoice or place the order and the respondent would phone and pay. In the evening the claimant looked on the website and the way to order was automated online and so he decided to go ahead and make the order. Ms Gasior paid for it on her bank card. The claimant later told Mr Graham who said it was "fine." The claimant later went on to make further orders for seeds in the same way.

26. On 27 February 2020 the claimant was given a copy of the staff handbook and he also signed a letter of appointment offering the job of farm manager with flexible hours from 24 January 2020 until a full time employee on 1 March. The letter set out the salary, annual leave and that it was a permanent job. The letter said the claimant would be issued with a full statement of the terms and conditions for the post within 8 weeks of the commencement date.

27. On 1 March 2020 the claimant and Ms Gasior met up with Ms Jackson-Graham and her family at an outing to collect leaf litter to make bio fertiliser. The claimant was introduced to Ms Davies who was a part time employee of the respondent in the assembly department.

28. On 2 March 2020 at 13:19 the claimant emailed Ms Jackson-Graham saying he was pressed for time and could do with some help clearing and the sterilising the greenhouse and asked if there was anyone who could help him on Friday.

29. On 2 March at 13:58 Ms Roberts sent the claimant an email saying an employee who had previously worked at the farm had monitored the first aid kits and asked if it was something the claimant could manage. She said she did not know the current state or if there was a kit at Troy View. The claimant responded to say he had put a new first aid kit in Troy View as there was not one there. He said off the top of his head he thought both farms needed an accident book and really there should be health and safety posters up at both locations plus fire extinguishers and blankets. Ms Roberts said, in an email at 14:24 she would speak to Mr Graham about fire blankets and extinguishers and check if there were spare accident books in the office. She said if not she would order some.

30. At 14:35 Ms Jackson-Graham emailed the claimant responding to his earlier question about help on the Friday. She said Ms Roberts was happy to help for the day.

31. At 14:36 pm the claimant emailed Ms Roberts saying yes please make Mr Graham aware of the situation (relating to fire extinguishers and blankets). He said “I think putting up signs posters etc will be a big job for April when we have a big clean and organisation. We are also putting a new staff kitchen in at Troy View so a good time to consider eyewash, extinguishers etc, again see what Kevin says.”

32. At 14:42 the claimant said to Ms Jackson-Graham that Ms Davies would like to help occasionally on the farms, and he would contact Gavin about it (who he had previously been directed to speak to). Ms Jackson-Graham responded to say that the claimant should go through her about use of staff, and she would liaise with the different departments about availability. The claimant responded to clarify the best way to deal with the potential for staff to help and said it was quite urgent as he needed to get infected material out of the greenhouse and to the tip and needed somebody with a car on Friday. Ms Jackson-Graham responded to say that the assembly department were really busy and for the short term were not available. She said it was worth speaking to Mr Graham about transport on Friday as it may be there were others on site who could help. She forwarded the email on to Mr Graham for information.

33. On 3 March 2020 Mr Graham emailed the claimant to say "We are all busy so I would like you to do as much as you can on your own at this moment in time. This includes the greenhouse and clearing/tidying the barn ready for lambing. There is a lot of rubbish wood which can be burned along with the old settee. You could have a good look around for stuff to go on the bonfire."

34. On 4 March 2020 Ms Jackson-Graham emailed the claimant to say Ms Roberts had been off work unwell and was not sure when she would be back. Ms Jackson-Graham said it may be the claimant could get some help for two person jobs from someone already at the farm and "I have made Kevin aware of your transport needs too." The claimant replied saying he had started clearing the greenhouse and burning rubbish as Mr Graham had instructed and had put all the non-burnable rubbish and infected compost ready for disposal. He said he was fine working on that alone but may need a second pair of hands when fitting the new pvc panels at some point.

35. The claimant says that Ms Jackson-Graham's email saying the claimant should go through her was a distinct change in attitude and change in procedure. He also alleges that the email in the bundle from Mr Graham of 3 March 2020 has been altered by the respondent and that the original version he recalls receiving was much blunter, as he can recall being angry and upset about it. He says he had to make several subject access complaints to get the version that is in the bundle. Ms Jackson-Graham denied any alterations to the email. We think it is likely that the email is as originally drafted by Mr Graham, and it is likely the claimant has mis-remembered. In particular, the claimant's subsequent email to Ms Jackson-Graham refers to clearing the Greenhouse and burning rubbish as instructed by Mr Graham, which is the same content as Mr Graham's email of 3 March. The claimant's subsequent emails to Ms Roberts and text message to Ms Davies also talk about being told to work on his own as everyone was so busy, which again mirrors the language used in Mr Graham's email of 3 March.

36. In fact, Ms Roberts did return to work and still offered to come out to help the claimant on the Friday. The claimant ultimately told her not to worry as it was horrible wet work and "Kevin wants me to do it on my own as everyone is so busy at the moment."

37. The claimant says that on 6 March he told Mr Graham that he should not be working alone removing glass panels and replacing them with Perspex on his own, that it was a two person job and the panels needed replacing in one go. He says Mr Graham told him that everyone was too busy and it would have to wait. He says he told Mr Graham it could not wait as the

high wind was causing shards of glass to fly through the air and could hurt people. He says he asked Mr Graham if Ms Roberts had mentioned accident books and Mr Graham said it would come later. He says he showed Mr Graham the cuts on his hands from broken glass and said they needed an accident book now really. He says he told Mr Graham he had been promised a work phone, his had bad reception and if something happened to him there was no emergency procedure. He says he said to Mr Graham there should be a risk assessment in place. He says Mr Graham got angry and said that stuff could come later, and he would not be dictated to on his own farm. Mr Graham denied that any conversation took place in those terms. He said he did not recall first aid kits being brought to his attention whether by the claimant or by Ms Roberts. He denied the claimant showing him cut hands or that he had been injured by broken glass in the greenhouse. Mr Graham says he engaged with the claimant on getting the greenhouse in good order by measuring up the windows and getting the Perspex cut and delivered and saying more could be ordered if needed. He said the previous farm worker, Mr Smith, had replaced broken greenhouse windows previously without issue.

38. We accept there may well have been a discussion between the claimant and Mr Graham that day or around that time. We do not, however, consider it likely the claimant expressly told Mr Graham he had been injured by broken glass and that broken glass was an ongoing physical danger to him and others. If there had been it is likely, for example, that Mr Graham would have told the claimant to find or buy some appropriate gloves. We consider it likely that Mr Graham thought the greenhouse was in hand, with the Perspex being sorted and his instructions to the claimant to clear the greenhouse out. The claimant's email to Ms Jackson-Graham of 4 March said that he was fine working on the clearing of the greenhouse by himself and that the second pair of hands was needed for fitting the new panels at some point. The claimant's contact with Ms Roberts and Ms Davies asking them if they had personal experience of fitting greenhouse panes also shows, in the tribunal's view, that the claimant's real concern at that point in time was that he did not feel *able* to fit the panes or needed a second pair of hands to help, not that he was saying that the greenhouse was an ongoing physical risk to people.

39. On 9 March 2020 Ms Roberts emailed the claimant to ask him whether he was living at Troy View for his contract. The claimant replied to ask which contract it was, accommodation or employment. Ms Roberts responded to say it was the employment contract. That same morning Ms Roberts emailed Mr Graham saying "Please see what I have done so far on Jack's contract. If you'd like to go into detail, I could always write a job description for him. I've highlighted the part about duties." There is an attachment showing to the email. The respondent says this attachment was the draft contract of employment in the bundle.

40. On 9 March 2020 Mr Graham emailed the claimant saying it may be a good idea if he came to High View the next day and help with the erection of a mezzanine floor. Mr Graham said it was good indoor work while the weather was bad. The claimant responded to say he had a lot of other things to do but could come and help if Mr Graham wanted.

41. Some time before or around 10 March Ms Jackson-Graham cancelled a social meeting to make bio-fertiliser without explanation. She told the tribunal in evidence it was because of rising concerns she had about covid 19 and she did not want to take her family somewhere there would be people mixing. The cancellation left the claimant feeling rejected.

42. On 10 March the claimant and Mr Graham attended a roadshow organised by Farming Connect. The claimant says that on the way there he brought up going to work with the construction team and said he was not trained or experienced in such construction, that it was dangerous, and he had not received training for working at height. He says he told Mr Graham that he had noticed some of the construction team would work quite dangerously and it was a risk to them and others. He says he also stated he should not work with them as his CSCS card had expired. The claimant said he asked if the construction team had CSCS cards and Mr Graham said "no." The claimant says he said the building team needed CSCS cards and it was a simple online test. He says Mr Graham did not answer him and looked angry.

43. Mr Graham accepts he travelled to the roadshow with the claimant that day. He said he could not recall any such conversation and that he had the claimant had a good working relationship at the time. Mr Graham says he did not believe the construction workers required CSCS cards as they were working on his personal site, not being hired out for profit.

44. There are some text messages the claimant exchanged with Ms Gasior that day. They include Ms Gasior saying to the claimant "Just stay calm today and explain. You can do this and are doing great and need time to get the farm up and running so say that and about Dave and remember what this is leading to leaving for our place one day" and "your hired to do a job and your just trying to do that job as agreed?? Just stay calm and talk to him and explain how your feeling and what's going on and what your doing is all you can do and hopefully he will be ok and ease off a bit."

45. The Tribunal considers it likely the claimant was feeling vulnerable at this time. He was offended and upset by, for the second time, Mr Graham, suggesting that he may go and help the construction team. The claimant's sense was that he was being asked to do menial work, taking him away from tasks such as his management plan. He also did not want to work with Mr Llewellyn and Ms Jackson-Graham had warned him about Mr

Llewellyn and not getting caught between Mr Llewellyn and Mr Graham. We consider it likely that by this time the claimant was overthinking and over analysing what Mr Graham was saying in relation to assisting the construction team. We consider that Mr Graham was doing no more than that which his messages said i.e., simply suggesting if the claimant had any spare time those days he could go and help. They were not orders, and not deliberate directions to do menial tasks. The claimant took it that way, but that was not Mr Graham's own thought process or intent. Much of that miscommunication was probably due to the fact that the claimant and Mr Graham had not sat down, since the claimant started the full time job, to sort exactly what were the claimant's duties, responsibilities and powers.

46. We think it likely that, against that background, the claimant did say something to Mr Graham about not feeling that he was trained or experienced to do the construction work and that he did not have a CSCS card. We consider the claimant may well have asked Mr Graham if the other workers had CSCS cards and that Mr Graham said not. We also accept, given Ms Gasior's reference to "Dave", that the claimant may well have said that he thought the construction team worked dangerously at times. However, we do not consider that the claimant's main purpose behind the conversation was to raise health and safety concerns; it was about how he was feeling about the allocation of work by Mr Graham. Moreover, we do not consider that the conversation was a big deal for Mr Graham. We consider it likely that he simply saw it as the claimant saying why he did not really want to get involved in the construction work when he had been asked. We do not consider it likely that Mr Graham was angry about it, and find from Mr Graham's perspective it was an innocuous conversation.

47. On 13 March the claimant messaged Mr Graham to say he was cleaning the sheep troughs and they were a quarter inch thick with slime. He took photos but they did not send due to poor signal. The claimant says he later saw Mr Graham at the farm and tried to show him the photographs and said that clean water was paramount to health. He says Mr Graham blamed Mr Smith. The claimant says he told Mr Graham there were three people responsible for the sheep before the claimant started and that the overgrown sheep foot the claimant had dealt with previously would have taken two years to grow. He says he reminded Mr Graham that he had also recently reported that several of the flock had a bad cough and that Mr Graham had said to get them off to market. The claimant says he said to Mr Graham they needed a med plan to make sure medications were correct and to adhere to food safety standards. He says he said that many of the sheep drenches and medications had labels missing or the information on the labels was incomplete. He says he said he had found a vat of sheep dip on its side leaking with a watercourse nearby. He says

Mr Graham became agitated and told the claimant he was not getting the vet out, it was his farm and what he said went.

48. Mr Graham accepted he may have had a conversation with the claimant that day but denied it was in the terms set out by the claimant. Again, we accept that the conversation is likely to have taken place and that the subject matter may well have been about the topics the claimant identifies. But we do not find that it was a serious conversation about the raising of health and safety matters as the claimant says or one that upset Mr Graham. The topics raised by the claimant are matters that Mr Graham would expect to fall within the claimant's remit as farm manager as he grew into the role and took responsibility for sorting out and resolving or improving the farms. There was no particular reason for Mr Graham to take offence to them. Mr Graham said he was building a flock that in the longer term he hoped to use as a dairy flock and that at the time in question the sheep were not entering the food chain. It seems likely to us that the claimant was aware of this too, given his exchanges with Mr Graham about sheep dairy farming ideas. As such, at that point in time, Mr Graham would not have had pressing concerns about food safety standards or be that bothered by the claimant commenting upon it as something that needed to be sorted in the longer term. It strikes the Tribunal that in reality much of what the claimant was raising with Mr Graham here was about the longer term future of sheep care.

49. On 15 March the claimant emailed Ms Roberts asking if he should come into sign his contract that week so there were no complications and in time for payroll. It is not in the bundle, but he says that on the 16 March he received an email from Ms Roberts saying she was still working on the claimant's contract as it was something she needed Mr Graham for really, but she would try and get it done that day. She said it might be she would list the claimant's roles on a job description as opposed to the contract and get the job description out a bit later, but she had to discuss it with Mr Graham. On 17 March the claimant asked Ms Roberts how they would get the contract signed on time for payroll. She replied to say it would not need to be signed before payroll as the claimant by working agreed to the contract before it was signed, hence why they had 8 weeks to write the contract.

50. On 17 March the claimant asked Mr Llewellyn about the whereabouts of Mr Morgan, one of the builder team who he had not seen him around for a week or so. Mr Llewellyn told him that Mr Morgan had coronavirus. On 18 March the claimant emailed Mr Graham saying he understood Mr Graham must have a lot on his mind with the virus and not to worry about the farms and he was upping production of crops. He said he was happy to muck in elsewhere if needed. The claimant said that Ms Gasior was working from home, had low kidney function, and was quite high risk from

the virus so he said if Mr Graham heard of any confirmed cases nearby to let him know. Mr Graham responded to ask about making their own compost from horse manure and the claimant responded further about that. Mr Graham said he would order some more compost.

51. Somewhen around this time the respondent's management team, Mr Graham, Ms Jackson-Graham and Mr Miller got together and discussed potential redundancies. Mr Graham and Ms Jackson-Graham explained in evidence they were already concerned about the potential impact of Brexit when the covid pandemic hit. They said the management team agreed that they needed to secure the future viability of the business by looking at whether they could restructure and reduce the labour costs in the business, and whether to scale back on their ambitions for the business. Ms Jackson-Graham's stance, which was agreed by the management team, was that they needed to refocus back on the core business of the respondent. They also decided to look at whether they could make cuts within that core business where there were other staff who could cover the work. Ms Roberts, who was the business administrator assisting Ms Jackson-Graham was to be made redundant, on the basis that Ms Jackson-Graham could pick up Ms Roberts' work. The farm manager role was a new role, and the farms and projects at the farms were not a core part of the business. A decision was made to place on hold the diversification at the farms and the permaculture project. It was decided Mr Graham could pick back up the remaining running of the farms including care of the sheep. The claimant was therefore to be made redundant.

52. Others were placed at risk in the core business including Ms Davies. The respondent sought advice from a HR consultancy. Where employees had colleagues in the same role, they were placed in redundancy pools for selection and a selection matrix set up and scored against. The claimant was not placed within a selection pool because he was the only farm manager. 6 individuals were ultimately to be made redundant, albeit one of them resigned before the redundancy took effect. Other than the claimant and Ms Roberts, there were two employees in assembly and two in the warehouse who were selected to be made redundant.

53. With the assistance of the HR consultant, Ms Jackson-Graham drafted letters for the staff, including the claimant saying that they were at risk of redundancy and inviting them to a meeting to discuss the potential redundancy.

54. On 19 March the claimant did not feel well and texted Mr Graham to tell him. The claimant received a text message from Ms Davies to say she was being made redundant and was meeting with Mr Graham in a few days. She said there were 7 being made compulsorily redundant. She said

"I totally get it, they are trying to save the company." That afternoon Mr Graham texted the claimant saying he needed to come and talk to him. The claimant went out to meet Mr Graham. There is a dispute about whether Mr Graham gave the claimant the letter of 19 March or indeed whether it actually existed at the time. We consider it likely that the letter was drafted. The letter contains no time in it for the meeting due to take place, according to the letter, on 20 March. We consider it likely that the letter was genuinely drafted by Ms Jackson-Graham at the time, and it is likely there is no meeting time in it because she was passing the arrangements for the meeting with the claimant over to Mr Graham to handle because the claimant was not part of the core business which Ms Jackson-Graham looked after and because Mr Graham was the claimant's line manager.

55. We accept the claimant did not receive the letter at the time; he said so in the later exchanges he had with Ms Davies about the process. What exactly happened to the letter we are not able to make a positive findings about. However, we consider it likely that Mr Graham, on going up to the farm to speak to the claimant, decided to just cut to the chase and tell the claimant then and there that he was being made redundant. We accept the claimant was told by Mr Graham, as set out in the claimant's witness statement, words to the effect that after Covid he had Brexit to contend with and so was making redundancies and the claimant was one of the individuals being made redundant.

56. The claimant says at the start of his discussion with Mr Graham, he asked if it was about covid and Mr Graham said yes and that Mr Graham had confirmed that Mr Morgan had covid. The claimant now says that he told Mr Graham that there were things they needed to do like have everything cleaned, and it was then Mr Graham told the claimant he was being made redundant. Mr Graham denies there was any such conversation and says he did not say that Mr Morgan had covid because, in fact, it had never been confirmed that Mr Morgan had it. We accept there may have been some passing conversation about covid and Mr Morgan but we do not find it was any more than that. Mr Graham's intention was simply to tell the claimant about the redundancy and that was the focus of their discussion.

57. Mr Graham told the claimant that he was going to put together an alternative deal to offer the claimant, which might involve being a partner or a tenant farmer. At the time the claimant thought Mr Graham was upset and he messaged Ms Davies to say that Mr Graham was upset and he totally understood.

58. On 21 March Mr Graham told the claimant that he was not going to make the claimant a partner or a tenant farmer but he was still looking at a deal to offer the claimant relating to the farm being a community.

59. Ms Jackson-Graham, with the HR consultant, was preparing redundancy confirmation letters for the affected employees. One was prepared for the claimant which, again, she passed on to Mr Graham to deliver. The letter said the claimant was being made redundant from 31 March, and offered the right of appeal.

60. On 30 March, the claimant exercised his right of appeal. The appeal letter said he was grateful for the support of Mr Graham and Ms Jackson-Graham and that he was discussing an independent deal with Mr Graham. But he expressed concern about his and Ms Gasior's financial situation. The claimant said that as the expansion of the farm based business such as glamping and the dairy had been postponed, there was a need for him to be on site looking after the animals and crops. He said he was a key worker in agriculture and should qualify for furlough.

61. Ms Jackson-Graham suggested an appeal by phone or whats app. The claimant set up whats app on his phone. That evening at 6:30pm Mr Graham came to the farm and the claimant went out to see him. Mr Graham said they may as well do the appeal hearing then and there. Mr Graham told the claimant that the farm and the house had nothing to do with the respondent and that he was not going to put the claimant on furlough as if on furlough the claimant would not be able to work, and he did not trust the Government that he would not have to pay it back. Mr Graham said he was still firming up an alternative deal and to hang in there.

62. On 12 April Mr Graham sent the claimant an email to say the job remained terminated through redundancy and the claimant would be paid up to mid-April as he had performed some work up until then. The email said it had been agreed from the outset that the tenancy was independent of the job, he had been fair in helping out at the start but that the rent and costs needed to be paid. Mr Graham said other arrangements were terminated pending any renegotiation and that the food production project was up for negotiation. He said he would make land, contribute some agreed costs and possibly some resources available and in return would want food from the farm and a small amount of farm labour support.

63. On 26 April the claimant rejected the proposals. The claimant asked again to be furloughed, pointing out it would help him to be able to pay some rent. Mr Graham responded to again state they would not furlough the claimant and denied saying the claimant had a guaranteed 6 months employment. He said the rent remained the claimant's responsibility and they had a standard shorthold tenancy. Mr Graham removed the offers relating to permaculture and said the only arrangement going forward was as tenants. He said he expected some serious negotiation about how they

intended to settle outstanding rent and costs. On the evening of 26 April the claimant and Ms Gasior were given a notice to quit document, together with invoices, saying that Mr Graham needed to move into the property to tend to the animals without having to travel in lockdown. It was said they were also looking to progress the redevelopment of the building shortly. The notice said there was not a specific leaving date because of covid difficulties and Mr Graham was happy to negotiate on this.

64. There was then a further dispute between the parties as to whether they could be given a notice to quit and whether when arrears were due during lockdown. Mr Graham said he wanted them to leave by end of August. The relationship between the parties had seriously broken down by this point and on 13 June 2020 the claimant and Ms Gasior moved out.

Discussion and conclusions

65. Applying our findings of fact and the applicable legal principles to the issues to be decided our conclusions are as follows.

Breach of contract claim – 6 months minimum employment?

66. We have not found as a matter of fact that Mr Graham offered the claimant a guaranteed 6 months minimum period of employment. It was an offer of permanent employment with a probationary period of 6 months but that is not the same thing as guaranteed 6 months employment. It was therefore a contract terminable on reasonable notice or the statutory minimum period of notice. This breach of contract claim is not well founded and is dismissed.

Raising health and safety concerns?

Emails of 2 March about first aid kits and other matters

67. Based on our findings of fact, we do not consider on this occasion the claimant brought to the respondent's attention circumstances connected with his work which the claimant reasonably believed were harmful or potentially harmful to health or safety. It was Ms Roberts who raised the question of checking the first aid kits. It was not the claimant going to the respondent in that regard raising circumstances he believed were harmful or potentially harmful to health or safety. The claimant and Ms Roberts then engaged in dialogue, with the claimant raising the other matters that occurred to him off the top of his head. It was a spontaneous, low level email exchange which culminated in the claimant saying he considered it could wait until the April clear up of the site. The claimant agreed it should be run past Mr Graham but that was not done in a way in which the claimant was saying there was a concern to health and safety. It was

simply about things being run past Mr Graham. Based on the email exchanges we do not find that the claimant actually believed at the time the circumstances being discussed presented a health and safety concern and he was not bringing to his employer's attention circumstances connected with his work which he reasonably believed were harmful to health or safety.

Emails 2 – 6 March about the greenhouse

68. The claimant had previously commented to Mr Graham about the greenhouse being a hazard in relation to the wind getting in and further damaging the panes. Mr Graham agreed to get the new Perspex panes. As set out in our findings of fact, in the emails between 2 and 6 March the claimant was not saying that it was dangerous for him to work alone in the greenhouse. The claimant was asking for a hand in its clearing out and to help remove the waste. He was offered help in the clearing out by Ms Roberts but ultimately decided to cancel her help on that occasion. The claimant said he was fine to work on the clearing out alone, but he may need help with fitting the panels later on.

69. The emails between the 2 and 6 March were about requests for help, they were not about the greenhouse being harmful or potentially harmful to health or safety. The claimant therefore did not bring 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.

Conversation with Mr Graham about working on the mezzanine floor and CSCS cards for the construction team

70. We have made findings of fact that the claimant, in the trip to Port Talbot, did raise with Mr Graham that he did not feel safe working on the mezzanine floor, that he felt he had observed the construction team working dangerously. We accept in this regard that he did bring to his employer's attention circumstances connected with his work that he believed were harmful or potentially harmful to health or safety in regard to concerns about construction practices. They were based on what he had observed on site, and we therefore find they were reasonably held beliefs.

Sheep troughs, COSHH regulations and food safety standards

71. We have made findings of fact that the claimant did make some comments to Graham about sheep care. We do not, however, find that the claimant raised circumstances he reasonably believed were harmful or potentially harmful to health or safety. In the natural language of the legislation, health and safety must, in our judgment, relate to the health

and safety of people, not animals. At the time the sheep products were not entering the food chain as Mr Graham was building his flock. We have found it likely that the claimant knew this. He was not raising circumstances in which he believed there was harm or potential harm to health and safety. Our findings of fact in this regard were that the claimant was raising matters he felt, going forward, they needed to work towards in terms of sheep care, with the long term plan of the sheep being milked in the future. However, we do not consider that this amounted to the claimant raising circumstances that he reasonably believed were potentially harmful to health and safety in the future. It was just a conversation about matters to be addressed in the future given the claimant's role as farm manager. They were not concerns at that time of a level that were actually about potential harm to health or safety within the natural meaning of sections 44 and 100 of ERA.

Mr Morgan

72. The claimant simply asked Mr Graham to let him know if there was a case of Covid 19, whilst explaining that Ms Gasior may be vulnerable. His message did not constitute the claimant raising circumstances or concerns which he reasonably believed were harmful or potentially harmful to health and safety. The claimant had simply made a request for information. We consider that the claimant's position in relation to this allegation was fanciful.

Asserting a statutory right?

73. In Mennell v Newell & Wright (Transport Contractors) Ltd [1997] IRLR 519 the Court of Appeal said:

"*It is sufficient if the employee has alleged that his employer has infringed his statutory right and that the making of that allegation was the reason or principal reason for his dismissal. The allegation need not be specific, provided it has been made reasonably clear to the employer what right was claimed to have been infringed. The allegation need not be correct, either as to the entitlement to the right or as to its infringement, provided that the claim was made in good faith. The important point for present purposes is that the employee must have made an allegation of the kind protected by [s104]; if he had not, the making of such an allegation could not have been the reason for his dismissal."*

74. We do not consider that the claimant raised with the respondent a qualifying allegation that the respondent had infringed his statutory right to a statement of particulars of employment within the meaning of section 104. The only evidence before us is of the claimant asking whether he needed to come in to sign his contract for payroll purposes. That does not

constitute the claimant making it reasonably clear to the respondent that he was saying they were infringing his right to a statement of particulars of employment. The claimant's claim that the principal reason for his dismissal was that he had asserted such a statutory right is therefore not well founded and the claim is dismissed.

Denial of training opportunities?

75. We do not consider, as a matter of fact, that the respondent denied the claimant training opportunities. The claimant was given the green light to attend various training courses via Farming Connect.

76. The claimant's real contention here seems to be the fact that Ms Roberts took over the organising of the group chainsaw training, and that it was moved away from Farming Connect. He took that as a personal slight. In our judgement, it is likely, given the content of Ms Roberts contemporaneous email, that the decision was made to look at other providers because of the complications with getting employees set up with individual accounts with Farming Connect, setting up their individual learning plans and applying individually for courses. Ms Roberts was then asked to take on the task of looking for providers because her role was business administrator.

77. The claimant may disagree with these being sensible business decisions, but we are satisfied that they were genuine business decisions and decisions the respondent was entitled to take. It was not conduct that was targeted at the claimant or seeking to make him feel marginalised.

78. Moreover, as a matter of pure timing the claimant's complaint in this regard simply makes no sense. His allegation is that he was deprived of organising the chainsaw training because he raised health and safety concerns. However, Ms Roberts emailed the claimant about the chainsaw course on 24 February which is before the date the claim says he raised his first health and safety concern on 2 March. The complaint that the claimant was subjected to a detriment by an act or omission of his employer, in denying training opportunities, done on the ground that he had raised health and safety concerns is not well founded and is dismissed.

79. The claimant also makes the point that because he was dismissed, he was deprived of the opportunity to attend courses. That is a point, however, that is about the losses he says he has sustained through being dismissed. It is not a complaint that the respondent has, in effect, victimised him by deliberately depriving him of training courses because he raised health and safety concerns. It is the latter, put in simple terms, that section 44 of the Employment Rights Act is fundamentally about. It is

about whether, looking into the mental processes of the employer, the raising of health and safety concerns, had a material influence on a decision to remove an option of attending courses. It is not a question of whether "but for" the act of being dismissed, the claimant would have attended courses.

Decision to dismiss

80. In Abernethy v Mott Hay and Anderson [1974] IRLR it was said that a reason for the dismissal of an employee is a "*set of facts known to the employer, or it may be of beliefs held by him, which cause him to dismiss the employee."*

81. We find as a matter of fact that the decision to dismiss the claimant was made by Mr Graham, Ms Jackson-Graham and Mr Miller as part of a wider decision, in the face of worries about the implications of Covid, to reduce their overheads by focussing back on the core part of the business, and cutting staff where they felt they could cover the work in other ways. The claimant and Ms Roberts were made redundant because they were not directly engaged in core business work. It was considered that Ms Jackson-Graham could cover Ms Roberts' work, and the claimant was made redundant because Mr Graham decided to put his diversification plans on hold and that he could take back other tasks such as looking after the sheep. They both, in effect, by absorbing back some responsibilities previously given to Ms Roberts and the Claimant, took a hit on the individuals who had previously been hired to assist them. They were tightening their belts. Other staff in assembly, such as Ms Davies, were made redundant, as a means of also reducing the headcount there.

82. The reason for the claimant's dismissal was therefore redundancy. The requirements of the business for employees to carry out work of a particular kind had ceased or diminished. That the claimant disputes that it was a sensible business decision, or that there were other options such as furlough, does not make a difference to this analysis. The point is that we are satisfied and find that this was the genuine reason for the claimant's dismissal.

83. We found, above, that the claimant had raised a qualifying health and safety concern with Mr Graham on 10 March. We do not, however, find that the raising of that health and safety concern was the reason or principal reason for the claimant's dismissal. We are satisfied, as we have said, that the reason or principal reason was redundancy. There can only be one principal reason. But in any event, we are satisfied that the health and safety concern the claimant raised on 10 March had no influence at all on the decision to dismiss the claimant. We have found, as set out above, that the conversation was not a big deal for Mr Graham, and he saw it as

an innocuous conversation. The claimant's complaint that he was unfairly dismissed on the basis that the reason or principal for his dismissal was the raising of health and safety concerns is therefore not well founded and is dismissed.

84. We would add that even if we had found that the claimant had raised other qualifying health and safety concerns this would not have affected our decision on this point in any event. We are satisfied that none of the matters that the claimant points to had any influence on the decision to dismiss him. The things that the claimant seeks to rely on simply were not issues operating in the mind of Mr Graham (or Ms Jackson-Graham) at the time of the decision to dismiss.

85. The claimant points to the ways in which he says he was treated differently to others made redundant. We are satisfied, however, that this was due to the fact the claimant was the only farm manager. There was therefore no need to place him in a selection pool and devise and implement selection criteria. There was some shortcutting of the redundancy process in the claimant's case, because, as we have found, Mr Graham came and told the claimant he was being made redundant, as opposed to initially putting the claimant at risk. We are satisfied, however, that this was due to Mr Graham being given responsibility for the claimant's process (as opposed to Ms Jackson-Graham) because the claimant fell under Mr Graham's line management, and because it was Mr Graham's style to decide to just "cut to the chase" with the claimant. It was not due to the claimant raising health and safety concerns. The general fairness of the redundancy process followed by the respondent is not a matter before us as the claimant did not have sufficient qualifying service to bring an "ordinary" unfair dismissal claim.

86. The claimant also argues that the respondent deliberately made redundant individuals who raised health and safety concerns. He refers to Ms Davies and Mr Rogers. We did not hear evidence from Ms Davies. Ms Jackson-Graham gave her evidence in a straightforward, compelling manner and readily accepted that Ms Davies had raised concerns about dust extractors. She said, and we accept, that she had no problem with this, and it had nothing to do with Ms Davies' selection for redundancy. Ms Davies, at the time she was put at risk of redundancy, told the claimant she completely understood why the respondent was making her redundant, as they were trying to save the business. Ms Davies, herself, was therefore not initially suspicious at the time. We also did not hear from Mr Rogers. But the correspondence he sent the claimant at [415-416], whilst clearly disgruntled with having been made redundant, does not say he was dismissed for raising health and safety concerns.

87. We find that the redundancy process followed by the respondent, in respect of which Ms Jackson-Graham took advice from an HR consultancy to try to make sure an appropriate process was followed, was a genuine one conducted in good faith and not motivated in any way by a desire to remove people who raised health and safety concerns.

88. It strikes the Tribunal that what has happened here is that, after the event, the claimant (who to an extent was understandably very upset to lose his job and his home), has, with the assistance of individuals such as Ms Davies, overanalysed everything that has happened. He, after the event, has constructed a narrative at which he sees himself as the victim of numerous wrongdoings at the hands of the respondent. He has felt compelled to find a reason for what has happened to him as being more than the respondent simply deciding to make redundancies. The claimant's tendency in this regard is supported by the way the claimant has, for example, read far more into emails than they, in the Tribunal's judgement, actually contain or represent.

89. We would add that even if we had found the claimant had properly asserted a statutory right, in respect of not being given a statement of particulars of employment, we would not have found that this was the reason or the principal reason for the claimant's dismissal. We do not consider that the claimant asking about his employment contract was a problem to the respondent. They were working on producing it. It just had not been finalised and issued as at the point the claimant was made redundant. The complaints of automatic unfair dismissal are therefore not well founded and are dismissed.

90. Finally, in relation to the claimant's dismissal, by the time of his closing submissions, the claimant was emphasising an argument that the principal reason for his dismissal was that he told Mr Graham that they needed to be undertaking cleaning and other measures if Mr Morgan had covid. We made clear to the claimant this was not an issue before us in the list of issues. That remains the position. But we would observe that we would not have found, in any event, that the claimant raised a qualifying health and safety concern in that form on that day. We simply do not consider that the conversation between the claimant and Mr Graham on that day actually took the form that the claimant now, some time after the event, says. We consider it is something the claimant has made bigger during the course of this litigation. At the time, and as of 10 May, the claimant had been referring to the conversation about Mr Morgan has having been something that had "slipped his mind" [409]. The claimant has since exaggerated its contents and significance. We consider that at the time there was only a passing reference in the conversation to covid and Mr Morgan. Furthermore, we would not have found that the principal reason for the claimant's dismissal was any such discussion about Mr Morgan or

indeed that it had any influence on the decision to dismiss the claimant. Mr Graham was already in attendance to communicate to the claimant that he was being made redundant.

Decision to seek to evict the claimant from the flat

91. This is brought as a health and safety detriment claim. We have only found that the claimant raised a qualifying health and safety concern in one respect; on 10 March about the construction team. We do not find that this was a material influence on Mr Graham deciding to seek to evict the claimant from the flat.

92. We find that Mr Graham sought to evict the claimant and Ms Gasior from the flat because they were not paying their rent, and there was a general breakdown in relationships between the parties by that point in time. But that breakdown in relationships was nothing to do with the claimant said on 10 March. We have found, as set out above, that the conversation was not a big deal for Mr Graham, and he saw it as an innocuous conversation.

93. This complaint of health and safety detriment is not well founded and is dismissed. We would have reached the same conclusion even if we had found that the claimant had raised other qualifying health and safety concerns as set out in his pleaded case.

Breach of contract – two years minimum residence in the flat

94. The claimant says the respondent made a contractual promise that he and Ms Gasior would be able to live in the flat for a minimum period of two years. We do not consider that the Tribunal has jurisdiction to hear this breach of contract complaint. It is a complaint about an alleged breach of a contractual term requiring the employer to provide living accommodation to the claimant as an employee. Under Article 5 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 the complaint therefore falls outside the jurisdiction of the employment tribunal. That complaint is therefore dismissed.

Breach of contract - Reimbursement of purchases

95. The claimant accrued a series of such smaller expenses during his employment. They are set out in his schedule of loss. The respondent's position is that they do not owe any expenses to the claimant because the claimant did not follow the proper process in incurring expenses, as they should all have been paid by way of an invoice or by Mr Graham or Ms Jackson-Graham paying by card.

96. The claimant said in evidence that when Mr Smith was showing him the ropes, he took the claimant into the office to reclaim some expenses, for tasks such as key cutting. Mr Smith told the claimant that with a receipt, expenses could be reclaimed from petty cash but that anything over £100 Mr Graham and Ms Jackson-Graham preferred to pay for by card. He said Ms Jackson-Graham agreed with Mr Smith. This evidence was not disputed, and we accept it. We therefore find that for smaller authorised expenses the claimant could fund these upfront and seek reimbursement. For larger purchases, Ms Jackson-Graham or Mr Graham would pay on a work credit card. The Claimant only worked for the respondent for a short period. He did not know he was about to be dismissed. He therefore had no way of knowing at the time a date by when he had to put his petty cash reimbursement claim in for the authorised smaller amounts. They were therefore outstanding as at the date of dismissal and have been declined since during these Tribunal proceedings.

97. The first 5 items are travel expenses for attending the conference on 27 and 28 January 2020. One of them is recorded in the sum of £90 when it should be £0.90. This is a conference Mr Graham asked the claimant to attend in his place. We consider that such circumstances gave the claimant implied authority to incur reasonable travel expenses. The claimant had to get there and back. You cannot ask a bus company to send an invoice for a bus ticket or get your employer to ring the bus driver and pay by credit card. They were sums authorised and reimbursable to the claimant under his contract of employment.

98. The next item in the Schedule of Loss is footrot shears. Mr Graham accepted in evidence that he may well have authorised the claimant to buy these. Mr Probert says we should not read too much into that admission as Mr Graham was frustrated in being asked questions about what he saw as minor matters, when there were more serious issues at stake in the claimant's case. But it would have been open to the respondent to think about these smaller expense claims in advance of the hearing in more detail themselves to see if they could narrow the field of dispute. If not, the claimant had to put his case to Mr Graham in cross examination, even on the smaller issues. We find this was an authorised expense in respect of which the claimant was expressly promised reimbursement. To not pay the claimant is therefore a breach of contract.

99. There are various purchases of seeds. The purchase of seeds, in principle, was authorised by Mr Graham. Whilst it was disputed by Mr Graham, we accept the Claimant's account that after the first purchase from Real Seeds, when the claimant told Mr Graham what had happened, Mr Graham said that was "fine." We consider the Claimant is more likely to remember the conversation than Mr Graham. We find that Mr Graham therefore confirmed that there would be reimbursement of that cost. To not

pay the claimant is therefore a breach of contract. The claimant went on to make further purchases of seeds on the understanding the same principle would apply. They are sums that would fall within the petty cash limit and he was authorised to make those kinds of purchases because the central part of his role was to be planting for the permaculture project. To not pay the claimant legitimately incurred expenses is therefore in breach of contract.

100. There are then miscellaneous small matters such as tree guards, paint brushes, a garden sprayer, tree stakes, glazing strips, cleaning materials for the greenhouse and thermometers. Again, we consider that these were expenses genuinely incurred by the claimant in the performance of his duties as farm manager and expenses that fell within the petty cash limit. Mr Graham knew the claimant was tasked with activities such as planting trees (which required protection) and repairing and cleaning out the greenhouse. They were expenses legitimately incurred. To not pay the claimant is therefore a breach of contract.

101. The claims were outstanding or arose on the termination of the claimant's contract of employment. He became unable at that point to submit his petty cash claim. Having checked the calculations we find that the sum for expenses owed to the claimant is **£209.09.**

Statement of particulars of employment / Employment Act 2002

102. The respondent accepts that the claimant was not provided a statement of particulars of employment within the required timeframe. The claimant has succeeded in his breach of contract claim for expenses. We are therefore obliged to make an award of at least 2 weeks' pay unless there are exceptional circumstances which make an award unjust or inequitable. We may, if we consider it just and equitable, increase that to 4 weeks' gross pay.

103. We do not consider there are exceptional circumstances meaning that no award should be made. We consider it is just and equitable to make an award and to increase the award to 4 weeks' pay. The respondent says that they were hampered in getting the statement of particulars of employment to the claimant because it lay with Ms Roberts and whilst she was due to leave employment herself on 31 March, she did not in fact return to work after the nationwide lockdown was brought in on 23 March 2020. Mr Graham also said he decided not to give the statement of particulars over to the claimant because it would be rubbing salt into the wound when the claimant was being made redundant.

104. Mr Graham was therefore aware that the statement of particulars was overdue. Moreover, we do not consider that completion of the draft lay in

the hands of Ms Roberts. She had emailed it to Mr Graham on 9 March 2020. It lay in the hands of Mr Graham to sort the job description. The reality is that, whilst we accept that Mr Graham had no issue with the notion of sorting a job description for the claimant, or giving the claimant a contract or statement of particulars of employment, Mr Graham had not actually got round to sorting the job description out. It was that which was holding things up. We also do not accept that not wishing to rub salt into the claimant's wounds was a valid reason not to give the claimant his statement of particulars. The answer lay in asking the claimant whether he still wanted/needed it. He would have said that he did. There is information in a statement of particulars of employment that an employee will want to receive irrespective of the fact their employment is in the process of being terminated. Indeed, some of the information an employee may well particularly want in such circumstances.

105. We therefore reject the arguments put forward by the respondent. In the circumstances as we have found them to be we consider it just and equitable to increase the award to 4 weeks' pay. At a salary of £20,000 a year that amount to the gross sum of **£1538.00.**

Employment Judge R Harfield
Dated: 16 May 2022

JUDGMENT SENT TO THE PARTIES ON 17 May 2022

FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS
Mr N Roche