



Neutral Citation Number: [2026] EWHC 571 (KB)

Case No: KB-2023-004110

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13/03/2026

Before :

ELIZABETH O'NEILL
(sitting as a Deputy Judge of the High Court)

Between :

Matthew Foxton-Duffy

Claimant

- and -

Jockey Club Racecourses Limited

Defendant

Darren Finlay (instructed by **Setfords Solicitors**) for the **Claimant**
Hugh Hamill (instructed by **DWF Law LLP**) for the **Defendant**

Hearing dates: 24-28 November, 1 December 2025

JUDGMENT

Elizabeth O'Neill (sitting as a Deputy Judge of the High Court) :

1. By this claim, issued in October 2023, the Claimant seeks damages from his ex-employer for a psychiatric injury which he alleges arose in and around November 2021 as a result of stress at work. Liability, causation and quantum are all at issue.
2. Mr Matthew Foxton-Duffy (the Claimant or MFD), was employed by the Jockey Club Racecourses Limited (the Defendant) from 7 January 2013 until 15 April 2022, when his employment was terminated by consent.
3. The trial took place over six days from 24 November 2025 to 1 December 2025. The Claimant was represented by Mr Darren Finlay, the Defendant by Mr Hugh Hamill. Documentary evidence consisted of an agreed bundle running to approximately 2000 pages and a small supplemental bundle of documents produced by the Defendant following Deputy Master Toogood's Order of 13 November 2025.
4. I determined the factual issues on the balance of probabilities, the Claimant bearing the burden of proof to establish the component elements of his claim, and the Defendant bearing the proof of establishing any contributory negligence by the Claimant.

Preliminary issue – anonymity order

5. Part of the documentary, witness and expert evidence before the court relates to the nature and extent of a psychiatric injury sustained by the Claimant. Some of this evidence relates to sensitive and traumatic events occurring in the Claimant's childhood, and refers to sexual abuse, identifying alleged victims and an alleged perpetrator.
6. At the outset of the trial, after submissions from counsel for both parties, I considered the steps necessary to protect the rights to privacy of identified alleged victims of abuse, including the Claimant.
7. After a short adjournment to enable the Claimant to be advised of his rights, the Claimant confirmed that he maintained his consent to his name being published in connection with allegations that he was a victim of sexual abuse, waiving any right to anonymity. I heard from counsel for both parties and from a member of the press (who voiced no objections).
8. Upon consideration of the importance of the principle of open justice and each of the various rights protected by Articles 6, 8 and 10 ECHR that were engaged, I determined that it was necessary to provide anonymity to the third parties whose identity was incidentally revealed in the evidence before the court in connection with the alleged abuse, in order to protect their rights to privacy and to secure the proper administration of justice. Accordingly, I made an order providing for redactions from accessible court documents and for reporting restrictions.

The Claimant's case in outline

9. The Claimant asserts that the Defendant acted in breach of its common law duty to take reasonable care not to subject him to working conditions which were reasonably likely to cause him psychiatric injury; and that it failed as a reasonable and prudent employer, to give positive thought for his safety in light of what it knew or ought to have known of the risk of him suffering psychiatric harm. He additionally claims that the Defendant acted in breach of its duty not to act in such a way as would be calculated or likely to destroy the relationship of mutual trust and confidence between employer and employee.
10. The Claimant's case is that as a result of a restructure of the marketing team in late 2020, and the resultant reduction in staff, both he, as Head of Marketing for the West Region, and the regional marketing teams, were expected to undertake an excessive amount of work. He claims that in April 2021, he and his colleague Michelle Anderson ("MA"), Head of Marketing for the East Region, placed their line manager, Olaf Gueldner ("OG"), on notice of the risk of injury to those working in the marketing team in express terms. He alleges that from this point onwards, it was abundantly clear to the Defendant that the Claimant himself was personally at risk of harm to his health due to the excessive demands of his work. This was foreseeable to the Defendant by:
 - a. third parties' comments to his line manager and senior leaders in the organisation;
 - b. his own frequent tearfulness and dramatically changed behaviours; and
 - c. the complaints he made, raising excessive workload and his mental health, to his direct line manager OG, and also to Mr. Ian Renton ("IR") and Ms. Amy Starkey, Managing Directors the West and East Regions respectively.
11. Despite his increasing signs of ill health, the Claimant says that no attempt was made by the Defendant to assess his workload or refer him to occupational health, or to take any step to alleviate the pressure to which he was subject.
12. The Claimant claims that a reasonable and prudent employer would have recognised the need to act to safeguard the Claimant from 29 April 2021 onwards, and that the Defendant was in continuing breach of its duty of care at all material times thereafter. The Claimant avers that his injury arose in and around November 2021, and that the Defendant had a six-month period before then in which to take preventative action.
13. In particular, the Claimant alleges that the Defendant failed to:
 - a. carry out a suitable and sufficient assessment of the risks to the health of the Claimant;
 - b. introduce any preventative and protective measures to safeguard the Claimant from a reasonably foreseeable risk of harm which should have been identified by a risk assessment, including but not limited to:
 - i. reducing his workload;
 - ii. ensuring that he was able to and did in fact take annual leave;

- iii. ensuring there were sufficient staff;
 - c. refer the Claimant to occupational health;
 - d. heed or act upon the warning of the Regional Heads of Marketing;
 - e. provide the Claimant with a safe system of work.
14. Further, it is alleged that in breach of the implied term of mutual trust and confidence, the Defendant subjected the Claimant to a redundancy exercise that was not genuine; sought to replace the regional marketing heads with people of his own choosing; sought to restructure the marketing department for a second time in two years with little or no consultation and showed no regard whatsoever for the health of the Claimant or the marketing department.
15. As a result of these breaches, the Claimant's case is that he incurred a psychiatric injury and that he suffered loss.

The Defendant's case in outline

16. Although the Defendant accepts that the Claimant's mental health deteriorated in January 2022, it denies the Claimant's psychiatric injury arose in the autumn of 2021, or that any psychiatric injury which the Claimant might have sustained arose out of his employment.
17. The Defendant contends the Claimant was provided with a safe system of work and that there was nothing which the Claimant either did or said which would have placed a reasonable employer on notice.
18. According to the Defendant, the Claimant was a respected and hardworking marketeer who was passionate about his work, who actively sought out and claimed additional responsibilities, and who was territorial, leading him to actively resist the centralisation of work that was associated with the new marketing structure. Any complaints articulated by the Claimant in the period preceding his departure did not relate to excessive workloads or to his health but were directed at criticising the new marketing structure.
19. Far from raising ill-health through overwork, on the last day he attended work before going off sick, the Claimant sought to advance himself as the best candidate to fill the new proposed role of National Marketing Director.
20. In terms of the Claimant's behaviour, which it is alleged was a sign that he was suffering harm, the Claimant had a well-established tendency to emotional outbursts and was often overbearing towards colleagues.
21. Given the absence of any prior complaints of excessive workload, lack of prior illness or absence from work, the Defendant denies that it was foreseeable either that Claimant was likely to suffer an injury, or that any injury might be attributable to overwork.

22. The Defendant does not admit any implied terms to the contract of employment with the Claimant but asserts that even were such a term to be implied, it did not act in breach of it. On the contrary, it invited the Claimant to a meeting to discuss a restructure of the marketing department in January 2022, when it was made clear to the Claimant that it was hoped he would be retained in a new role.
23. The Defendant's case is that the Claimant's negligence caused or contributed to his injury, in that he failed to report any of the matters of which he now complains to his employer. Further, he did not make use any of the free services available to support his mental health, failed to seek medical assistance from April 2021 onwards, and did not take reasonable care for his own well-being.

Legal test for psychiatric injury arising from stress at work

24. The relevant principles for a claim of breach of the employer's duty of care for stress-related psychiatric injuries were enunciated in Sutherland v Hatton and other appeals [2002] EWCA Civ 76 ("*Hatton*"). The Court of Appeal cautioned that claims of psychiatric injury or illness arising from stress at work "*require particular care in determination, because they give rise to some difficult issues of foreseeability and causation and, we would add, identifying a relevant breach of duty.*" Hale LJ articulated the legal principles applicable to personal injury claims for stress at work as follows:

"(2) The threshold question is whether this kind of harm to this particular employee was reasonably foreseeable (para 23): this has two components (a) an injury to health (as distinct from occupational stress) which (b) is attributable to stress at work (as distinct from other factors) (para 25).

(3) Foreseeability depends upon what the employer knows (or ought reasonably to know) about the individual employee. Because of the nature of mental disorder, it is harder to foresee than physical injury, but may be easier to foresee in a known individual than in the population at large (para 23). An employer is usually entitled to assume that the employee can withstand the normal pressures of the job unless he knows of some particular problem or vulnerability (para 29).

(4) The test is the same whatever the employment: there are no occupations which should be regarded as intrinsically dangerous to mental health (para 24).

(5) Factors likely to be relevant in answering the threshold question include:

(a) The nature and extent of the work done by the employee (para 26). Is the workload much more than is normal for the particular job? Is the work particularly intellectually or emotionally demanding for this employee? Are demands being made of this employee unreasonable when compared with the demands made of others in the same or comparable jobs? Or are there signs that others doing this job are suffering harmful levels of stress? Is there an abnormal level of sickness or absenteeism in the same job or the same department?

(b) Signs from the employee of impending harm to health (paras 27 and 28). Has he a particular problem or vulnerability? Has he already suffered from illness

attributable to stress at work? Have there recently been frequent or prolonged absences which are uncharacteristic of him? Is there reason to think that these are attributable to stress at work, for example because of complaints or warnings from him or others?

(6) The employer is generally entitled to take what he is told by his employee at face value, unless he has good reason to think to the contrary. He does not generally have to make searching enquiries of the employee or seek permission to make further enquiries of his medical advisers (para 29).

(7) To trigger a duty to take steps, the indications of impending harm to health arising from stress at work must be plain enough for any reasonable employer to realise that he should do something about it (para 31).

(8) The employer is only in breach of duty if he has failed to take the steps which are reasonable in the circumstances, bearing in mind the magnitude of the risk of harm occurring, the gravity of the harm which may occur, the costs and practicability of preventing it, and the justifications for running the risk (para 32).

(9) The size and scope of the employer's operation, its resources and the demands it faces are relevant in deciding what is reasonable; these include the interests of other employees and the need to treat them fairly, for example, in any redistribution of duties (para 33).

(10) An employer can only reasonably be expected to take steps which are likely to do some good: the court is likely to need expert evidence on this (para 34).

(11) An employer who offers a confidential advice service, with referral to appropriate counselling or treatment services, is unlikely to be found in breach of duty (paras 17 and 33).

(12) If the only reasonable and effective step would have been to dismiss or demote the employee, the employer will not be in breach of duty in allowing a willing employee to continue in the job (para 34).

(13) In all cases, therefore, it is necessary to identify the steps which the employer both could and should have taken before finding him in breach of his duty of care (para 33)."

25. Following the approach outlined by the Court of Appeal in *Hatton*, I have the following mixed questions of law and fact to determine to decide whether the Defendant has breached its duty to take reasonable care to provide MFD with a safe place of work:

- i) Was it reasonably foreseeable to the Defendant that the Claimant was (a) at risk of suffering this kind of harm and (b) that the risk was the result of overwork? Factors to which I may have regard include, but are not limited to, the nature and extent of the work, and signs of impending harm to the employee's health from the employee himself or others on his behalf.

- ii) If so, did the Defendant fail to take one or more of the steps that a reasonable employer could be expected to take in the circumstances?
- iii) If so, did that failure cause or materially contribute to the Claimant sustaining an injury?

The witness evidence

- 26. Much of the evidence in this case turned on interactions between the Claimant, and his colleague and peer, Michelle Anderson (Head of Marketing for the East Region) on the one hand, and their line manager Olaf Gueldner (Chief Marketing Office) and other senior colleagues such as Ian Renton (Managing Director of the West Region overall).
- 27. The following witnesses were called on behalf of the Claimant:
 - i) Matthew Foxton Duffy (“MFD”): the Claimant, Head of Marketing for the West Region until 15 April 2022;
 - ii) Michelle Anderson (“MA”): the Claimant’s colleague and counterpart, Head of Marketing for the East Region until early 2022;
 - iii) Rebecca Elvin: Operations Manager employed by the Defendant from 2014 until 2023;
 - iv) Simon Claisse: Regional Head of Racing for the South West Region from 2012 until December 2021;
 - v) Charlotte Loten: the Claimant’s wife;
 - vi) Dr Douglas Turkington: expert witness.
- 28. On behalf of the Defendant, the following witnesses were called:
 - i) Ian Renton (“IR”): Managing Director for the West (just retired at time of trial);
 - ii) Olaf Gueldner (“OG”): Chief Marketing Officer and the Claimant’s line manager from January 2021 onwards (now employed elsewhere);
 - iii) Portia McKeown: People & Culture Business partner employed by the Defendant since November 2021;
 - iv) Helene Sharrock (“HS”): Chief People Officer from May 2021 onwards;
 - v) Dickon White: currently North-West Regional Director;
 - vi) Dr Jan Wise: expert witness.

Reliability of witness evidence

Michelle Anderson

29. I was invited to approach MA's evidence with some care. As the Claimant's peer and counterpart for the East Region, whose evidence (uncontested on this point) was that she had also experienced problems with mental health due to the stress associated with the role, and as a friend of the Claimant's, this witness was emotionally invested in the success of his case – a fact which she did not seek to conceal. Her husband, a lawyer specialising in occupational stress, provided advice to the Claimant at the outset of this matter.
30. In weighing her evidence, I bore in mind MA's strong and avowed allegiance towards the Claimant, which was relevant to her perception of events. However, I found MA a credible witness. She was succinct in her responses to questions and did not overstate or amplify what was said or done by her, and she was forthright in recognising the limits of her own direct observations. She was candid in acknowledging that she had consulted the HSE website to determine how she should raise the risk of injury and ill-health with the Defendant. When questioned, she was clear about the role her husband had played when she prepared her witness evidence. I believed her account that her husband had not advised her about the content of her witness evidence other than to give her headings and tell her not to state her opinion as fact.

The Claimant

31. I was invited to approach the evidence of the Claimant himself with great care. As part of his assessment of Claimant's injury, the Defendant's expert witness Dr Wise administered a number of validity tests, two of which the Claimant failed and two of which were (in layman's terms) borderline.
32. There was some argument on the subject of the reliance the court should place on these validity tests, particularly as the method underpinning these, due to licensing constraints, was only disclosed shortly before the trial, limiting the Claimant's ability to scrutinise the conclusions reached on the basis of these tests. Dr Wise, though a qualified psychiatrist who is trained to administer and interpret these tests, is not a psychologist or neuropsychologist, and he did not administer the tests in the context of a full neuropsychological assessment. The Claimant's experience of the appointment and the testing process was negative, and his evidence and that of his wife, Charlotte Loten, was that upon his return home from the testing, he self-harmed in an unprecedented manner.
33. Although Counsel for the Defendant did not allege malingering, it was submitted by the Defendant that some aspects of the Claimant's evidence may not be reliable, given Dr Wise's opinion that he had not done his best on the validity tests. I note also that the Claimant's own expert witness, Dr Turkington, who was present when the Claimant was called to give evidence, expressed concerns about the Claimant's ability to recall facts, given that, as is agreed between expert witnesses, he is currently still unwell. In forming my view on MFD's evidence, I had regard to the opinion evidence of both experts.

34. It is clear from the self-harming incident that occurred on the same day, that MFD's state of mind when undertaking the validity tests administered by Dr Wise was not propitious to undergoing tests. This context, together with the fact that the testing experience was negative and that these were free-standing tests, undertaken outside of a holistic assessment, mean that I do not consider the outcome to be more widely representative of MFD's veracity. I note that as additional evidence with respect to the MFD's childhood came to light, Dr Wise accepted that MFD's childhood adverse experiences may better explain his responses to his International Trauma Questionnaire, the veracity of which he had initially substantially questioned.
35. MFD's perception of external events and indeed his perception of his own well-being must be affected by his depression and PTSD. However, in my judgment his evidence was honest. I am conscious, as Dr Turkington remarked, that given his condition his recall may have suffered. On contentious points, I pay particular regard to the availability of contemporaneous documents and other evidence relevant to his testimony in deciding whether his evidence is reliable.

Other Witnesses

36. The Defendant invited me to view the evidence of all remaining witnesses, including those called by the Claimant, as witnesses genuinely seeking to assist the court. Whilst I do not disagree, I note that OG's answers in cross-examination tended to pivot defensively to a broader discussion of the merits of his position, rather than addressing the factual question posed directly.

Reasonable foreseeability of MFD suffering injury related to overwork

The nature and volume of work

37. On the nature and volume of his work, the Claimant's case is that prior to 2020, he was working at his maximum capacity as the Defendant's Head of Marketing (South West Region), responsible for marketing for the Defendant's racecourses at Cheltenham, Wincanton, Warwick and Exeter.
38. In November 2020, the Defendant restructured its marketing department, merging four regional head of marketing roles into two roles. The Claimant alleges that the nature and the extent of the work entrusted to him increased substantially when he was given the new Head of Marketing role for the enlarged West Region, which additionally covered Aintree, Haydock Park and Carlisle racecourses.
39. According to the Claimant:
 - i) the total marketing staff for the seven racecourses in the West Region dropped from 21 to 7 individuals;
 - ii) nearly the same amount of work was required to be done by the remaining 7 staff as was previously undertaken by 21 staff. Although digital functions were

intended to move to the central national marketing team as part of the restructure, the central marketing teams' lack of regional knowledge meant that in fact, much digital work remained with the regional teams;

- iii) the Claimant undertook complex additional responsibilities which fell outside of his role as Head of Marketing (West Region), such as ticketing (pricing, creation, design production); access control on every race day; promotion and management of annual badge membership; branding and merchandising for the Cheltenham festival; Jockey Club Air; complex operational work at Cheltenham; promotion of the Cheltenham and Southwest Racing Club, promotion and assisting in ticketing, pricing and entertainment for the Blenheim Palace International Horse Trials, and complex customer engagement.
40. The Defendant did not dispute that the restructure substantially reduced the resource in both the East and the West regional marketing teams. The Defendant's case on the nature and extent of the Claimant's work is that:
- i) the reasoning behind the November 2020 restructure was that many regional marketing functions would pass to the national marketing team, including digital media, and that the Claimant's new role was essentially a leadership and development role where he was expected to manage, encourage and support his marketing services team;
 - ii) as regards the additional tasks outside his role, the Defendant's case is that the Claimant actively sought out additional roles;
 - iii) whilst the Defendant accepts that from time to time the Claimant may have taken on additional ancillary roles, in the context of the business in 2021 when attendances at the races was significantly curtailed due to the pandemic, the workload associated with such tasks, and in particular ticketing and access control was greatly reduced;
 - iv) the recruitment of two new staff members, together with the overall downturn arising from the pandemic, meant that the Claimant's workload would have lessened during 2021;
 - v) the Claimant was not happy with some of the changes associated with the restructure, including the reduction in his responsibility for events at Cheltenham Racecourse, and he resisted the centralisation of work associated with the restructure.

Nature and volume of work - findings

41. It is accepted by all parties that the Claimant was a talented and creative marketer performing at a high level, who was knowledgeable and passionate about his work. Even before the restructure the Claimant was hard-working, and had a tendency not to take his annual leave. Cheltenham, part of his portfolio even before the restructure, carried a great deal of responsibility to generate income for the Defendant, as it accounted for approximately 70 percent of the Defendant's revenue.

42. MFD's portfolio prior to the restructure was significant. Simon Claisse, Regional Head of Racing for the South West, who worked alongside the Claimant explained:

"Cheltenham was delivering a very significant proportion of the profit of Jockey Club racecourses and so it attracted a lot of focus and scrutiny. We also had ITV with us on at least fourteen of sixteen days racing and obviously when you are being broadcast to a national audience that brings additional pressures to bear. So in terms of the scale of the job, it doesn't really get much more high pressured than that and clearly in my opinion the concentration of the effort needed to be at Cheltenham Racecourse. My observations of the Claimant in that environment, was that he handled the stress and the pressure of the role really well and he did a good job."
43. With the restructure, the Claimant became responsible for three additional racecourses Aintree (and the Grand National), Haydock Park and Carlisle. The number and geographic spread of the racecourses additionally entrusted to the Claimant entailed a substantial increase in his workload and responsibilities.
44. Rebecca Elvin, who worked on the operational side in the West Region, commented:

"Obviously from that point onwards the workload doubled for the Marketing Team, because the four regional teams had been merged into two. There was also the travelling to contend with on top of that, because we had four disparate regions across the country and when we just became the "West" the guys would be busy with us at the festivals in March and then you had the big Grand National event in Aintree in April, it was just relentless. We would be three hours away from Aintree so straight away when you are doubling your workload and halving the team then adding the travel on top, which probably most people hadn't had to do previously, it all just an accumulation of things and it became totally unmanageable."
45. In addition to gaining new racecourses, the West Region entrusted to MFD consisted of a materially larger and more complex marketing portfolio than the East Region. In April 2022, shortly after MFD's departure, the Defendant's response to an equal pay grievance raised by MA assessed the West Region for which MFD was responsible as comprising 9 of the Defendant's top 10 financially significant race days, with a marketing revenue target of £26 million, contrasted with a target £10 million for the East Region. The Grievance Hearing Meeting Notes record that *"Ian [Renton] explained that the scale of the MFD role was significantly higher and he possessed a marketing skill set was "head and shoulders" above anyone else in the business."*
46. In addition to greater scale, size, and pressure to generate revenue, the expectations of MFD's marketing role were higher than for his counterpart in the East Region. The Grievance Hearing Meeting Notes record that according to OG, MFD was *"tasked far more with innovation eg merchandising, website reselling and the membership sales programme"*.
47. MFD's sizeable portfolio had previously been resourced with 21 marketing employees. Following the restructure, resourcing was reduced to 7 employees.

Did regional marketing teams' work diminish with the restructure as intended?

48. Although the aim of the restructure was to diminish the work of the regional marketing teams in favour of the central marketing team, on the witness and documentary evidence before the court, the regional teams' work did not reduce as planned following the restructure.
49. MFD's and MA's evidence was that work did not materially diminish due to a variety of factors, in particular:
 - i) one of the main intended reductions, moving digital functions to the central teams, was not successful. The central team's lack of specialist knowledge with respect to the individual racecourses meant that continuous input from the regional teams was required to correct errors in the digital workstreams. For example, the regional teams continued to provide website content on racecourses, and update the pages for the running order on every race day;
 - ii) the restructure in-sourced certain tasks, which were no longer undertaken by external agencies but by the central team. This in practice could even increase the regional team's work, as they had to give instructions to the central team, the output contained errors and there were difficulties with the turnaround time, leading to additional work for the regional teams;
 - iii) the regional teams were still expected by individual recourses to meet their individual marketing needs, with those for the West Region often insisting on in person attendance by MFD or his team at events;
 - iv) following Covid, marketing teams lost external support from a third-party data agency to support their ticket marketing initiatives, which led to additional work, as they had less visibility on the market.
50. IR and OG's evidence was that although they acknowledged some transitional difficulties with workflow and lack of clarity on roles, this was no more than was to be expected in the circumstances of a restructure. Further, OG's evidence was that some of these problems were of the regional teams' making; he explained that they were territorial and found it difficult not to correct and improve the work of the central teams. For example, the regional teams insisted that the creative work should feature the appropriate horse - a jumps racing horse for jump racing, and a flat racing horse for a flat racing event (which difference is visible from the horse's mane). OG explained that work was also done to push back on the smaller racecourses' demands.
51. It is clear from the documentary evidence that from April 2021 onwards, the regional marketing teams flagged on numerous occasions that there was no meaningful decrease in their workload. There were also difficulties with some of the new working processes, for example with respect to the in-sourced creative work, which gave rise to additional work for the regional teams.
52. In cross-examination, IR readily accepted that the in-sourcing of creative digital work from external agencies to the central team did not lead to any decrease in work for the regional marketing teams. HS, the Defendant's Chief People Officer, confirmed that the Defendant had not filled vacancies in the creative digital space.

53. One year after the restructure, on 3 November 2021, MA set out a list of 9 workstreams that continued to require the regional teams' continuous input and work. As part of these she mentions:

“ 3... Earlier this year I was asked that the regional team pick website content back up from the national team because the national team don't have enough racecourse knowledge to manage this. [...]

6. We have had a proposal from the new social media managerHe is suggesting that between him and his social media exec (both full time) they'd manage social media for 26 of the east's 204 racedays, leaving the other 178 to be managed by the regional team. On the 26 they propose to manage they weren't suggesting they'd respond to customers, direct queries – just create and post content. [...]" [emphasis added]

54. The same email provides tangible examples of the errors that were being picked up by the regional teams, such as website pages directing customers to the wrong place, or having to step in, often at the last minute, to provide content or manage contractors booked to provide video content on race days. None of these problems or workstreams were of the regional teams' making.
55. I find that in practice, contrary to what was planned, the bulk of the marketing work that was meant to move to the central team, in particular the digital workstreams, remained with the regional teams who were no longer resourced to undertake this work. Further, the in-sourcing of creative digital services from external agencies to the central team generated errors and delays, with associated work for the regional teams.
56. I find that the voluminous increase of work for the regional teams cannot be ascribed to MFD or the regional teams' perfectionist tendencies, nor to MFD's territorial desire to keep the work. The sole example of such behaviours provided by the Defendant, the regional marketing teams' request that visual promotional work should feature the appropriate type of horse for the relevant event being promoted, cannot fairly be characterised as anything other than a valid concern, even if it was not shared by OG.
57. In terms of MFD's and his team's resistance to the work being undertaken by the central teams, there is no evidence of this other than by general, unspecified assertion. The documentary evidence reveals the regional marketing teams seeking to push work back to colleagues outside of the team, including an (unsuccessful) occasion on which help was sought from OG in this respect.
58. The increased volume of work for the regional marketing teams was acute enough to be noticed by colleagues. Simon Claisse explained that:

“Once we began to emerge from the pandemic, at some point in early 2021, the business recommenced marketing tickets for racing events, so those teams all felt a huge jump in workload from that point. My observations were that the expectations on what the Marketing Team in particular were asked to achieve were entirely unrealistic given the lack of resources available to them, compared to the resources they used to have available.” [emphasis added]

59. Although, as OG explained, the marketing team put in place a banding system to manage the demand from smaller racecourses, the portfolio for the West comprised many large racecourses, so that despite the reprioritisation and push back on smaller racecourses, MFD and his team were still required to give individual attention to much of the portfolio.
60. After MFD's departure, following a proposal made in 2022, the Defendant effectively reversed the changes associated with the restructure and moved back to a four region structure. It re-appointed marketing managers for each region. This further supports the Claimant's assertion that the restructure gave rise to a fundamental imbalance in workloads.
61. I find that the restructure reduced resourcing for the regional marketing teams by two-thirds. However, the work of the regional marketing teams did not significantly diminish. Accordingly, the regional marketing teams experienced a dramatic upsurge in work. This upsurge was not attributable to Claimant's territoriality or resistance to work, but to imbalances in the allocation of work and resource following the restructure.
62. The impact of this upsurge in work on MFD was amplified, giving the scale and size of the West Region, the geographic spread of the courses (with the concomitant travel) and the concentration of high revenue racing days for which he was responsible.

Additional tasks undertaken by the Claimant outside of his role

63. In addition to the responsibility for a substantial marketing portfolio with reduced staff, I find that the Claimant was personally responsible for significant and complex additional tasks that were not included in his role as Head of Marketing for the West.
64. The Defendant's own assessment of MFD's role was fully documented shortly after MFD's departure, when MA submitted an Equal Pay claim. The Grievance Hearing Meeting Notes Summary record the role the Claimant played with respect to Cheltenham on an operational level:

*“Ian identified that there had been a lack of understanding of the size, scale and complexity of the Cheltenham operation and during the restructure in 2020 parts of MFD's role (ticketing and access control) were removed from the role profile, however MFD continued to undertake these responsibilities. Ian noted he raised concerns about this with the then Group Sales and Marketing Director, but the concerns were dismissed. **Ian stated that MFD's role profile was not accurate and did not reflect the role that MFD was doing, saying it reduced it to a purist marketing role without recognising the other responsibilities that MFD undertook.**” [emphasis added]*

65. The formal response to MA's equal pay grievance, dated 29 April 2022 assesses that the extra responsibilities entrusted to MFD amounted to an extra 55 days of work per year, plus 2.5 days per race day. Assuming 20 race days per year (the evidence

suggests the true number is considerably higher), this means that MFD's additional responsibilities gave rise to an additional 105 working days:

“In the West, the Head of Marketing undertook the following additional integral and complex responsibilities that were not documented within his role profile:

Ticketing – reporting to Ian Renton directly on ticketing, this was a vast task for MFD, it involved the overall responsibility for the creation, design, production and ordering of tickets, badges and wristbands for over 400,000 racegoers. For the Festival this involved a minimum of 15 different concepts and approximately 6 for each of the other racedays. As part of this remit MFD was responsible for calculating the number of badges required for each restaurant facility available on a race day and ensuring the design, production and ordering of the required badges. For high end restaurant and badge offerings, MFT was also responsible for the design, production and ordering of presentation boxes. A conservative estimate would be that this would account for a minimum of 40 days work per annum.

Access control - MFD was responsible for ensuring that the soft and hardware used at approximately 30 to 40 turnstiles was operating issue free and that racegoers tickets were allowing entry on every raceday. This would consume a minimum of 1.5 days working time in the run up to and on the morning of each race day. On a race day itself MFD held the overall responsibility to ensure all elements of access control were working smoothly, and was the point of escalation should issues occur. MFD would liaise closely with the Business Services team regarding any problems and would be highly involved in the investigation, and resolution of any access control issues.

Management of and driving revenue from annual badge holders - MFD was responsible for the design, production and ordering of three different categories of metal annual badges, along with the selling of seats, carpark labels and marketing of annual badges. MFD was additionally responsible for the creation, design and content of the monthly information e-mail sent to annual badge holders. MFD would work closely with the membership and sales teams who had shared responsibility with MFD for sales of annual badges. Undertaking these tasks would take approximately 15 days work time per annum."

66. In addition to the roles above, MFD's colleagues at Cheltenham relied upon him daily for complex customer engagement and the resolution of operational issues arising.
67. The evidence of Rebecca Elvin, who joined the Defendant as Operations Manager working in the West Region and remained there April 2023, was that MFD "was doing a lot more things than a marketing manager or head of marketing would have done historically. We found that out after the Claimant left in early 2022, that there were so many tasks that just didn't fit anywhere because it previously has sat with the Claimant [...] I'm not sure at what point some of these additional tasks slid into the Claimant's to do list."
68. In 2021, the Defendant ran the four-day Blenheim Palace International Horse Trials (the *Blenheim Horse Trials*) for the first time. This event was outside of the Defendant's core business of racing and was acknowledged by all witnesses to be a

substantial and particularly labour-intensive project, which required months of intense preparation. MFD was tasked with preparing the original proposal for this event, and a leading role in its delivery.

69. MFD said in evidence: *“I was expected to adopt the entire four-day event and its delivery into my schedule. This was a huge undertaking, involving the creation of a brand; all event and promotional marketing; family fun operation on the day; access control, public sales and associated on course marketing; and all TV provision.”* This new workstream required much of MFD’s time in the summer months, and the run-up to this event frequently saw him starting work at 5 am and working until 7 pm.
70. Further, under the new matrix management structure, MFD was entrusted with tasks from both OG, the Chief Marketing Officer, who was his line manager, and from IR, his previous line manager and the Head of the West Region. This led to MFD being entrusted with a number of competing high-pressure and complex logistical projects, with little regard for competing requests.
71. For example, in September 2021, in addition to participating in Marketing Leadership Team away days on 8 and 9 September, delivering the Blenheim Horse Trials in mid-September, and hosting and presenting at an internal marketing event at the end of September; MFD was tasked by IR with a leading role in organising the All Colleague Away Day in Cheltenham on 28 September. MFD organised entertainment (including a parade of real horses, and a fictional auction of horses) as well as managing the logistics for hosting colleagues arriving from all over the country.
72. Contrary to the Defendant’s pleaded case, MFD’s role was not essentially a leadership and development role where he was expected to manage and support his marketing services team. This is expressly recognised in Defendant’s response to the MA’s equal pay claim:

“It was noted that the changes to the role profile presented the new positions as more of a purist marketing role, however, this did not accurately reflect the duties undertaken by the Head of Marketing within the West Region.”
73. I find on the balance of probabilities that MFD was expected to undertake a vast number of significant, complex, time-consuming and high-pressure additional responsibilities which fell outside of his role.

Was MFD’s workload reduced due to the pandemic or by the recruitment of additional resource?

74. The Defendant accepted that MFD may have taken on additional ancillary roles. However, it submitted that the Claimant’s usual workload was reduced due to the impact of the Covid restrictions on racing.
75. During the Covid pandemic, racecourses were shut for a ten-week period between March and June 2020, and when racing resumed it was initially held behind closed

doors. Reduced numbers of spectators were allowed to attend events from early 2021, and the restrictions were finally lifted in July 2021.

76. The Claimant's case is that his workload became excessive from mid-November 2020 onwards. For some of this period, therefore, I find that the Claimant did not have the workload associated with numerous racegoers attending races. The Cheltenham Festival was held behind closed doors in March 2021, which reduced some aspects of MFD's workload.
77. However, the reduction in racegoers did not lead to a commensurate reduction in the marketing work, as marketing work was not conducted on a per person basis. Furthermore, the pandemic gave rise to work for the marketing team and MFD to address needs of at-home audiences, and to assist with communication of Covid protocols.
78. From March 2021, when the planned lifting of Covid restrictions was announced, the regional marketing teams began marketing events later in the year, so that there was no material reduction in their workload from this point onwards.
79. With respect to the impact of the pandemic on MFD's additional responsibilities outside of his marketing role, IR accepted that even in areas such as access control - where MFD managed the soft and hardware used at approximately 30 to 40 turnstiles - the tasks undertaken by MFD meant that his work was not commensurately reduced with the reduction in racegoers.
80. I find that the pandemic reduced certain aspects of MFD's workload for the period to March 2021. From March 2021 onwards, it ceased to have any material effect on his workload.
81. As regards additional resource, in February 2021, IR appointed a colleague, KX, to take a newly created position of Community Support at the Cheltenham and Warwick racecourses. This reduced some of the customer engagement work that MFD undertook. MFD and KX then jointly recruited GX to take on responsibility for access control and annual members in September 2021. This (relatively junior) new colleague required ongoing support from MFD, and did not have the capacity to take on access control for the smaller racecourses.
82. Following the regional teams raising resourcing issues with him in April 2021, OG sought and obtained permission for additional resource, and in May 2021, he appointed an Engagement Executive for the West. This junior person was given responsibility for the administration of band bookings, though MFD continued to lead on these. Upon MFD's departure, band bookings suffered and assistance from an additional staff member was required.
83. The appointment of a junior person to assist on band bookings, and another to deal with annual members and access control did not suffice to resource these workstreams fully or remove them from MFD's responsibility.
84. Considering the evidence with respect to MFD's workload in 2021, I find that a relatively small part of the Claimant's overall workload, in particular part of his

ticketing and access control responsibilities, some customer engagement and administrative aspects of band bookings, were reduced as a result of the additional resource that was made available by the Defendant over this period.

85. The Defendant's case that MFD's work, if anything, lessened overall in 2021 does not allow for the new and additional workstreams that were entrusted to MFD during the same period, nor does it recognise the upsurge in the volume of work associated with the restructure.
86. I find that throughout this period, MFD was required to undertake a variety of new tasks falling outside of his job description, such as purchasing a racehorse or leading on the preparation of the All Colleague Day at Cheltenham in September 2021.
87. In particular, MFD was entrusted with drafting the proposal for and delivering substantial aspects of the Blenheim Horse Trials. This was a new, labour-intensive and high-pressure project requiring months of preparation, from early 2021 until delivery in September 2021. When asked about the volume of work undertaken by MFD and others in delivering the Blenheim Horse Trial, IR recognised that in hindsight, with the benefit of more experience, he might have put in place additional resource.
88. I find that any diminution the Claimant's workload resulting from reduced racegoers in the period to June 2021, and from the involvement of extra resource, was entirely outweighed by the new tasks entrusted to MFD over this period, such the substantial workstream relating to Blenheim Horse Trials, and the preparation and hosting of the All Colleague Day at Cheltenham.
89. These new workstreams, together with the upsurge in work and reduction in resource resulting from the restructure, meant that in 2021 MFD's work dramatically increased overall.

Conclusion on nature and volume of work

90. Considering the nature and extent of the workload that was entrusted to MFD, I find that it was much more than was normal, when compared with the demands made of others in his role. I find that MFD had complex, multi-faceted and intellectually demanding role. The range and volume of demands made of him were unreasonable, and his evidence that in 2021 he undertook a number of responsibilities which could have amounted to separate roles on their own is corroborated by the evidence before the court.

Indicators of impending harm to MFD's health as a result of stress

91. The Claimant's case, as developed in court, is that a reasonable and prudent employer would, on or after 29 April 2021, have known, or ought to have known, of the risk of impending harm to MFD's mental health from the signs below:

- i) a meeting convened by the Claimant and MA with OG to place the Defendant on notice of a risk of psychological injury brought on by occupational stress, on 29 April 2021;
 - ii) the Claimant's clear deterioration in mental health, as noticed by his colleague MA and expressed in conversations with her. He began to cry in meetings and developed a short temper with his colleagues that was out of character;
 - iii) as the Claimant became more stressed and distressed, MA taking the lead in raising points with the Defendant in both their interests, and between 29 April and 18 June 2021, frequently informing OG of the occupational stress she was suffering, and her concerns for the health and safety of her team, the Claimant and his team in the West region; and thereafter raising it with others such as Amy Starkey and the Chief People Officer, Helene Sharrock;
 - iv) throughout the autumn 2021 period, the Claimant repeatedly complaining about his stress levels, wellbeing and deteriorating mental health:
 - a) in meetings with IR from the end of lockdown in or about April 2021, on occasions too numerous to particularise, the Claimant frequently being in tears and visibly upset;
 - b) in a call with Amy Starkey;
 - c) becoming visibly upset in front of colleagues and leaving the room at a pre-presentation marketing meeting;
 - d) in a conversation with OG on 3 November when he informed him that the pressure he was under had affected his behaviour and was such that *"it is only a matter of time before I fall out with everyone"*;
 - e) in a meeting with IR on 8 November 2021, in which he became visibly upset and showed IR a draft email setting out his situation;
 - f) in a telephone call with Dickon White on 10 November 2021;
 - g) in a conversation with Portia McKeown on 19 and 20 November and 2 December 2021;
 - h) in a meeting with OG on 2 December 2021, when the Claimant became visibly distressed when highlighting the difficulty of his workload and the effect it was having on his health.
92. The Defendant's case is that at no stage prior to 12 January 2022, when the Claimant first was signed off sick, was the Defendant aware that the Claimant suffered from any stress related illness, let alone one which had its origins in his working conditions.
93. MFD did not inform OG that he was suffering from stress or at risk of becoming unwell at any time. Further, the Claimant did not complain to IR about his workload. Just before his departure, the Claimant presented himself as the suitable for promotion to National Marketing Manager.

94. The Defendant contends that the Claimant was not happy with some of the changes made by November 2020 restructure, as he viewed any centralisation of tasks as a reduction in his responsibilities or influence and something which he should challenge.
95. The Claimant was unable to recognise that he was in part responsible for the poor relationships within his own team and that the way in which he related to his colleagues made matters worse.

Indicators of impending harm to health - findings

29th April Meeting

96. On 23 April 2021, AX, a member of MFD's team, wrote to MFD raising the issue of work pressures on the team. She wrote:

"I am extremely upset and disappointed that there are still the number of people in the business not fully aware of the pressures on the Marketing teams, not only in a new structure, but also for the West particularly due to the following:

A new team back in only January with less than 14 weeks to deliver new and creative solutions for an at home audience for two of the biggest meetings in the Group - working all hours to produce -not to mention Blenheim or budgets.

A new marketing structure where processes and ways of working are not finalised and we have had to find our way.

A new team trying to understand the various racecourses that are part of the "New West".[...]

We are doing literally everything we can to keep on top of things, which I actually believe we've done pretty well so far in just over three months. Sadly with a reduced team and a bigger remit has to come focus of delivery, otherwise we will all break, and if I'm honest we're not far off!! [...]

But it got to a point that I needed to get it down for my own sanity." [emphasis added]

97. This email prompted a telephone call between MA and MFD to discuss the levels of stress in the team. During the call, MFD was distressed and tearful. They agreed to jointly raise the issue with OG and MFD.
98. MFD separately undertook a risk assessment with AX, following which they jointly agreed and adopted appropriate measures to avert any injury to AX.
99. On 26 April 2021, MFD forwarded AX's email to OG and wrote:

*“I am keen to discuss this email, Michelle and I briefly discussed it on Friday and view is **here are some red flags we need to discuss and act upon.***

*Clearly there are issues which are currently being solved and I am now more than ever aware of local challenges but **that is no excuse for driving our team members to breaking point.**” [emphasis added]*

100. MA’s uncontested evidence was that at this stage she was suffering from physical symptoms of stress herself, such as loss of sleep, irritability, muscle tension and tearfulness, for which she had started therapy from January 2021 onwards. Given the conversation with MFD, AX’s email, her own stress symptoms and observing signs of stress in her colleagues in the East team, she intended to place the Defendant formally on notice of a risk of an injury to health brought on by occupational stress for the team as a whole. To this end she looked at the HSE website to understand what language she should use. Her intention to raise a risk of an injury to health was not contested in cross-examination and was referred to by the Defendant in closing.
101. The contemporaneous note MA prepared of the subsequent meeting between herself, MFD and OG on 21 April 2021 reads (emphasis added):

“Discussion between Michelle Anderson, Matthew Foxton-Duffy and Olaf Gueldner, Thursday 29 April 2021 (video call). Matthew had forwarded Olaf an e-mail from one of his team regarding the lack of resource and continued high expectations of volume of output. The e-mail referred to things becoming “particularly stressful”, the risk that she and her team “will all break”, and that she needed to send this e-mail to her line manager “for my own sanity”.

*I explained to Olaf that I shared these feelings and that my team and I are **being asked to deliver an unmanageable level of work. I explained that I believe the main cause has been the reduction in resource in the restructure 6 months ago without any meaningful decrease in workload or responsibility,** leaving the east team expected to do the work of up to 18 people (pre restructure) with only 4 of us at present. While the east team is due to hopefully increase to 6 heads and I accept that 2 of the 18 former east team now work in the national team (removing SEO, CRO and any significant web development from our remit), this will remain an impossible task.*

*I explained that we either need more resource or we need to agree the work that cannot be delivered. I understand from Olaf’s response that additional resource is not possible. **I explained that I have a duty of care to my team and am concerned for their welfare. They are showing signs of not coping with the workload, and increasingly making mistakes, being defensive and speaking of being “overwhelmed”. I told Olaf I think it’s possible to foresee someone in our marketing team becoming absent from work through stress related illness, and I’m particularly worried for the implications for those who’d be left to carry the workload in their absence.**”*

102. MA accepted in cross-examination that although she was at this stage suffering from physical symptoms of stress, she did not share this fact, nor did she raise the issue of the Claimant's health at the meeting with OG. She was clear that she was flagging the risk that someone in the team might become unwell as a result of stress, but she was not indicating that anyone had at that point become unwell.
103. MFD's evidence was that at the meeting he was not sufficiently well to feel able to speak on this topic, but he was grateful to MA for articulating the concerns that they had previously discussed on their joint behalf.
104. MA said that on the following day, she received a call from OG in which she indicated that she was worried about the Claimant. OG told her the Claimant had said the same about her. Although MA did not say in terms that she was worried about MFD's mental health, in her view it was absolutely clear to OG that she was expressing a concern about the Claimant's health, given the discussion the previous day about escalating levels of stress withing the marketing team.
105. OG's evidence was that the 29 April meeting was entirely about how the team would cope with increasing workloads. At no time did the issue of ill-health or stress arise. According to OG, MFD assured him that he was undertaking measures to assist AX and assured him not to worry about her. At no time did MA and MFD mention stress levels; sleep; or ill health; it was always the structure. Further, neither MA or MFD raised any concerns about their own or each other's health with him. According to OG the structure was clear and placed responsibility for decisions with those at the centre, and this went against people's perception about what they wanted to do – it was clear but they just did not like it. His recollection was that *“people coming on board and believing the structure and letting it do its magic was the thing that worried me”*.
106. Given the terms of MA's contemporaneous note, and MA's avowed aim of placing the Defendant on notice of a risk of a possible injury to team members due to stress, which was accepted by the Defendant, I find that it is proved on the balance of probabilities that contrary to OG's recollection, MA and MFD expressly raised the risk of injury through stress to all members of the marketing team, which included themselves, at the meeting of 29 April 2021.
107. Further, given the clarity and precision of MA's evidence on her subsequent exchange with OG, I prefer her evidence and find it proved on the balance of probabilities that she expressed worry about MFD in a telephone call with OG the following day.

May to June 2021

108. The Claimant's case is that, as the summer progressed, the restructure was giving rise to intolerable levels of stress for himself and the marketing team as a whole. MA took the lead in raising the issue of the occupational stress to which they were both subject, as his own condition deteriorated. However, as the summer progressed, he was manifesting symptoms of stress that were sufficiently plain for MA and all to see.

109. The Defendant's case is that MFD did not complain that his workload was excessive or unreasonable. No employer with the Defendant's knowledge of MFD and his working conditions would have been on notice of any signs of impending harm, and it cannot be affixed with MA's knowledge of MFD's mental state. The Defendant denies that OG ignored a verbal complaint from MA that she was not sleeping due to stress. Further, the Defendant's pleaded case is that the Claimant's position was not comparable to MA's given that the summer was a busier season for MA.
110. MA said that she informed OG she was stressed and not sleeping on 3 June 2021, which he ignored. On 18 June 2021, MA emailed OG, stating (emphasis added):

*"I would like to add to the discussion list for us to revisit the conversation between Matthew Foxton-Duffy, you and I on the morning of Thursday 29 April regarding my concerns about **unhealthy levels of stress in the marketing department and the risk of potential impact on the health of both myself and others in the team.** This is particularly relevant to the bullet point in your email regarding me being a buffer for the team. As **I personally continue to wake in the night worrying about work or get up in the night to work (for the first time in my career), and have been in tears on video calls with colleagues (ditto) the risk has not gone away and I would like to make some recommendations about how we handle this risk.** I have attached my contemporaneous notes of the call of 29 April to aid this discussion."*
111. OG's evidence was that at no point did MA ever, at any stage, raise issues with respect to stress or lack of sleep as a result of overwork. This does not align with the documentary evidence. When asked about MA's email to him expressly raising physical symptoms and "*unhealthy levels of stress in the marketing department and the risk of potential impact on the health of both myself and others in the team*", and the contemporaneous note of the meeting of 29 April 2021 which she attached, his response was that he had not digested the content of the email, or the attachment thereto. This is despite the fact that MA's email was short, clear and purposeful, and he had responded on another point in the same message.
112. I find it proved that MA raised the issue of unhealthy levels of stress within the marketing team with OG in express terms by her email of 18 June, and the attached summary of their earlier conversation on the topic of 29 April. By the same email, she explained that stress was having a negative impact on her health.
113. The Defendant was therefore aware in June 2021 that another person in the same role as MFD was suffering harmful levels of stress which gave rise to both physical symptoms (lack of sleep) as well as behavioural symptoms (tearfulness).
114. Far from having less work than MA over the summer, the Defendant knew or ought to have known that MFD's workload was heavier than MA's in summer 2021 given his additional operational responsibilities, such as delivery of the Blenheim Horse Trials.

MA conversations with Amy Starkey July-August 2021

115. On 7 July 2021, MA met with Amy Starkey, (Managing Director East Region, IR's counterpart), with whom she had previously discussed difficulties associated with the restructure. She informed Amy Starkey of her email exchange with OG.
116. In an e-mail to her husband after this meeting, MA recounted that Amy Starkey told her:

*"[...] to make the best of it and keep my head down, so we can **"pass the baton" back to the West who'll then be the ones put under unbearable levels of stress as we come out of our busy period and they go into theirs. Presumably so it becomes clear that I'm not the one causing the problem, but at the expense of the mental health of Matthew and his team, from what I can tell. I told her that plan doesn't sit well with me"***.
117. In her statement, MA says that in expressing her discomfort with this approach, MA asked Amy Starkey: *"So we're trying to give Matthew a breakdown?"* In cross-examination MA, while not correcting this aspect of her statement, accepted that she did not in specific terms raise a risk to MFD's mental health as a result of overwork.
118. The Defendant did not submit evidence from Amy Starkey.

Claimant's own signs of stress June to September 2021

119. The Claimant's evidence is that from April onwards, he was finding it increasingly difficult to cope with his work, and his mental health was deteriorating. He was regularly working in the office from 7 am to 7 pm – and often more. He took his work home so that at the evenings and weekends, he was continually working on emails and available. He did not take annual leave, as he did not feel able due to the work that would accumulate in his absence. When he left in January 2022, he had twenty days of untaken annual leave.
120. According to the Claimant, over the summer, he started to be tearful at times during the working week, shutting the door to his office to cry. Towards the end of the summer, as his condition worsened, he began to cry on the way to and from work. At all times his mind was directed towards keeping going, and to trying to accomplish the various tasks that fell to him. He was strongly motivated to ensure the future of racing was preserved after the pandemic. He describes the run up to Blenheim Horse Trials as particularly demanding, with 5 am starts and very long days.
121. MFD said that over the summer months, he spoke to Amy Starkey about his growing difficulties with work pressures and stress. He told her how unsupported he felt. He was tearful on these calls. He described Amy Starkey as more sympathetic, as unlike others she asked questions. The Claimant also describes speaking about these issues with Ian Renton, when he occasionally became tearful.
122. In addition to his own evidence of his (occasionally tearful) conversations with Ian Renton and Amy Starkey, the Claimant relies on the evidence of several colleagues who noticed his changed behaviour and the impact that the workload was having on him to establish that the decline in his mental health related to stress was evident to all.

123. MA's evidence with respect to his declining mental health was that *"when MFD called me in tears on 22 April I saw a line as having been crossed and believed his health was at risk. From here there was a five-month period of decline culminating in MFD reaching the point of breakdown in in late September"*.
124. Simon Claisse, Regional Head of Racing for the South West Region, noted:

"It was around the same time that I handed my notice in May 2021 that I started to notice that the Claimant was showing some obvious signs of stress and that he was struggling to cope, such as changes in mood and behaviour... He had a lot of responsibility through race days and because of the changes within the teams, we just didn't have enough people of the ground...now we didn't have those people to do that with anymore and the Claimant ended up very stressed on the ground and it was obvious to me from the level of responsibilities that he had that he was massively over-stretched."
125. Simon Claisse's evidence pointed to a marked change in the Claimant. *"No challenge was too much for the Claimant back then. He was completely dedicated to what he did, he loved doing it, he build up a really good, strong team...I recall there were very clear signs that the Claimant wasn't coping with the amount of work that was thrust upon him and the amount of changes the business went through from April 2021"*. In particular, he noticed, for first time in his experience, that MFD was tearful at work, and visibly more irritable.
126. In her witness statement, Rebecca Elvin, the Operations Manager in the West Region stated:

"I recalled probably from mid-2021 onwards, that the Claimant became much more withdrawn. He had also started to get a bit under hot under the collar about stuff too and would get a bit emotional and lose his clarity of thought, I could visibly see him getting himself wound into a tighter and tighter coil [...] until he became quite snappy and visibly stressed."
127. Rebecca Elvin describes: *"I noticed the Claimant's mental health deteriorating; he became more and more withdrawn and his character completely changed. Sometimes when were chatting, he would get really emotional and would have just to get up and leave, because he found the situation too overwhelming."* Further she says: *"[t]he Claimant mental health was quite obviously going downhill and he as visibly struggling to cope, his whole demeanour changed and he was just like a different person."*
128. When asked to explain this at the hearing, Rebecca Elvin explained that *"it was a gradual change in the run up to Blenheim, but I can't put my finger on it was Aintree or another event, it was a general wearing down... Until then I had never seen Matthew get teary and he did get teary on occasions...I first noticed before Blenheim and a few times after Blenheim, I had never seen that before in him. He was not the person he was and I associated that with his mental health. People who were based at the track not just me had heard the rumours, seeing a grown man in tears makes you wonder what's going on"*.

129. Although MFD described himself as passionate and emotional, he had not cried in front of colleagues before this time. The only person who had seen him in tears was Ian Renton, to whom he was particularly close, and who testified he had seen MFD in tears perhaps four times over the ten years that they had known each other – on IR’s account, two of these occasions occurred in autumn 2021.
130. Neither IR or OG noticed any external signs from the Claimant that he was not coping with his workload. There was no evidence from Amy Starkey.
131. I find, on the balance of probabilities, that from June 2021 onwards, the change to MFD’s demeanour and behaviours, in particular his frequent tearfulness, were sufficiently clear for it to be obvious to those working around him that his mental health was declining. Further, given the context and timing of the signs of stress that he displayed, which were tied to a dramatic and unreasonable upsurge in the demands made of him, it was clear that the changes in his behaviour were linked to the increase in the volume and nature of his work and MFD being overstretched.

Marketing Leadership Team Meeting 9 September 2021

132. On 12 August, in preparation for a Marketing Leadership Team workshop planned for 9 September 2021, Helene Sharrock (“HS”), the Chief People Officer, sent a questionnaire to attendees. The aim of the workshop was to improve the way the team worked together. One of the questions asked was: *“If you could change something what would it be?”*.
133. MFD’s rather short response to this question was *“our structure, it’s under resourced, we bombed our marketing team”*. MA’s response was: *“We’re massively under-resourced in the regions and desperately need agreement on whether we can bring more resource back in or whether we accept that we will deliver less”*.
134. The Claimant’s case is that it was obvious to all present at the workshop that they were experiencing unendurable stress and that all members of the marketing leadership team were tearful at some point. The Defendant’s case is that there was no evidence of unendurable stress in the team, that MFD and MA were particularly hostile towards OG and though both stated that they felt overworked they did not mention suffering stress or becoming unwell. MX was in tears during one session, on account of MFD’s unpleasant manner towards her.
135. The meeting consisted of HS as facilitator and OG, MA, MFD, AB, and MX.
136. MFD and MA’s evidence was that any conflict between team members was attributable to stress caused by the restructure and that this should have been the focus of the session. Both gave evidence that they were in tears at various points of the meeting, as was MX.
137. MA explained in cross-examination that MX became tearful at the meeting because MX was disappointed with her reception from the team and from MA in particular. MA had not spoken to MX at a work dinner, which MX considered a valuable opportunity to meet a new senior female colleague after the pandemic lockdown. MA accepted the criticism as well-founded and apologised to MX at the meeting.

138. OG's evidence was that considerable care had gone into preparing the workshop, and that only MX became tearful, and that this was due to an attack on her performance by MFD. He viewed this was another example of MFD's occasionally aggressive behaviour, and said that MFD subsequently called him to apologise if he had been the cause of the upset.
139. HS said she had a call with MFD before the meeting, as MFD had expressed concern that the meeting should not be made about personalities. HS attributed MX's tearfulness to the tension in the room, she was not able to corroborate either MA's or OG's accounts as to what specifically caused it, though she recognised MA apologising to MX. The person whom HS identified as hostile in the meeting was MA, whom she thought carried some anger towards OG and MX.
140. MFD subsequently referred to this meeting in a draft email to OG dated 5 November. His email corroborates his account and does not reveal any indication that MFD was apologetic or considered he was at fault for what happened, quite the contrary. It contains the following:

“ In addition [AB] and I raised serious concerns regarding your desire to have team meeting to discuss challenges on 9th September, both [AB] and I advised you that the issues were structure led not personal yet you proceeded – the resulting meeting upset [MX] so much that she left the room , and I was visibly upset also.”
141. Had MFD been the aggressor as described by OG, such a striking aggression, bringing a fellow colleague to tears, should have given rise to adverse comment from either HS or OG, and there were none. When OG subsequently wrote to MFD regarding his interactions with MX on 27 October 2021, when MFD admits that he lost his temper with MX, there was no mention of any earlier incident.
142. Having considered the evidence of all witnesses and the documentary evidence, I find that OG and HS invested thought and care in preparing the Marketing Leadership Team meeting. However, the meeting itself went badly, and in discussing team dynamics, various members of the team, including MFD and MA, displayed tearful behaviour or became upset. MX left the room abruptly in tears. This was not attributable to MFD's conduct towards her at the meeting, but to her disappointment with her reception by the team as a whole.
143. I find that both before and at the meeting MA and MFD expressly raised their excessive workloads. The meeting also revealed that there were issues with respect to how the team worked together. Several members of the team became upset and tearful, including MFD.
144. I find that the state of disarray of the team, the upset and tearfulness of its members, its lack of cohesion and the express complaints of overwork ahead of and at the meeting, in my judgment, amounted to warning indicators that the team, and MFD in particular, were displaying symptoms of harmful levels of stress associated with pressures of work.

Marketing Event 29 September 2021

145. On 28 September 2021 the Defendant held an All Colleague Away Day at Cheltenham. IR requested that MFD lead on preparing the entertainment for this event and manage the hosting logistics. On the day itself he stayed up until 4 am to arrange taxis for staff who had failed to take the pre-arranged coaches to the hotel. The next day, there was an internal marketing event at which the Marketing Leadership Team were to share the wider strategy that they had worked on together at a workshop on 8 September.
146. MFD's evidence was that he told OG that it was excessive for him to prepare Blenheim Palace Horse Trials (which took place from 17-19 September), be responsible for the All Colleague Away Day on 28 September and also have the responsibility for hosting the internal marketing event on 29 September.
147. MFD's evidence is that he was so exhausted on 29 September that as he prepared to give his presentation, in front of MA, OG and AB, he became overwhelmed and tearful and was unable to proceed: *"I became upset, and I had to leave the room in order to compose myself. I had broken down as I didn't understand why I was being asked to do all these events in such quick succession and I did not have the bandwidth to cope anymore"*.
148. OG's evidence was that MFD did not at any stage raise overwork, that he had agreed the date of the internal marketing event and volunteered to organise it, which in OG's view he did very well. With regard to the meeting on the 29 September, the reason MFD left the room, according to OG, was because he was in a "massive huff" as he had a last-minute objection to the content and the format of the presentation to which he had contributed. After a chat with OG, he gave the presentation very well and then went on to brilliantly host the evening events he had organised for the team.
149. MA's evidence was that she followed MFD out of the room and asked what she could do. He made no specific suggestion, there was *"just a general sense of complete overwhelm and hopelessness"*.
150. MFD's draft email to OG of 5 November 2021 is consistent with his account:

"Ahead of the marketing meeting away day on 29th September I was unable to continue the pre-meeting due to being visibly upset and yet again said to you that the structure was not working, I felt that your main objective was to get the meeting away with little regard for my welfare"
151. MFD's account is corroborated by MA's evidence. It is also supported by the pattern of events, in particular, his excessive workload from March 2021 onwards leading to peaks of work in September 2021, during which time he took no or no significant leave, his late night the previous night and his repeated complaints of overwork. It is consistent with the deterioration in MFD's demeanour and tearful behaviours as noticed by other colleagues. OG's account of a baseless huff by MFD with material MFD had prepared himself is difficult to reconcile with OG's evidence that he made

no adverse comment nor was there any repercussion for what he depicted as MFD's arbitrary behaviour.

152. I find it proved, on the balance of probabilities, that on 29 September 2021 MFD lost his composure and became tearful in front of colleagues, so that he had to leave the room. I find that he did so for the reasons he gave in evidence, namely that he was exhausted and overwhelmed by the successive demands that were made of him. I find he was displaying behavioural symptoms of harmful levels of stress. Bearing in mind the wider the facts and factors found above, which OG knew or ought to have known, this was an indicator of potential harm to his health.

Outburst of 27 October 2021

153. MFD lost his temper with a colleague ("MX") and shouted at her in the course of a telephone call on 27 October. He apologised, and according to IR, MFD was in tears after the accident as he knew he had behaved inappropriately.
154. The Claimant's case is that this incident was out of character and reveals the pressure which was affecting him. In MFD's witness statement he says: *"I lost my temper and shouted down the phone at her. I deeply regret this incident, and I still believe my behaviour was not acceptable but it was obvious to all around me that I was struggling with my mental health"*.
155. The Defendant's case is that this incident was not out of keeping with MFD's behaviour, and that there were long-standing issues relating to his short temper and his inability to get on with colleagues.
156. It was common ground that MFD was passionately invested in his work, and was generally a genial colleague, but that he had had to learn some lessons on handling colleagues better at the outset of his time with the Defendant.
157. MA's evidence was that MFD cared for and looked after his team, and his communication style was direct and positive. She had never experienced him shouting or being inappropriately aggressive. Simon Claisse and Rebecca Elvin, both of whom engaged regularly with MFD from the beginning to the end of his time at the Jockey Club and were accepted by the Defendant to be reliable witnesses, indicated that they had never seen him shout or behave aggressively.
158. IR's evidence was that though MFD had learned lessons with respect to handling colleagues at the outset of his time with the Defendant, his issues in this respect were not altogether cured and that MFD had a track record of aggressive behaviour towards people. When asked about what he understood by this track record, IR referred to three past incidents of short-tempered behaviour, none of which gave rise to any disciplinary action.
159. With respect to the first incident, which occurred several years previous, it was acknowledged that the fault did not entirely lie with MFD. The second incident amounted to a general and vague assertion that the Claimant and a past colleague could not be in a room with each other. The third incident occurred in 2016-17, some five years previous.

160. Considering all the evidence, I do not find an established pattern of short-tempered or inappropriately forceful behaviour towards colleagues. I find that MFD's angry outburst to MX was an unusual event, for which MFD was genuinely contrite and that he immediately recognised he was in the wrong and apologised by calling MX back straight after the call. MFD's uncharacteristic outburst, and his tears thereafter, were symptoms of stress having a negative impact on his behaviours.

Meeting of 3 November 2021

161. MFD and OG met on 3 November at a service station near Newbury to discuss MFD's angry outburst with MX. The Claimant's case is that MFD informed OG that the excessive stress and lack of support had affected his well-being, and this was the reason why he had shouted at MX on 27 October 2021. He explained that OG had failed to consider the root cause of the Claimant's short-tempered behaviour and told him that: *"It is only a matter of time before I fall out with everyone"*. In the circumstances, this was a clear indicator that MFD was no longer coping with the pressures of work.
162. The Defendant's case is that MFD did not state that he was under excessive stress or pressure at the meeting of 3 November 2021.
163. MFD's evidence is that he was upset throughout the meeting. He says: *"I told him that the pressure I was under due to the unendurable stress and mental ill health I was experiencing and the lack of support I was receiving had affected my behaviour, and this was the reason why I had shouted at [MX]...I informed Olaf that it was only a matter of time before I fall out with someone else or had a breakdown."*
164. OG's written evidence was that the meeting of 3 November was fixed to discuss Matthew's relationship with MX, as word had reached him that MFD was bullying MX.
165. However, HS, the Defendant's Chief People Officer, made clear at the hearing that there had been no talk of MFD bullying MX at that time. The formal email which OG sent to MFD summarising their discussion at Newbury refers only to the 27 October incident. IR clarified on cross-examination that he was only aware of one incident between MFD and MX, namely the incident of 27 October 2021. I find on the balance of probabilities that there was no issue of MFD bullying MX.
166. OG categorically denied that MFD raised stress or overwork as being a factor leading to his behaviour. Although OG recalled that they discussed MFD's statement that *"it is only a matter of time before I have fallen out with everyone"* – to which OG refers in his email summary of the meeting - in OG's view this statement reflected MFD's unwillingness to compromise and his combative approach to relationship management. OG was not sure when exactly the statement had been made, it may have been said at an earlier time, but it was discussed on 3 November.
167. Two days later, on 5 November, OG wrote to MFD summarising the meeting as follows:

"Dear Matthew,

Thank you very much for your time on Wednesday and making your way to Newbury to talk about the current situation following the incident between you and a fellow team member. I would like to summarise the three key points that we discussed:

1. Structure & role

The business and I made a decision to move to a matrix organisation. While we are still finding our way with some details (e.g. central social and content team) the overall direction is clear and it is incumbent upon us as the senior team to ensure the structure we are operating in is successful. You (both personally, and as the Head of Marketing for the West) play a significant part in this matrix – owning the marketing plan for the West region as the biggest contributor and operator of our two biggest festivals. It is an important job and Ian and I need you to be fully on board with delivering within this structure, supporting it and living it actively as well as work closely with your peers and the wider marketing team.

2. Values and the shadow you cast

[...] It is enormously important that you behave at all times in ways that are in line with our values (e.g. one team) as well as the principles that we agreed as MLT (e.g. Show you care). Your recent behaviour with [MX] was the opposite of those and I want to make absolutely clear that this is not acceptable (as explained in person on Thursday 28th). Whilst I am not considering disciplinary action in relation to this incident, I would have no option but to investigate any further breach of our behavioural standards under the disciplinary policy.

3. Reposition you as a cooperative leader

We talked about your statement that “it is just a question of time until I will fall out with everyone”. This is not an appropriate way to manage your relationships across the organisation we are reliant on healthy, cooperative working relationships to deliver for our own objectives, but also for the good of the Group. We talked about how we need to reposition that - both for your personal sake as well as to create a more healthy atmosphere within the marketing team.

I am keen to support you in any way and always I can resolve the situation....”

168. The same day, MFD set out his proposed response to this message, in a draft email to OG dated 5 November (“the Draft Response”), which he shared with MA:

“Olaf

Thank you for your e-mail and for laying it out.

I totally agree with point two and I have since unreservedly apologised to [MX] which was accepted, [MX] and I once again discussed the impacts of structure and your failure to manage or address the issues that caused the actions.

I have also categorically stated to Ian that this will not happen again, however I yet again raised concerns regarding structure that causes welfare issues and behavioural challenges.

I do not agree with your point three which is totally taken out of context as would not result in poor behaviour.

Which then bring me to your point 1.

I'm astounded that you have not recognised the impacts and situations that lead to challenging behaviours and repeated discussions that raised the impact of the structural reform and its detrimental effect on well-being and mental health.

You have been repeatedly made aware of the structure challenges and the impact it is having on well-fare.

In the summer you dealt with Michelle Anderson, who raised serious concerns

I have forwarded you emails from [AX] that raise similar concerns - attached.

In addition, [AB] and I raised serious concerns regarding your desire to have team meeting to discuss challenges on 9th September, both [AB] and I advised you that the issues were structure led, not personal, yet you proceeded -the resulting meeting upset [MX] so much that she left the room, and I was visibly upset also.

Ahead of the ,marketing meeting away day on 29th September, I was unable to continue the pre-meeting due to being visibly upset and I yet again said to the to you that the structure was not working, I felt that your main objective was to get the meeting away with little regard for my welfare.

Around 4 weeks ago I broke down in front of Ian citing structure and working challenges,

Last week I discussed the issues regarding content and social with [AB], despite the structure being suggested by him, he considered that it was not working.

During our meeting in Newbury, I have continually maintained that the structure you advocate and advocated at our meeting was not working and was having serious impact on health.

I also suggested that the structure did not require my role if you felt it was the correct structure, whilst you disagreed I take your e-mail to be working to manage me out and the fact that you maintain the shadow you cast language yet to do recognise the impact you have nor the role you have to play in welfare concerns me greatly.

*My behaviour towards [MX] was unacceptable and I'm pleased you have stated that you do not feel it warrants disciplinary action. **However, it must also be noted that during the subsequent meeting with both you and [MX], [MX] agreed with my statement that you had asked too much of her and yet you failed to recognise the impact that has on both her wellbeing and mine. [...]***

I have today advised Ian Renton again that the structure does not work and that I no longer believe the structure under your leadership to be requiring my involvement, I

also believe that your lack of care and awareness of well-being to be dangerous”.
[emphasis added]

169. The spontaneous and comprehensive nature of the Draft Response makes clear that MFD instantly and immediately rejected OG’s summary of the meeting. In the Draft Response, he categorically re-asserts that he raised negative impact of the restructure on mental health at the meeting, and reveals that his concern was acute enough for him to put his job on the line if no change was made:

“[...] I’m astounded that you have not recognised the impacts and situations that lead to challenging behaviours and repeated discussions that raised the impact of the structural reform and its detrimental effect on well-being and metal health.

I also suggested that the structure did not require my role if you felt it was the correct structure [...]

During our meeting in Newbury, I have continually maintained that the structure you advocate and advocated at our meeting was not working and was having serious impact on health.[...]”

170. OG’s email summary of the meeting contains a reference to their discussion which is more consistent with MFD’s account of the meeting, than it is with OG’s own account. He says: *“We talked about your statement that “it is just a question of time until I will fall out with everyone”. This is not an appropriate way to manage your relationships across the organisation”.*
171. The sentence that *“it is only a matter of time before I fall out with everyone”* was not, and could not be, as OG contended in his summary, MFD’s own description of his approach to relationship management. To read this as such attributes MFD with an intent to fall out with others. This is not supported by the evidence - even at its highest, the Defendant’s case regarding MFD’s behaviours was that he was generally a helpful colleague. Further, it is inconsistent with the context, and in particular with MFD’s remorse, which several witnesses confirm.
172. Against the context which OG knew or ought to have known – the excessive and unreasonable volume of MFD’s work; the fact that he had taken little or no leave; the risk of injury through stress that had been raised for the team; MFD and MA’s repeated complaints of overwork; MA’s reported harmful effects of stress, MFD’s noticeably changed demeanour over the summer months; his tearful complaints to Amy Starkey; his public tearfulness and loss of composure on 9 and again on 29 September; MFD’s outburst at MX (and his tears thereafter) - I find that MFD’s statement in that meeting that *“it is just a question of time until I will fall out with everyone”* was a clear admission that he was not coping and that he feared it would get worse.
173. MFD, following IR’s advice, did not send the Draft Response to OG. His shorter response to OG’s email, as sent on 8 November, stated the following (emphasis added):

“Olaf,

Thank you for your e-mail and for detailing our meeting

Regarding one, I understand there was a meeting last Friday that concerns structure and I look forward to the future.

*I totally agree with two and I have since unreservedly apologised to [MX] which was accepted, I have also stated to Ian that this will not happen again, however, **I yet again raised concerns regarding structure that causes welfare issues and behavioural challenges***

***I do not agree with your point 3 which is totally taken out of context** as would not result in poor behaviour. I am keen to resolve issues and look forward to doing so best wishes*

Matthew”

174. MFD’s actual response rejects OG’s characterisation of his “falling out with everyone” statement as “totally out of context”. Though he mentions “yet again” raising concerns regarding structure causing welfare issues and behavioural challenges, there was no pickup or response from OG.
175. When OG was asked, at the hearing, what he took from MFD’s email to him of 8 November describing their conversation of 3 November as “*I yet again raised concerns regarding structure that causes welfare issues and behavioural challenges*”, OG indicated that in his view this was MFD criticising the structure and that it raised double the work for MFD because of MFD’s inability to work with the new structure.
176. This reply illustrates that, from OG’s perspective, all MFD’s concerns relating to the restructure, even when expressly badged as “welfare” concerns, were viewed as unfounded attacks on the restructure. It also reflects that OG dismissed any concerns of excessive work associated with the restructure as because he considered (contrary to the findings above) that MFD himself was responsible for generating the additional work arising from the restructure.
177. OG cast doubt on whether MFD might have made the “falling out with everyone statement” at an earlier (unspecified) time, and that it was subsequently discussed on 3 November 2021. I do not accept this evidence. The meeting was about MFD falling out with a colleague. MFD’s evidence is that he said this at the meeting, when explaining the negative impact of the restructure on his behaviours. The statement was referred to in OG’s own summary of the meeting. I find on the balance of probabilities that MFD made this statement at this meeting, and not at an earlier occasion.
178. I find that when MFD met with OG to discuss the MX incident, MFD explained that the pressures of work associated with the restructure and the welfare issues to which it gave rise for him were the reason for his inappropriate shouting at MX. Although I am not satisfied that MFD expressly used the words “*or have a breakdown*” in the meeting, I find that in the context of MFD’s behaviours leading up to and at that meeting, together with what MFD said, and how he behaved at the meeting itself (during which he was upset throughout), MFD made clear that the pressures of work associated with the restructure were having a damaging impact on his mental health,

such that he could no longer sustain normal working relationships. As his Draft Response records, he questioned whether he could continue in his role if no changes were made.

179. I find that OG's email summary of the meeting reflects a determined unwillingness to listen to or acknowledge the concerns that MFD raised. Even if, in OG's view, MFD's approach to the restructure contributed to the volume of the work, MFD had made it obvious that the pressures of his work were having a damaging impact on him and that he feared he could not sustain normal working relationships.
180. Far from acknowledging these concerns, OG's own summary of the meeting made it clear to MFD that he had little or no hope of his concerns being recognised. It contained a veiled threat that he needed to "*get on board*" with the restructure. It distorted MFD's admission that the pressure was such that he would not be able to cope into a potential problem with performance: "*We talked about your statement that 'it is just a question of time until I will fall out with everyone'. This is not an appropriate way to manage your relationships across the organisation*".
181. On the basis of the witness and documentary evidence, I find it proved that at the meeting of 3 November, given what the OG knew or ought to have known, MFD made it clear, by his words and by his behaviours, that the pressures of the work associated with the restructure were having a harmful impact on his mental health and that he feared that he could no longer sustain normal working relationships.

Meeting of 8 November 2021

182. The Claimant's case is that on 8 November he met with IR and told IR that he was not coping with the pressure. He explained to IR that OG was not having regard to the root cause of his behaviours, which was the workload and pressures of the restructure, broke down into tears and showed him the Draft Response. His case is that he had, on occasions too numerous to particularise, complained about the pressures of his workload to IR, when he was sometimes in tears and visibly upset.
183. The Defendant admits that MFD became upset at a meeting with IR on 8 November. However, it contends that it was obvious to both by that point that MFD's relationship with OG was completely fractured. MFD wanted IR's advice as to whether he should send OG a critical letter, which he advised against. The Claimant did not tell IR that he was stressed or that he felt upset because he was overworked, and he had not complained of his workload to IR more generally.
184. In his statement MFD says: "*I broke down and became extremely upset and explained to him that I was not coping with my workload, and I was exceptionally stressed. I told him that he and Olaf were not dealing with the cause of my behaviour which was my workload. [...] I also showed Ian the draft email that I had drafted to Olaf, where I had outlined again the stress I was under and how it was affecting me at work. While he was reading my email. I became terribly upset, which would have been obvious to him. Ian then told me not to send the email and that he would help to sort it out, so I did not.*"

185. IR describes their meeting of 8 November as follows: *“I would estimate that I have seen Matthew break down in tears about 4 times over the years that I have known him. However, he did not say that the cause of his upset was due to being overworked. By this time his relationship with Olaf was fractured. This was the reason for his upset. He showed me a draft letter that he proposed to send to Olaf. I cannot recall the exact terms of the letter but I do remember that in the letter he was critical of Olaf. I advised Matthew not to send the letter because I didn’t think it would be a sensible career move.”*
186. I believe IR’s predominant memory of the meeting of 8 November 2021 was that MFD’s relationship with Olaf was fractured. However, his evidence that the discussion and MFD’s distress solely turned on MFD’s fractured relationship with OG, but that MFD did not raise that he was stressed or complain of overwork is not supported by the documentary evidence. This evidence establishes that overwork and the negative impacts of the restructure on MFD’s and his team’s health and wellbeing were at the heart of MFD’s conflict with OG.
187. In his statement IR accepted that MFD showed him a longer draft email response to OG that was critical of OG. He did not remember the exact terms but did not contest that the Draft Response appended by MFD to his statement was the relevant draft. In evidence, when IR was taken to the Draft Response appended to MFD’s witness statement, and his attention was drawn to the language referring to the negative impacts of the restructure on mental health and the welfare challenges to which it gave rise, IR for the first time denied that the draft email appended to MFD’s witness statement was the draft MFD had shown him.
188. Even the paired down, far shorter email that MFD sent to OG after speaking to IR, contained wording retained from the longer draft, which raised negative welfare and behavioural issues associated with the restructure: ***“I yet again raised concerns regarding structure that causes welfare issues and behavioural challenges”***.
189. The Draft Response corroborates MFD’s evidence as to what was on his mind at this point. He expressly refers to the AX email raising excessive workloads. He cites the concerns MA raised in this respect. He goes on to provide several examples of times when he has broken down at work as examples of his own harmful levels of stress. His criticisms of OG exclusively relate to OG’s failure to heed the earlier warnings that had been made with respect to the overwork and the negative impact of the restructure on his and his team members’ health and wellbeing:

*“I’m astounded that you have not recognised the impacts and situations that lead to challenging behaviours and **repeated discussions that raised the impact of the structural reform and its detrimental effect on well-being and mental health.[...] You have been repeatedly made aware of the structure challenges and the impact it is having on well-fare. [...] I also believe that your lack of care and awareness of well-being to be dangerous [...].” [emphasis added]***
190. The Draft Response is exclusively dedicated to one topic: MFD’s personal examples of harmful levels of stress, the negative impact of the restructure on health and welfare of the team, and OG’s failure to acknowledge any of these. This was at the

core of the relationship fracture from MFD's perspective. Any discussion of the relationship fracture with IR could not but include this central issue of conflict.

191. The Draft Response makes express reference to an earlier incident in which MFD became distressed raising work pressures with IR: "*Around 4 weeks ago I broke down in front of Ian citing structure and working challenges [...]*". MFD was sufficiently confident of this fact to make express reference to it in his Draft Response which was destined for OG.
192. Given the above near-contemporaneous record of MFD breaking down in front of IR citing structure and working challenges, which corroborates MFD's evidence on this point; the acknowledged closeness of their working relationship; MFD's express complaints of overwork on 12 August and 9 September 2021 and Simon Claisse's evidence to the effect that MFD had expressly confirmed to him that he was discussing his difficulties with workload with IR, I find, on the balance of probabilities, that the meeting of 8 November was not the first occasion on which MFD had raised with IR that he was struggling to cope with the pressures of his work.
193. I find, contrary to IR's more recent recollection, that MFD showed IR (and IR read) his Draft Response to OG, in the form appended to MFD's witness statement. This referenced earlier complaints of overwork, raised the negative impact the restructure was having on the welfare and mental health generally, and provided several examples of MFD's own recent harmful levels of stress. In the Draft Response, MFD offered to resign and qualified OG's lack of awareness and care for welfare to be "dangerous".
194. I find that at the meeting with IR, MFD raised the harmful stress that he was experiencing, and made it clear to IR that the pressure to which he was subject and its negative impact on him were the cause for his behaviours, reflecting the concerns he expressed in writing at the time. As he did so he broke down into tears, manifesting the extent of his anxiety. On IR's evidence, this was the second episode of MFD's tears which IR witnessed in a short time (the first being after the incident with MX).
195. Given what IR knew or ought to have known, on 8 November 2021 MFD made it clear, by sharing his Draft Response, by what he said and by his behaviours at the meeting, that the pressures of work associated with the restructure were having a harmful impact on his mental health and that he was no longer able to continue.

Particularised signs of harm after November 8

196. The Claimant's evidence is that in a phone call of 10 November 2021, he confided in Dickon White (Regional Director North West), becoming upset and citing his deteriorating mental health. Dickon White's clear and compelling evidence was that although Dickon White and MFD had may have had conversations, his diary commitments that day meant that he was not likely to have spoken with MFD on 10 November. Further he was very clear that though they spoke, MFD never raised his deteriorating mental health with him, and that had he done so, he would have taken action, given that personal experience had made him sensitive to mental health issues. I accept Dickon White's evidence on this point. I find that, contrary to the Claimant's

recollection, he did not share his concerns with respect to his mental health with Dickon White.

197. Similarly, on hearing evidence from Portia McKeown (People & Culture Business Partner), although MFD's evidence was that he raised issues concerning the restructure with her, I do not find, on the balance of probabilities, that MFD expressly indicated that he was unwell or suffering from stress.
198. Last, the Claimant did not at the hearing rely on the particularised meeting with Olaf Gueldner on 2 December 2021, and on the evidence available to me I cannot be satisfied that it happened.

Was the risk of psychiatric harm to MFD reasonably foreseeable in April 2021?

199. The Claimant's case is that the meeting of 29 April and follow up calls placed the Defendant on notice of a risk of injury to MFD's mental health through excess work.
200. The Defendant's case is that the email from AX, and the meeting thereafter, were not sufficiently specific to put the Defendant on notice of a risk of impending ill-health due to work-related stress with respect to MFD. Further, it was suggested in cross-examination and in closing that MA, in using the language of foreseeable risk of harm to health was seeking to use legal language to put the Defendant on notice in a manner that was premature, as none of the team members were at that point ill.
201. In considering this issue, I bear in mind the guidance in *Hatton* that: "*It is important to distinguish between sign of stress and signs of impending harm to health. Stress is merely the mechanism which may but usually does not lead to damage to health.... in view of the many difficulties of knowing when and why a particular person will go over the edge from pressure to stress and from stress to injury to health, the indications must be plain enough for any reasonable employer to realise that he should do something about it.*"[27]
202. I find that the AX email, together with the meeting of 29 April between MA, OG and MFD, and the follow up conversation between MA and OG clearly placed OG, and through him the Defendant, on notice that AX, and the team as a whole was overworked, and feeling stress (though not ill-health at this point) in relation to overwork. Further, it was the specific intent of MA to raise a potential risk of ill health for the whole team, and she did so; she also indicated in a follow up conversation that she was worried about MFD.
203. MFD had not manifested any signs of impending harm to his health prior to the conversation and was performing well. The sole indication that MFD specifically might be at risk came from MA's call with OG. In the absence of any other specific indicators relating to MFD, I do not consider that a single warning from a colleague in these general terms makes the risk of potential harm to MFD's health plain enough for a reasonable employer to realise he should take steps to avert the risk.
204. The most tangible indication of potential harm to anybody's health related to AX, who in her email made reference to breaking and losing her sanity. MFD was taking steps to address this by undertaking a risk assessment with AX.

205. Against this factual context, I find that OG's conversations with MFD and MA at the end of April 2021, including the follow-up call, do not in themselves amount to a sufficiently specific or obvious sign of MFD in particular being at risk of an injury of this nature, such as to give rise to an obligation on the Defendant to take steps to avert possible injury to MFD.
206. The conversation and warning on 29 April do however mean that the Defendant was aware that the workload for the team was higher than the team and its leaders were comfortable with, and that the team's leaders feared that a member of the team may become injured as a result of stress at work.

Was the risk of such an injury reasonably foreseeable at some later stage?

207. On the consideration of evidence and the findings of fact made above, I find that the risk of harm to MFD's mental health through overwork became sufficiently obvious for a reasonable employer to realise that he needed to take steps to avert the risk upon MFD's meeting with OG on 3 November 2021.
208. It is clear from *Hatton* that foreseeability turns on the individual circumstances of each case. In examining the circumstances of this case, I have had regard to the fact, as *Hatton* highlights, that employers should be more alert to picking up signs from an employee, such as MFD, who is being over-worked in an intellectually or emotionally demanding job, and from whom unreasonable demands are being made.
209. Further, in terms of vulnerabilities known to the employer, which *Hatton* also indicates are relevant, MFD was known to be hard-working and to have a tendency not to take annual leave. The Defendant knew, or ought to have known, that in the year leading up to his injury, MFD had worked near-continuously, taking up a fraction of his annual leave entitlement. As recognised by the Defendant's medical expert, working without respite in this manner gives rise to a risk of psychiatric injury.
210. I have also had regard to the cumulative effect of occasions on which the Defendant was warned that the marketing team's workload was such as to give rise to a risk of injury to team members, starting with the 29 April meeting. Though this meeting was not sufficient, of itself, to make an injury to MFD foreseeable, the fact remains that the risk of injury due to overwork for the whole team was raised with the Defendant in April with a junior member flagging that the pressure was such that "we will all break", and MFD and MA both endorsed this risk. As a follow up to this conversation, MA flagged her concern with respect to MFD's wellbeing.
211. The risk of damage to health due to "*unhealthy levels of risk in the marketing department*" was formally raised with Defendant for a second time in June, when MFD's counterpart also informed the Defendant of her own physical and behavioural symptoms of harmful levels of stress. The fact that colleagues in the same position are suffering from harm related to stress is relevant, and particularly so in this context, where the Defendant was aware that MFD's role considerably more taxing than MA's.

212. Against this context, when MA had already reported physically harmful symptoms of stress, MA's conversation with Amy Starkey on July 7 with respect to "*handing the baton over to the West*" put the Defendant on notice that MFD in particular was facing into a period of very significant pressure the end of August onwards. MA flagged risk to MFD by asking Amy Starkey whether taking this approach would be at the cost of giving MFD a breakdown. This conversation, together with the tearful calls MFD had with Amy Starkey over the summer months, during which he shared with her the difficulties he was experiencing with the pressures of work, in my view amounted to another relevant warning sign of potential harm to MFD, of which the Defendant became aware in July and August 2021.
213. In addition to specific warnings with respect to the risk of injury due to stress, the Defendant had been made aware on numerous occasions (29 April, 17 June, 7 July, 12 August, 9 September) that the team was subject to huge pressures with workloads. MA and MFD specifically indicated that they felt overworked in autumn 2021. This is relevant to the Defendant's understanding of the cause MFD's symptoms.
214. The disarray, tearfulness and lack of cohesion of the team at the meeting of 9 September, together with the express complaints of overwork by MA and MFD, should have indicated to the Defendant that there were potential issues with respect to harmful levels of stress for MFD and the entire team. *Hatton* highlights that where there are others showing signs of harmful stress, this is relevant.
215. There were also increasingly significant signs of harmful levels of stress from MFD himself. In addition to tearful calls in which he raised the pressures of work with Amy Starkey, he had a number of conversations with Ian Renton in which he shared his difficulties in coping with the pressures of work. By the end of the summer, MFD was frequently crying at work, on a one-to-one basis with selected colleagues. As the walls were made of glass, there was not much privacy.
216. Further, several colleagues testified that, as the volume and nature of his work surged, from June 2021 onwards MFD's behaviour and demeanour markedly changed, so that colleagues outside of the marketing team directly attributed the change to a deterioration in his mental health associated with work. Their evidence, which I accept, was that the symptoms of stress and associated deterioration in MFD's mental health were visible and noticed more widely within the organisation.
217. By the autumn, MFD's mental health had deteriorated so much that he was unable to hide his difficulties. On several occasions, he lost his composure in public. He was tearful at the team meeting of 9 September. He was unable to give his presentation and tearful at the pre-marketing meeting on 29 September. On 27 October he shouted at MX and was in tears thereafter. Though his performance did not drop in terms of output, the quality of his performance had clearly dropped. He was visibly displaying behavioural symptoms of harmful levels of stress.
218. Given all these factors, and the clear signs of impending harm to MFD's health, which OG knew or ought to have known, when, on 3 November 2021, MFD told OG of the negative impact the pressure of work and the restructure were having on his mental health and explained that inability to cope was the cause for his unacceptable outburst towards MX, sharing his fear that "*it was just a matter of time until I fall out with*

everyone”, I find that MFD made it clear to OG that he had reached a point at which he could no longer function normally. The risk of an injury was obvious, such that OG needed to take positive steps to avert that risk.

219. OG’s response to this conversation, in an email which requested that MFD “get on board” with the restructure, transformed MFD’s fears with respect to his inability to sustain working relationships into a performance-related failure in relationship management. As is made clear from paragraph 206 of *Hatton*, placing unreasonable demands upon an employee and then responding in an unreasonable way to the employee’s complaints about these demands are among the factors to be taken into account in deciding whether the employer knew or ought to have known that the pressures of the job were causing occupational stress.
220. On 8 November MFD met with IR to share the same concerns. He made it clear to IR that the pressure to which he was subject and its negative impact on his mental health were the cause for his behaviours. He shared his Draft Response with IR, which IR read. This document set out several personal examples of the harmful impacts that work-related stress had had on him, emphasised the negative effect of the restructure on mental health, proposed his resignation, and described OG’s lack of awareness and care for staff welfare as “dangerous.” As he raised his concerns with IR, MFD broke down into tears, on his own account, the second time IR had witnessed tears from MFD in ten days.
221. Given all the above factors and signs of impending harm to MFD’s health, which IR knew or ought to have known, I find that, by the information MFD conveyed and by his behaviours at the meeting, it was obvious to IR that there was a risk of injury to MFD’s health as a result of stress, such as to give rise to a duty on IR to take steps to avert that risk.
222. This is not a soldiering on case: in addition to the broader relevant factors such as the unreasonable level of work, that another in MFD’s position had suffered harm from stress, that the Defendant had allowed MFD to work continuously without taking the annual leave to which he was entitled, that MA had flagged that he was entering into a period of “unbearable stress” with Amy Starkey, there were clear signs from MFD himself which meant that the Defendant knew or ought to have known that MFD had been unsuccessfully struggling with harmful effects of stress for some time.
223. In addition to MFD’s own markedly changed demeanour and behaviour over the summer months, his (sometimes tearful) conversations complaining about the pressures of work with Amy Starkey and Ian Renton, in September and October 2021 there was a visible drop in the quality of his performance associated with his irritability, loss of composure, loss of temper, and in particular his repeated public tearfulness. He was visibly no longer coping. On 3 November and again on 8 November, MFD made it clear and obvious to management, both in his words and by his tearful behaviour, that the negative impact on his mental health was such that he had reached a point at which he was no longer able to cope with the pressures of work and sustain normal working relationships.
224. Bearing in mind what his employer knew ought or to have known, from 3 November onwards it was obvious to the Defendant that MFD was at risk of a psychiatric injury

due to the pressures of work, such that a reasonable employer would have known that it needed to take steps to avert the risk. The meeting of 8 November further ought to have made it doubly clear to the Defendant that the pressures of work were such that immediate steps needed to be taken to avert the risk of psychiatric injury to MFD.

Breach of duty: did the Defendant fail to take one or more of the steps that a reasonable employer could be expected to take in the circumstances?

225. Assuming that the risk of harm to health as a result of overwork is sufficiently clear to be reasonably foreseeable, *Hatton* establishes that a breach of the employer's duty of care only arises where the employer has failed to take steps which are reasonable in the circumstances, bearing in mind the magnitude of the risk of harm occurring, and the costs and practicability of preventing the harm.
226. In particular, it is necessary to identify the steps which the employer both could and should have taken in considering whether there is a breach of his duty.
227. The Claimant's pleaded case particularises more than twenty steps that the Defendant could and should have taken to discharge its duty of care towards the MFD. The essential breaches that were developed at trial and put to the Defendant were that the Defendant failed:
 - a) to carry out a suitable risk assessment;
 - b) to undertake a capacity review;
 - c) to refer the Claimant to occupational health; and
 - d) to take preventative and protective measures such as reducing MFD's workload, or ensuring that he was able to and did in fact take annual leave.

Confidential advice services

228. The Defendant points out that it provided a variety of confidential occupational and mindfulness services to its employees, including a confidential counselling service provided by Racing Welfare. The Claimant also had access to Maitland Medical Services and Bupa Healthcare as part of his remuneration.
229. *Hatton* establishes that an offer of a confidential advice services by the employer can provide evidence of the employer taking steps to prevent such harm occurring, though Counsel for the Defendant acknowledges the subsequent caselaw which recognises that such an offer is not a panacea (*Daw v Intel Corporation* [2007] ICR 1318 ("Intel")).
230. The evidence as to how widely the Defendant's employees appreciated that such a confidential advice line was in place was mixed. Certain employees testified that they thought it was for racing staff only, others did not have full confidence in the confidentiality of the service. Yet others point to the fact that after the pandemic efforts were made to promote the availability of the service. Overall, I am satisfied

that the Defendant made a respected counselling service and private healthcare available to MFD.

231. However, given the nature of the risk to MFD's health, I do not consider the general availability of confidential counselling service or private healthcare sufficient to discharge the employer's duty of care to MFD in the circumstances of this case. On 3 November, and on 8 November, it was made obvious to the Defendant that MFD was at risk of psychiatric injury related to overwork, such that his employer should have realised that positive steps were needed to avert this risk. MFD's problems were substantial and could only be dealt with by more definitive management intervention. The general availability of a counselling service or private healthcare is not in these circumstances sufficient to meet the Defendant's duty of care with respect to MFD.

What steps could and should have been taken to discharge the employer's duty of care?

232. MFD had lost his composure and been tearful in front of colleagues on 9 and 29 September. On 27 October he shouted at a colleague. On 3 November he explained that the restructure was affecting his wellbeing and his behaviours, and indicated to OG that "*it was just a matter of time until he fell out with everyone*". His concerns were so acute he mentioned resignation. On 8 November, again MFD raised resignation, and on IR's own recollection, IR had seen him cry twice in the preceding ten days. The risk to his mental health was immediate.
233. The most immediate and obvious step suggested by the Claimant was to refer MFD to Occupational Health to obtain professional advice on the risk of injury and how to avert the risk of injury. The Claimant also submitted that the Defendant could and should have undertaken a risk assessment, such as the one MFD undertook for AX when she had flagged stress, following which they had agreed measures to manage AX's stress levels and avert an injury to AX.
234. The Defendant gave evidence that it undertook a risk assessment for a colleague of MFD's who manifested symptoms of stress and potential ill-health after his departure, with success. This measure was clearly within its capacity, and one which the Defendant's own practice and processes recognised as appropriate for employees in this position. The Defendant's HR team indicated that this was the appropriate step when AX raised her concerns in April 2021, when she had demonstrated far less significant signs of potential harm to health than those demonstrated by MFD.
235. A risk assessment and an occupational health referral have in common that the employer recognises the risk with respect to the pressures of work and takes steps to better gauge the employee's personal risk. This then leads to the identification of appropriate, personalised measures to avert the risk that has been assessed for the individual.
236. Neither of these steps would have been unduly onerous or difficult for the Defendant, and both are within the Defendant's capabilities given the size and scale of its operations. MFD's evidence is that he could no longer see a way out. His evidence is that recognition of his difficulties by a sensible measure, including specifically a risk assessment or an occupational health referral, would have made a real difference.

237. Dr Turkington’s opinion, expressed in his Report dated 27 March 2023, is that “*the breach of duty of care which led to occupational stress and psychiatric injury includes failure to perform a stress risk assessment and thereafter to make reasonable adjustments such as reduction of workload*”.
238. I find that either a risk assessment and/or a referral to occupational health were reasonable, effective and proportionate measures by which the Defendant could, and should, have discharged its duty of care to avert the risk of injury to MFD.
239. OG’s response to the meeting on 3 November was his email of 5 November, emphasising MFD’s obligations “to get on board” the restructure. The formal tone of this email, and the implicit threat it carried with respect to his performance, far from taking positive steps to address the risk, effectively cut off any potential avenue for MFD to express further concerns about the impact the workload caused by the restructure was having on him.
240. IR’s response to MFD at the meeting of 8 November, was to advise him not to send the draft email response to OG because it was not a sensible career move. MFD describes what happened after his meeting with IR as: “*After this conversation, yet again nothing happened. I didn’t get any more resource, I didn’t get any jobs taken off me, I just had to carry on with what I was doing, as there was always another event coming up shortly. Additionally a stress risk assessment was not undertaken, and I was not referred to Occupational Health*”.
241. OG, HS and IR’s evidence confirms that the Defendant took no step to refer MFD to occupational health or undertake a risk assessment as they did not recognise the risk to MFD’s health. HS’s evidence was that though she had seen the questionnaires in which MFD and MA raised issues with overwork, she had not been made aware by OG of previous meetings in which MFD and MA raised the risk of injury to the team as a whole in April, nor of MA’s email on the subject appending her note of the discussion. IR’s evidence, similarly, was that he was not aware of these, nor was he aware of the conversations in which both MA and MFD had raised the pressures of work they were experiencing with Amy Starkey.
242. With respect to a capacity review, which is another step that the Claimant asserts should have been undertaken, OG, IR and HS confirmed that no steps were taken by the Defendant to undertake a formal capacity review or determine the amount of work MFD and his team were given despite the numerous complaints of excessive workloads associated with the restructure.
243. However, given the personal nature of the risk that had arisen to MFD’s health in early November 2021, I do not find that the failure to undertake a capacity review at this juncture amounts to a breach of duty, as it is unlikely to have been an effective measure to avert the risk posed to MFD’s health unless it was accompanied by a personalised risk assessment and/or an occupational health referral.
244. Nor do I find that ensuring that MFD take annual leave in November 2021 would have averted the risk of a breakdown: without measures by which the Defendant recognised and gauged the risk to which his working conditions gave rise, this may well have been taken by MFD as a further rejection of his concerns.

245. Accordingly, I find that from 3 November onwards, from which time onwards MFD's risk of injury due to stress would have been obvious to a reasonable employer, the Defendant breached of its duty of care towards MFD by failing to undertake a risk assessment, or an equivalent step, such as an occupational health referral, to recognise, gauge and avert the risk posed to MFD's health.

Causation

Immediate factual context: events from November to January 2022

246. MFD's evidence is that he started to cry on the journey to work *"as October and November came, I would cry more in the car as my situation felt more and more hopeless, I would be driving to work dreading the day, but trying to get over what happened the day before and start afresh. I began to count the trees on the side of the road, trying to decide which one would be the best one to crash into just to take the pain of work away."*
247. However, his impulse was to keep going as best he could. He avoided bringing his problems up at home as he did not want to burden his wife with these. At some undefined point in November, MFD recounts that he started to count the trees on his drive to work, and one morning on his way to work, he selected one tree towards which he accelerated with the intention of killing himself, only regaining control of the car at the last minute.
248. Although no specific date is given for this incident, the pattern of events is such that I find, on the balance of probabilities, that this event occurred towards the middle or end of November. The Defendant did not contend otherwise, recognising in closing that *"No date is given for the November incident, but it is easy to infer from what is known that he reacted badly to what took place at the start of November which clearly contained the possibility of his stopping work"*.
249. MFD's wife, Charlotte Loten, indicated that though she had clearly noticed worsening symptoms of stress in her husband for some time, he avoided speaking to her about his difficulties at work. However, at some point in late 2021, she noticed a marked change in him, his sleep noticeably deteriorated, and he began to talk and shout out during the night in the midst of troubled sleep.
250. On 11 January 2022, MFD was invited to a meeting which was expressed to be informal. The meeting was attended by OG, IR and Portia McKeown, and its purpose was to share with MFD plans of a further proposed restructure and obtain his feedback thereupon. The proposed restructure upon which feedback was sought potentially involved the removal of both MFD's and MA's positions in favour of creating a single National Marketing Director position, together with three additional roles, one of which was marketing manager for Cheltenham. Portia McKeown's evidence was that no fixed decisions had been made at that point, and the aim of the meeting was to involve MFD and get his feedback.
251. MFD proposed himself for the role of National Marketing Director. In the course of the conversation, it was made clear that MFD could not assume that he was the best

candidate for that role. IR's evidence is that from that point onwards MFD ceased to participate in the conversation, so that there was no wider discussion or further exploration of the options. In his view the Defendant would certainly have considered providing a role for MFD as marketing manager for Cheltenham. MFD's recollection is that he was not made aware that the Jockey Club wanted to keep him on in any role.

252. On 12 January 201, MFD made his first visit to the doctor with respect to mental health difficulties and was signed off sick. It is not disputed that after going off sick in January 2022, MFD's mental health deteriorated and he did not return to work for the Defendant. After leaving the Defendant's employment, MFD found work for a period of time as a part-time postman, but he was medically retired from this employment.

The Parties' cases on causation

253. The Claimant's case, as expressed in closing, was that the Defendant's breach of duty caused or materially contributed to MFD's Complex PTSD and Depressive Episode, both of which arose with MFD's suicide bid in and around November 2021, when on his drive to work he selected a tree and accelerated towards it with the intention of killing himself, only regaining control of the car at the last minute.
254. The Defendant's case, as expressed in closing, was that the Claimant developed complex PTSD as a child as a result of the physical, sexual and emotional abuse he was subjected to, and that this existing condition recurred either late in 2021 or 2022 in the face of failure and the prospect of failing work. Further, MFD's Depressive Episode occurred following the meeting of 11 January 2022, after the Claimant realised that his job was at risk.

Expert evidence

255. The Claimant relied on the expert evidence of Dr Douglas Turkington, the Defendant on that of Dr Jan Wise. Both experts have considerable experience of the treatment and diagnosis of mental illness as consultant psychiatrists, and both are approved under section 12 of the Mental Health Act 1983.
256. As is often the case, with additional access to medical records, the medical experts' understanding of the Claimant's condition has evolved, and each expert has produced several reports. Dr Turkington produced his first Report on 27 March 2023, followed by an Addendum Report on 12 November 2024, and another on 18 August 2025. Dr Wise produce his first Report on 4 March 2024, with Addendum Reports following on 1 November 2024, 18 March 2025 and 4 September 2025.
257. The experts have agreed two Joint Statements, the first dated 10 May 2025, and the second dated 26 September 2025.

Areas of agreement between the experts

258. *Nature of the injury:* at the hearing, it was common ground that the Claimant suffered from Complex PTSD and a Moderate Depressive Episode. In their second Joint

Statement the experts “*agree on the diagnoses of Complex PTSD (ICD-11 6B41) and that he describes a Moderate Depressive Episode (ICD 6A70.1)*” (emphasis added). Dr Wise in his oral evidence acknowledged that MFD displayed symptoms of a Moderate Depressive Episode.

259. *MFD’s vulnerability*: The experts agree in their second Joint Statement that in light of the multiple adverse childhood events which the Claimant had experienced, he was several times more likely to develop a mental disorder than individual who did not experience multiple adverse childhood events. They also agree that the majority of persons with such levels of vulnerability do not develop an adult mental disorder.
260. *Core belief*: Both experts agree, in their first Joint Statement, that the therapy records suggest that achieving success is a “core belief” about the Claimant’s personal efficacy and threats to that identity had the potential to lead to profound negative emotions.
261. *Prognosis*: The medical experts broadly agree on treatment and prognosis. Dr Turkington considers the risk of relapse lies between 20 and 40%, with Dr Wise expressing a reservation that the prognosis for complex PTSD is not as good.

Did the Claimant have pre-existing complex PTSD?

262. Dr Wise was of the opinion that and in light of MFD’s particular history of childhood abuse, and given the nature of MFD’s symptoms (which could not in his view be attributed to events at work or the incident in which MFD drove at tree), MFD had developed complex PTSD in childhood as a result of the multiple childhood adverse events to which he was subject, and this condition recurred in late 2021 or 2022 when faced with the prospect of failure at work.
263. Dr Turkington’s view was that MFD was highly vulnerable because of his history of extensive childhood abuse, but that complex PTSD was not present before these events. His opinion was that Complex PTSD could not develop and remain present and undetected over such an extended period as was contended by the Defendant, without manifesting itself. This was particularly the case as the abuse occurred more than 40 years ago, and MFD had already overcome difficult life events with no indication of this disorder being present. He opined that the trigger for MFD’s complex PTSD was, against a setting of increased stress, the perceived “abuse” in the workplace in the form of perceived breaches of duty relating to the excessive workload and failure to care for the Claimant’s wellbeing.
264. In terms of MFD’s wider medical history, the medical records disclosed by the Claimant did not reveal any recorded prior incidence of mental health disorders. He had taken remarkably few days off for reasons of illness. MFD’s professional track record was that of a high performing individual.
265. Other than MFD’s vulnerability related to adverse childhood experiences, there was nothing before the court to suggest that mental disorders had featured in his life beforehand. He had, on his account, successfully overcome negative and challenging life events such as a bankruptcy and a divorce without any adverse incidents and there was no evidence to suggest otherwise.

266. Professionally, he had undertaken high pressure and complex roles with success, as Simon Claisse testified, when describing MFD's performance in his role as Head of Marketing for the South West: *"So in terms of the scale of the job, it doesn't really get much more high pressured than that and clearly in my opinion the concentration of the effort needed to be at Cheltenham Racecourse. My observations of the Claimant in that environment, was that he handled the stress and the pressure of the role really well and he did a good job."*
267. I acknowledge that the events which MFD suffered in childhood are of such severity that they could give rise to a psychiatric injury such as complex PTSD, and that he was substantially more likely than others to develop a mental disorder. However, the experts are agreed that the majority of people with such levels of vulnerability do not develop any mental disorder.
268. In the absence of any evidence that any symptoms of this condition were manifested by MFD prior to the events at issue, I find, on the balance of probabilities and on consideration of the available evidence of MFD's past life trajectory, medical records and the expert opinion of both experts, that MFD's complex PTSD was not a pre-existing condition.

When did the symptoms of MFD's injury first manifest?

269. Dr Turkington's opinion is that, following a period of deterioration in MFD's mental health from April to November 2021, both the complex PTSD and the Depressive Episode arose in November 2021, triggered by a setting of increased stress, followed by perceived "abuse" in the workplace in the form of perceived breaches of duty relating to the excessive workload and failure to care for the Claimant's wellbeing.
270. Dr Wise's opinion is that MFD's Complex PTSD re-emerged when the Claimant was faced with the prospect of failure at work, either in late 2021, or in early 2022. Further, in Dr Wise's view, the symptoms of Depressive Episode only emerged after January 2022. The Defendant highlights that at the January 2022 meeting, MFD perceived himself as able enough to undertake the role of National Marketing Director.
271. The meeting in January 2022 in which MFD was informed that his role had become redundant cannot but have had a significant impact on him, given the particular importance which MFD ascribed to success at work which both experts acknowledge. The question is whether the Depressive Episode in particular arose subsequent to this meeting, or whether it had declared itself beforehand.
272. MFD only made his first visit to the doctor in January 2022, the day after it was made clear to him that his role was risk. However, to view this moment as the first emergence of his Depressive Episode does not reflect his attempt to drive into a tree in November 2021. Nor, as Dr Turkington remarks, is it consistent with the significant body of documentary and witness evidence with respect to MFD's gradually deteriorating mental health from April 2021 onwards. Against this evidence, MFD's suggesting himself as a suitable candidate for the role of National Marketing Director in January 2022 does not establish anything other than that an attempt, by someone who was already very unwell, to remain in employment.

273. The documentary evidence reveals that MFD's suicide bid in November 2021 was a significant event giving rise to lasting symptoms. The Talking Therapies notes record the following statement by MFD on 21 February 2022: "*I am trying not to drive as in November was on the way to work and was counting the trees as to which one I would hit, anxious about getting in the car and feel like this again - I feel like not fighting when I have a bad day It would be less than wise for me to -stress at work which triggered this and signed off sick – having these thoughts since November*".
274. The notes of the same day indicate: "*Escalating Factors: redundancy is a challenge and passed over to others, does not feel that this is increasing intent rating at this time but unsure if this will change*", again on this topic : "*I don't know on escalating factors, feel that have had tremendous shock so shoves this news on being made redundant into a box*". In March 2022 the notes refer to: "*thoughts of driving into a tree but is avoiding this by not driving – put his keys somewhere where he can't get to them easily*".
275. At paragraph 4.27 of his report dated 12 November 2024, Dr Turkington summarises the Talking Therapies records as follows: "*The Talking Therapies records indicate that two courses of CBT were attended and a likely diagnosis of a depressive episode was confirmed. The intrusive thoughts of crashing a car or being found dead in the wood/ in a lake were viewed as being depressive in origin rather than being symptoms of PTSD it was noted that the claimant had suffered from intrusive thoughts of ending his life by crashing his car since November 2021.*"
276. Dr Wise's opinion does not attribute any weight to MFD's symptoms of ill-health prior to January 2022, nor the significant nature and impact of the incident in November 2021, corroborated by MFD's Talking Therapy notes. Further, it does not set out any rationale by which MFD's symptoms relating to the Depressive Episode are to be distinguished from those of PTSD, nor on what basis it is considered that these separately arose in January 2022, other than the fact that MFD first sought medical assistance on that date, following the meeting at which he learned of the proposed redundancy, which would have been particularly relevant given MFD's core belief about success.
277. The documentary evidence and MFD's own evidence establish that in November MFD proposed resignation as he saw no way out. In November 2021 therefore, MFD's "core belief" about success, and the profound negative emotions that the experts agree could be triggered when this identity was challenged, had already been threatened.
278. On consideration of the witness and documentary evidence, which establishes that MFD's mental health was deteriorating from April 2021 onwards and given the evidenced central significance and repercussions of MFD's attempt to drive into a tree in November 2021, I prefer Dr Turkington's opinion.
279. I find, on the balance of probabilities, on consideration of the expert's opinions and the wider evidence, that although the events in January 2022 undoubtedly negatively affected the Claimant, and may have exacerbated his injury, MFD's suicide bid in November 2021 is the watershed event which demarcated the beginning of both his complex PTSD symptoms and his Depressive Episode.

Did the Defendant's breach of duty cause or materially contribute to the injury?

280. *Hatton* establishes that it is not enough for the Claimant to show that occupational stress has caused the harm. The Claimant must show that that breach of duty has caused or materially contributed to the harm suffered. It is not necessary, for this purpose, that the breach of duty should be the sole cause of the harm, other factors can have a part to play, as long as the breach of duty that is alleged has made a material contribution to the Claimant's injury.

Expert evidence

281. In their second Joint Statement, both experts agree that *"if the alleged breaches of duty are accepted by the court then they would have made a material contribution to the amount of distress Mr Foxton-Duff [sic] was under which may have contributed to any mental disorder present."*
282. This falls just short of agreeing that the breaches of duty made a material contribution to the diagnosed mental disorders. The nuance in the wording is unsurprising given that Dr Wise considered MFD's complex PTSD to be a pre-existing condition. However, the agreed statement makes clear that in Dr Wise's view the alleged breaches, if proven, would be material and relevant to this episode of mental distress, even on the assumption of MFD's pre-existent complex PTSD.
283. Dr Turkington's opinion in his Report dated 27 March 2023 is that *"the breach of duty of care which led to occupational stress and psychiatric injury includes failure to perform a stress risk assessment and thereafter to make reasonable adjustments such as reduction of workload"*.
284. In the second Joint Statement Dr Turkington opines that the alleged work-related stress and alleged breaches of duty made, at least, a material contribution to causation:

"DT opines that the Claimant was highly vulnerable because of his history of extensive childhood sexual and physical abuse but that the complex PTSD was not present before the alleged work-related stress and only triggered when faced with the trauma of the alleged sustained overwork/breaches of duty in 2021."

DT opines that despite the impact on his mental health being reported to management there was no action taken to protect the foreseeable deterioration in this mental health."

DT therefore opines that the alleged work related stress and alleged breaches of duty made at least a material contribution to causation."

Pattern of events

285. MFD's mental health gradually deteriorated from April 2021 onwards. After displaying increased tearfulness with individual colleagues from June 2021 onwards, from September 2021 onwards, he began to lose his composure in a more public

manner, so that he cried at a team meeting and again when attempting a presentation in front of colleagues. By October and November 2021, MFD was crying as he drove to work in the morning.

286. He started to behave in a short-tempered manner, and following an incident in which he shouted at a colleague after which he was remorseful and tearful, on 3 November he told his line manager that his health and welfare had been suffering as a result of the volume of work and that *“it is only a matter of time until I fall out with everyone”*. His evidence is that he saw no way out. He raised the prospect of resignation if nothing was done.
287. When this attempt to flag his difficulties failed, on 8 November he turned to a second, more trusted line manager, highlighting the detrimental impact the pressures of work had on his behaviours, again in tears, and shared a draft email containing examples as to how the stress negatively affected his performance and his well-being. His draft email reveal his concerns were so acute that he envisaged leaving his work: *“I have today advised Ian Renton again that the structure does not work and that I no longer believe the structure under your leadership to be requiring my involvement, I also believe that your lack of care and awareness of well-being to be dangerous”*.
288. His managers declined to offer any support. It was intimated that by raising these concerns he was not showing the leadership and collaboration that was expected of him. His evidence is that he saw no way out. At some later, unspecified date in the course of the month of November, on his way to work one morning, he selected a tree and accelerated towards it with a view to ending his life, only regaining control of the car at the last minute.
289. Considering the pattern of events, the inference is clear that MFD was “tipped over the edge” following his failed attempts to raise his welfare concerns with his employers, and specifically, by their failure to acknowledge his risk of injury by undertaking a risk assessment or an occupational health assessment, to measure and avert the risk to his health.
290. The Defendant in its closing submission recognised that the pattern of events was such that the events in early November – which it considered non-tortious- might be connected to his subsequent attempt to drive into a tree. *“No date is given for the November incident, but it is easy to infer from what is known that he reacted badly to what took place at the start of November which clearly contained the possibility of his stopping work”*.
291. Having regard to the pattern of events, the expert evidence, and the agreed position of the medical experts that the breaches of duty, if found, would materially contribute to MFD’s distress, and Dr Turkington’s opinion on causation cited above, I find that the Defendant’s breach of duty in failing to undertake a risk assessment and or to refer MFD to occupational health materially contributed to MFD’s injury.

Would MFD have incurred this injury in any event?

292. The Defendant raised a question as to whether the Claimant’s vulnerability was such that he would have developed these difficulties in any event. Alternatively, it is said

that he would have been likely to develop a similar condition when confronted with the (lawful) redundancy exercise in any event.

293. The medical experts agree in their Joint Statement that the majority of persons with such levels of vulnerability do not go on to develop an adult mental disorder. Further, given MFD's previous track record in demanding roles and successful navigation of adverse life events without recorded mental health difficulties, I find, on the balance of probabilities, that MFD's pre-existing vulnerability did not mean that he would have developed these difficulties in any event.
294. On the likelihood of MFD developing a similar injury in the January 2022 redundancy exercise, I find that the evidence before the court was that MFD had previously successfully undergone a redundancy exercise while working at the Defendant. He had not developed such an injury. Given his manifested resilience to such exercises in the past, I find that on the balance of probabilities, absent the Defendant's breach of its duty of care to MFD, the injury would not have occurred in the context of the subsequent redundancy exercise in January 2022.

Apportionment

295. It is acknowledged by both parties that in cases of psychiatric harm, given the nature of the harm, though there may be a multiplicity of causes leading to the injury, there is great difficulty in separating out that proportion of the harm suffered which is attributable to individual wrongdoing (*Dickins v O2 Ltd* [2008] EWCA Civ 1144 and *BAE Systems Ltd v Konczak* [2017] EWCA Civ 1188). Although the Defendant's breaches of duty were not the sole factor leading to MFD's injury, where, as in this case, the Defendant's breach of duty has materially contributed to a psychiatric injury, if the harm itself is indivisible the Defendant will be liable for the whole of the harm.
296. There is no factual evidence before the court that would enable divisibility or apportionment of MFD's injuries. Dr Turkington is of the view that the injury is indivisible. Dr Wise has provided alternative timing for the onset of MFD's Depressive Episode (which I have not found established on the facts) but has not directly suggested that the injury is divisible beyond this.
297. That being the case, as the Defendant's breaches of duty materially contributed to both MFD's complex PTSD and Depressive Episode which arose in November 2021, compensation is due from the Defendant for the whole of the harm. This finding does not preclude possible contingencies in recognition of the risk that broader factors such as MFD's vulnerability might have led to such an injury occurring in the future, when it comes to assessment and quantification of loss.

Alleged breach of implied term of trust and confidence

298. The Claimant's second pleaded claim is for breach of the implied term of trust and confidence. This claim was not developed in oral argument before the court.
299. The Claimant's case is that Defendant's redundancy exercise was not genuine and that it was designed to ensure MFD's and MA's employments were terminated so that the

Defendant could replace them with people of OG's choosing. Further, the second proposed restructure was undertaken in a manner that showed no regard for the health and safety employees in the marketing teams by subjecting them to a second exercise in two years. Last, it is claimed that OG showed no regards whatsoever for the health and safety of the Claimant, or the marketing department generally, resulting in the resignations of 7 named individuals.

300. On the basis of the available evidence, and in the absence of argument, and I do not find that the Claimant's claim in this respect is made out.
301. The Claimant has not established how some of the alleged breaches are distinct from a claim of unfair dismissal and how these would survive the agreement the Claimant reached with his employer following his departure, which waived all claims he had against the Defendant (save his right to a claim in personal injury).
302. On the Claimant's own case, it is averred MFD's injury occurred in November 2021. The second restructure and the redundancy process were initiated in January 2022. The Claimant has not explained how the alleged breaches connected with the redundancy and restructure in January 2022 have caused MFD's injury arising two months prior.
303. With respect to the only particularised breach which appears to predate MFD's injury, namely OG's general failure to have regard for the health and safety of the Claimant, or the marketing department generally, resulting in the resignations of 7 individuals, the evidence with respect to the resignations of third parties amounted to little more than general assertion. There was no argument with respect to what elements of the evidence before the court amounted to the alleged breach, and how this differed or overlapped with the alleged breach of duty of care.
304. For these reasons, the Claimant has not established any alleged breach of the implied term of trust and confidence.

Compensation

305. The Claimant's case is that he is entitled to compensations for the losses he suffered has a result of the injury, including lost earnings, past and present.
306. The Defendant submitted that MFD was not entitled to compensation for a number of claimed past and future losses associated with the injury, on the basis that it is likely, due to his vulnerability, that MFD would have developed this condition anyway. Alternatively, it is said he would have been likely to develop a similar condition when confronted with the (lawful) redundancy exercise in January 2022. I refer to my findings above on both these points.
307. Another argument that is advanced by the Defendant is that MFD faced redundancy anyway as his role was one of those that was at risk, and he was unlikely to accept a lesser role.
308. It is not disputed that at the time of he was signed off sick MFD was performing well. The Defendant's own assessment in early 2022 confirms his status as an extremely

capable and high performing individual who was “head and shoulders” above his peers.

309. Portia McKeown’s evidence was that when MFD was signed off sick in January 2022 the redundancy process had not even formally begun, and it was merely seeking his feedback. All options were open and no definitive decisions had been taken.
310. This being the case, and MFD having been deprived of the opportunity of any meaningful participation in this exercise, due to the injury which he sustained in November 2021, the outcome of a full and fair redundancy process in which he participated without injury cannot be assumed to be the same as the Defendant’s past exercise, undertaken without MFD’s participation. Absent the Defendant’s breach of duty, I find MFD would have been in a strong position to contribute to and influence the proposals.
311. No reason has been put forward by the Defendant as to why, absent its breach of duty and MFD’s injury, he might not have successfully applied for the role of National Marketing Director in the context of a full and fair redundancy process, given his status as an extremely capable and high performing individual who was “head and shoulders” above his peers.
312. Further, in light of the strong evidence of the Defendant’s favourable assessment of MFD’s superior skills and capabilities in early 2022, and its endorsement of his high levels of performance at the hearing, I find that, but for his injury, MFD was more likely than not to successfully survive a full and fair redundancy exercise and take on a more demanding role such as that of National Marketing Director.

Pain Suffering and Loss of Amenity

313. In their second Joint Statement the experts “*agree on the diagnoses of Complex PTSD (ICD-11 6B41) and that he describes a Moderate Depressive Episode (ICD 6A70.1)*” (emphasis added). The Claimant claims £60,000, which is towards the top of the range provided Chapter 4 of the Judicial College Guidelines under category (A) Psychiatric Damage, (b) Moderately Severe psychiatric damage.
314. I note that in terms of MFD’s self-reported symptoms, as additional evidence with respect to the MFD’s childhood adverse experiences came to light, Dr Wise noted that these may better explain his responses to his International Trauma Questionnaire, the veracity of which Dr Wise had initially doubted. Dr Wise also in his oral evidence acknowledged that MFD displayed symptoms of a Moderate Depressive Episode. MFD’s description of his state of health at the time of his witness statement in 2024 was “*I have almost daily suicidal thoughts, I have harmed myself, I have ruined my own credibility, confidence, creativity, and have put my wife and my home life under serious pressure. [...] I very rarely drive long distances anymore as to so reminds me of more challenging times and my wife always drives when we travel together.*” I note that the Talking Therapies notes are consistent severity of the Claimant’s self-reported symptoms following his injury.
315. On consideration of the evidence with respect to the factors outlined at Chapter 4 of the Judicial College Guidelines, I consider that an award of £60,000 is appropriate. I

note that despite his acknowledged predisposition to such injury, MFD had no prior history of mental illness, and had displayed resilience in the face of difficult life events, and enjoyed a very successful career. Following the injury, he has suffered severe symptoms, which have included episodes of self-harm and suicidal thoughts. He sought medical treatment, and part-time employment with the Royal Mail, but was not able to maintain this employment, struggling with changes and different rounds. Despite ongoing medical treatment, he suffers severe ongoing symptoms. The injury has had profound impact on all aspects of his life, from his ability to work, to his family and social life.

316. With respect to Loss of Congenial Employment, I allow £12,500, and refer to my findings above with respect to the Defendant's case that the Claimant would have gone on to be made redundant in any event.

Past losses

317. I refer again to my findings above findings with respect to MFD's likelihood of being made redundant/developing the same condition in any event, and accordingly allow the claimed past losses in full, at £211,920.87.

Future treatment and Travel

318. I award £9,237. I refer again to my findings with respect to MFD's likelihood of being made redundant/developing the condition in any event.

Future losses

319. The medical experts broadly agree on treatment and prognosis. Dr Turkington considers the risk of relapse lies between 20 and 40%, with Dr Wise expressing a reservation that the prognosis for complex PTSD is not as good.

Residual earning capacity

320. Dr Wise's opinion is that MFD could, after a treatment and a period of re-acclimatisation, return to the market without any disadvantage by reason of a psychiatric disorder. Dr Turkington's view is that MFD would be disadvantaged on the open labour market and would need careful line management on his return to a more junior marketing post.
321. On consideration of the expert and wider evidence, and bearing in mind that Dr Wise's assessment of the impact of the injury is tied to his view that MFD's complex PTSD pre-existed the alleged breaches of duty, which I have not found to be the case, I prefer the evidence of Dr Turkington and find that MFD's injury has given rise to a lifelong enhanced vulnerability and carries a significant risk of relapse which will permanently affect his ability to undertake more senior or high-pressure roles. This is also consistent with Dr Wise's slightly more negative prognosis for complex PTSD.

322. Turning to the quantum of the Claimant's residual earning capacity, the Claimant contends for a residual earning capacity of £25,000 per annum gross based on full time employment with Royal Mail. In consideration of the expert evidence with respect to his prognosis and future prospects, I consider that the Claimant has a higher residual earning capacity. Bearing in mind that the Claimant's professional expertise is very sector specific, I consider that a residual earning capacity in the sum of £30,000, is appropriate, allowing the Claimant a two-year period to enable treatment and re-adjustment following this judgment, rather than the three-year period sought by the Claimant.

Lost earnings and pension

323. To establish the extent of his lost earnings the Claimant relies on the assessment of his role and performance undertaken by the defendant in February 2022 in the context of which the Defendant's performance was assessed as "head and shoulders", the earnings and success of his peer and ex-colleague MA and those of IR, whose trajectory he claims he was following.
324. I do not consider that MFD has established, on the evidence available that either IR or MA are entirely appropriate comparators by reference to which his lost earnings should be calculated. MA has cross-sectoral expertise which have enabled her to prosper in other sectors. She does not, however, have MFD's sectoral excellence and experience. Although MFD has a track record as a high performing individual who clearly had potential to progress, on the balance of probabilities I do not consider that the evidence supports the claim that he was developing the broader strategic and communication skills required to operate in IR's role.
325. I find that MFD was performing well above others in his role. IR's evidence is that when he was recruited he was seen as a leader in his role, and that MFD was generally paid higher than his counterparts in recognition of this expertise. The Defendant's own assessment in early 2022 confirms his status as an extremely capable and high performing individual who was very likely to progress, and indeed who, but for the injury towards which the Defendant's breach of duty contributed, appeared to have all the qualities required to take on a more demanding role such as that of National Marketing Director.
326. Given the findings made above, I find that the Claimant is entitled to lost earnings calculated by reference to a projected annual salary of £160,000, which reflects his likely career trajectory. Furthermore, for the purpose of this calculation I allow the proposed retirement age of 70 suggested by the Claimant given the trajectory of colleagues such as IR, and the strong evidence with respect to the important role that employment and professional success played in MFD's life. The Claimant is entitled to lost pension rights that are associated with this income, subject to appropriate discount.

Contingencies

327. In assessing future loss, *Hatton* requires that consideration is given to the Claimant's vulnerability and the chance that the Claimant would have succumbed to a stress

related disorder in any event.

328. The medical experts are agreed that MFD was highly vulnerable to developing a mental disorder. Dr Turkington's opinion is that though such an injury may have occurred in later years, it would be treatable without a negative impact on MFD's employment trajectory. Dr Wise's opinion places far more emphasis on MFD's childhood experiences overall. His view on complex PTSD is less optimistic than Dr Turkington's.
329. In light of the impact the current disorder has had on MFD, I find that it supports Dr Wise's opinion that an injury, if MFD were to sustain it in later life, would have been likely to affect MFD's employment trajectory.
330. Given the very significant adverse childhood experiences MFD has sustained, together with the acknowledged importance that professional success played in his life, and bearing in mind the opinion of Dr Wise, I find that MFD was at significantly higher risk than others to developing a psychiatric disorder that may have impacted on his future employment trajectory.
331. Although most adults with such experiences do not develop adult mental disorders, and there is evidence of his successful navigation of difficult life events without such injury occurring, this does not mean that the heightened risk in this respect is eliminated. I find that a reduction of 20% on future losses is appropriate to reflect the risk that such injury might have manifested itself over the later years of his career.

Contributory Negligence

332. This aspect of the Defendant's case, the burden of which lies on the Defendant to prove, was only briefly developed in oral argument. The Defendant contends that the Claimant's negligence caused or contributed to his injury, in that he failed to report any of the matters of which he now complains to his employer. Further, he did not make use any of the free services available to support his mental health, failed to seek medical assistance from April 2021 onwards, and did not take reasonable care for his own well-being.
333. I refer to my findings above to the effect that MFD raised these issues with his employer in autumn 2021.
334. It is common ground that MFD did not take time off or seek medical help until 12 January 2022, and he did not make use of the confidential counselling service or private medical services that were made available to him by his employer.
335. The nature of psychiatric injury, as recognised in *Intel*, is such that a claimant's ability to make decisions (such as in this case, the decision to get medical help) is impaired. MFD had no history of psychiatric injury or mental health difficulties to inform his approach.
336. Further, as the Defendant recognised, *Hatton* makes clear that an employee cannot be blamed for seeking to work. Given that just some of MFD's additional responsibilities falling outside his job description, on the Defendant's own estimation, gave rise to

105 days' worth of additional work, it cannot find him at fault for failing to take time off.

337. On the balance of probabilities, I find that the Defendant has not made out its case that negligence by MFD caused or contributed to his injury.

Conclusion

338. The Claimant has suffered psychiatric harm on account of the Defendant's breach of duty of its duty of care. I summarise the Claimant's losses related to his psychiatric injury for which the Defendant is liable as follows:

General damages: £ 72,500

Past loss of earnings: £ 211,920.87

Interest: after the judgment being sent out in draft, the parties have agreed that the Claimant is additionally entitled to interest on general damages of £3,446 and interest on special damages of £17,442.

Future Loss: the parties have, based on the findings in this judgment, calculated future loss of earnings (inclusive of loss of pension and after deduction of the contingency identified in paragraph 311 of this judgment) in the net sum of £675,558.90, which with future treatment and travel expenses of £9237.75, takes total future losses to **£684,796.65**.

339. I am very grateful to both counsel for their helpful submissions and for the manner in which they conducted the trial.
340. I make an order in terms agreed by the parties consequent upon my judgment.