Appeal No. UKEAT/0436/13/RN

EMPLOYMENT APPEAL TRIBUNAL

FLEETBANK HOUSE, 2-6 SALISBURY SQUARE, LONDON, EC4Y 8AE

At the Tribunal
On 27 March 2014
Judgment handed down on 16 April 2014

Before

THE HONOURABLE MR JUSTICE LEWIS

(SITTING ALONE)

MR A J PANAYIOTOU — APPELLANT

(1) CHIEF CONSTABLE PAUL KERNAGHAN
(2) THE POLICE AND CRIME COMMISSIONER FOR HAMPSHIRE — RESPONDENTS

Transcript of Proceedings

JUDGMENT

APPEARANCES

For the Appellant	MS KATHERINE APPS (of Counsel) Instructed by: The Bar Pro Bono Unit 289-293 High Holborn London WC1V 6JQ
For the Respondents	MR ANDREW CLARKE (One of Her Majesty's Counsel) & MR GARY SELF (of Counsel(Instructed by: Hampshire Constabulary Headquarters Romsey Road Winchester Hampshire SO22 5DB

SUMMARY

VICTIMISATION DISCRIMINATION

Whistleblowing

Protected disclosure

The Appellant was a policeman who was subjected to a series of detriments and was ultimately dismissed by his employer. During the course of his employment, the Appellant made a number of protected disclosures as defined in section 43B of the **Employment Rights Act 1996**. He contended that the fact that he had made those protected disclosures influenced the employer in acting as it did and was the reason, or the principal reason, for his dismissal. The tribunal concluded that the employer acted as it did because of the Appellant's long term absence on sickness grounds together with the manner in which the Appellant had pursued his complaints. The Appellant would not accept any answer save that which he sought and, if he was not satisfied with the action taken following a complaint, he would pursue the matter to ensure that his view prevailed. As a result, the employer was having to devote a great deal of management time to responding to the Appellant's correspondence and complaints and the Appellant became completely unmanageable. The Employment Appeal Tribunal held that the tribunal was entitled to treat those particular factors as separable from the fact that the Appellant had made protected disclosures and to decide that those factors were the reason why the employer acted as it did. Further, the Employment Appeal Tribunal held that tribunal had not approached the matter on the basis that, as the Appellant had made a number of protected disclosures, there came a time when subsequent disclosures of information could not qualify as protected disclosures; the tribunal had adopted a correct approach.

THE HONOURABLE MR JUSTICE LEWIS

INTRODUCTION

1. This is an appeal against a decision of an employment tribunal promulgated on 3 May 2012 in which the tribunal dismissed claims brought by Mr Panayiotou against the Chief Constable of Hampshire Police and the Hampshire Police Authority (now the Police and Crime Commissioner). Mr Panayiotou claimed that he had been subjected to various detriments on the ground that he had made protected disclosures, contrary to section 47B of the **Employment Rights Act 1996** ("ERA"), and that he had been unfairly dismissed contrary to section 103A of ERA as the reason, or the principal reason, for his dismissal was that he had made such disclosures. A protected disclosure is defined in the ERA as any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show the existence of one of five particular state of affairs (such as the commission of a crime or a failure to comply with a legal obligation or that a miscarriage of justice has occurred). The tribunal also dismissed a claim that Mr Panayiotou had been victimised on the ground that he had done protected acts under the **Race Relations Act 1976** ("the 1976 Act"). It was not Mr Panayiotou's race that was in issue. It was said in particular that certain acts were done because he had objected to an officer making racially derogatory remarks.

2. There is one ground of appeal but it is said to be supported by five interlocking or related reasons. On analysis, some of the reasons might more appropriately be treated as separate grounds of appeal. The first issue is whether the employment tribunal decided that, as the employee had made a number of protected disclosures, there came a time when subsequent disclosures of information would not be protected disclosures for the purposes for the ERA and the employer would not be acting unlawfully if it were influenced by the fact that the employee had made those subsequent disclosures. The second, and principal, issue is whether the

employment tribunal erred by separating the features relating to the way in which the employee pursued his disclosures from the fact that he had made protected disclosures and treating the former as the reason why the employer acted as it did. In particular, it was submitted that it was not permissible, either as a matter of principle or on the facts of this case, to distinguish between the fact that the employer considered that the employee had become unmanageable as he made repeated disclosures and, unless they were dealt with as he wished, then he would simply continue to pursue the matters until the employer did act in the way he wished and the making of the protected disclosures themselves. The subsidiary issues are whether the employment tribunal failed to consider whether the treatment of Mr Panayiotou was in no sense whatsoever connected with race or applied the wrong test in deciding whether Mr Panayiotou had been subjected to a detriment on the ground of, or been dismissed wholly or principally for, making protected disclosures.

THE DECISION OF THE TRIBUNAL

The Structure of the Employment Tribunal Decision

3. In the opening paragraph of its reasons, the employment tribunal noted that the case had a long history going back over 10 years. Mr Panayiotou joined the Hampshire Police Force in 2000. The tribunal noted that the claims it was dealing with related to the concluding period of his employment. It indicated that it would need to cover the history prior to that period to a certain extent. In order to make its reasons more readily understood, it set out the claims and the issues raised, dealt with procedural matters and then provided a summary of its conclusions. The summary is at paragraphs 50 to 70. There then follows a more detailed section setting out the narrative history and the tribunal's findings of fact on particular matters and, ultimately, a review of the allegations at paragraphs 182 to 209 of their reasons. The last paragraphs of the reasons deal with one particular document and conclude with some general remarks. In order to make their reasoning more apparent to the reader, they italicised some of their comments on

certain of the facts that they found and put particular comments in bold text where these comments were considered to be particularly important. This judgment reproduces the tribunal's italicised and emboldened comments.

The Claims

4. The claims that the tribunal had to decide are set out at paragraph 3 of its written reasons. The individual issues they raise are set out at paragraphs 4 to 13 of its reasons. The matters that are principally relevant to this appeal are as follows. Mr Panayiotou contended that he had been subjected to certain detriments on the ground that he had made protected disclosures. The acts constituting the detriments began on 6 October 2006 with the revocation of permission for Mr Panayiotou to hold any interest in a business. They include four incidents relating to permission to have a business interest, an investigation of an alleged breach of an instruction not to work in his wife's business, a number of matters relating to a recommendation that Mr Panayiotou be dismissed, and three matters relating to the way in which misconduct issues were addressed. The detriments cover at most the period 6 October 2006 to about February 2008. The incidents involving alleged victimisation on grounds related to race include those incidents, and other incidents, and again relate to the period from 6 October 2006 to about February 2008. Dismissal was recommended by Chief Constable and approved by the Hampshire Police Authority on 15 February 2008.

The Facts and Findings Relevant to this Appeal

5. Mr Panayiotou was formerly a police officer with the Metropolitan Police. He transferred to the Hampshire force in 2000, initially to a posting in Southampton and then to the Isle of Wight. His wife established hospitality businesses on the Isle of Wight. There are rules governing police officers having business interests. Mr Panayiotou applied for and was granted permission to be associated with those businesses.

6. In the early period of the posting in the Isle of Wight, Mr Panayiotou made protected disclosures to senior officers concerning the attitude of certain officers in respect of the treatment of race and the treatment of victims of rape, child abuse and domestic violence. There was an investigation and Mr Panayiotou was found to be largely correct in his concerns.

7. The disclosures and the investigation appear to have occurred at some stage between 2000 and a date in 2002. The tribunal found that from as long ago as 2002 matters began to go awry. At paragraph 57 of its reasons, the tribunal found that while Mr Panayiotou had raised matters correctly, he was not happy with the outcome in particular cases that he raised. The tribunal found that the difficulty for the force came not because of the public interest disclosures that Mr Panayiotou had made, but his desire to right the wrongs that he believed had occurred. Therefore, he did not just make protected disclosures (that is, bearing in mind the definition of protected disclosure, he did not just disclose information) but he began to campaign for the force to take the actions that he believed appropriate. When the force did not take the action that he believed appropriate, he believed that matters were being covered up and this made him more determined to try other channels to secure redress in those cases. He sought and gained support from officers in representative bodies but, ultimately, many of those officers ceased to involve themselves with Mr Panayiotou. He considered that these officers were warned off or bought off from assisting him, for example, by being put forward for honours. The tribunal found that that had not in fact occurred. See paragraphs 57 to 59 of the written reasons.

8. There were a number of features of the way that Mr Panayiotou was treated, however, which did cause the tribunal concern and which led the tribunal ultimately to the conclusion

that Mr Panayiotou had not been fairly treated. These features include principally (but not only) the following.

9. First, from about October 2006, the police force revoked, refused, or would not consider, applications for permission for Mr Panayiotou to be involved in his wife's businesses. The tribunal was critical of the way in which these matters were dealt with and considered that the reasons given by the Chief Constable on one occasion were not genuine as appears from its italicised comments at paragraphs 127 and 128. It made further criticisms of later actions as appears from, in particular, the italicised comments in paragraphs 135 to 140 of its written reasons.

10. Secondly, on 6 October 2006, Mr Panayiotou was at home on sick leave. He was arrested at his home, the alleged offence being that he was receiving sick pay whilst working without authorisation in his wife's business. Six officers attended Mr Panayiotou's home. The tribunal said that that matter caused them "great concern". It is very critical of the way in which the First Respondent acted as appears from its italicised comments at paragraphs 125 to 126 of its written reasons. Then in 2007, surveillance was approved to establish whether or not Mr Panayiotou was working in his wife's business. Two officers, DC Plummer and DC Wright (about whom Mr Panayiotou had made complaints in about 2006), carried out surveillance, in their own time, of the market stall run by Mr Panayiotou's wife. One went to the roof of a nearby supermarket to video record what was happening and one was on the ground. The view was formed, erroneously, that Mr Panayiotou was carrying on a business. The tribunal found that the two officers involved were not impartial and the conclusion that Mr Panayiotou was involved in a business was not sustainable.

11. The relevant officers in the force decided to recommend that Mr Panayiotou be dismissed on the basis of a particular regulation, regulation 7 of the **Police Regulations 2003**, which allowed dismissal on the basis that a police officer had an incompatible business interest. That regulation provides that the Chief Constable does not have to discuss the matter with the officer concerned. The Police Authority had to allow the officer to make representations and had to approve the recommendation. If it did, there was no further appeal. This process therefore lacked the procedural safeguards, and the appeal rights, that would apply if the regulations providing for dismissal for misconduct had been utilised.

12. The tribunal were critical of the actions involved in the surveillance operation (see paragraph 145 of its reasons). The tribunal considered that Mr Panayiotou was correct in his view that senior officers in the force were acting in concert to use the Regulation 7 procedure concerning business interests to bring about the termination his employment rather than the conduct regulations (see paragraph 142 of its reasons). The tribunal considered that Mr Panayiotou had a good point when he argued that the decision to dismiss him on this basis was a wrong decision and the Respondents should not have used the Regulation 7 procedure as they did. It describes what happened as a "device to terminate the claimant's services in a manner that would preclude challenge outside the Force": see paragraphs 142 and 147. The tribunal was critical of the Police Authority's decision to approve the recommendation.

13. These matters are described in paragraph 60 of its reasons in the following terms:

> "However, there are substantial aspects of the treatment of the claimant which cause us great concern. These include the disparity of treatment between the claimant and Sgt Cairns; the claimant's arrest in October 2006 and the (extraordinary in our view) position of the force that working while claiming sick pay should be treated as a criminal offence rather than disciplinary; the refusal of the Chief Constable even to entertain a business interest request in July 2007 for what was a completely different business; and the use of the Police Regulations 2003, which has never happened before (nor since) in any constabulary in the country, including making the decision to dispense with his services – effectively in secret – without involving the claimant. There was a specific police operation - Operation Companionway – set up to investigate the claimant which involved a huge amount of work and resources including taking witness statements from no fewer

> than 44 people. The claimant had been medically approved for ill-health early retirement on 23rd January 2008, yet the Force continued with its decision to dispense with his services at the hearing on 15th February 2008. We find the use of the Police Regulations 2003 – without precedent in the annals of all 43 police forces – and the manner of its implementation to have been a device to secure the removal of the claimant by avoiding the Conduct Regulations, and the process involved from "Operation Companionway" through to dismissal a series of actions designed to secure the removal of the claimant from his office."

14. The tribunal was conscious that it was not dealing with a claim that the dismissal was an unfair dismissal contrary to section 98 of ERA as police officers do not have a statutory right not to be unfairly dismissed. The tribunal was acutely conscious that one of the legal issues that it had to consider was whether the reason why Mr Panayiotou had been subjected to detriments was in no sense whatsoever connected with the fact that he had made public interest disclosures. It also had to consider whether the reason, or the principal reason, for the dismissal was fair. It also had to consider the claim for victimisation on grounds related to race. It was also mindful of the fact that Mr Panayiotou submitted, amongst other things, that the matters referred to in paragraph 60 were matters that the tribunal should regard as evidencing a discriminatory motive on the part of the employer (see, for example, paragraph 61 of the written reasons).

The Tribunal's Summary Reasons

15. The summary of the tribunal's findings and reasons in relation to the treatment suffered by Mr Panayiotou are set out in part in paragraphs 62, 64 and 66 of the written reasons. These paragraphs (placing text in bold where the tribunal does so and omitting one reference to a matter which Mr Panayiotou says he did not accept in evidence) are in the following terms:

> "62. After giving this matter very great thought **our conclusion** is that the public interest disclosure was the genesis of the matters of treatment about which the claimant complains (all of which are necessarily detriments) but only in the sense of "If I had not taken the M5 and travelled on the A303 instead I would not have had the car crash". **It was the actions taken by the claimant subsequent to the disclosures which were the reasons why the Force were hostile to him.** Certainly we think they were hostile to him. **In addition, there was an exasperation that the claimant had worked so little in the years he had been with them, while seeking to be involved with family businesses while (mostly) being paid for (not) being a police officer.** We do not think that the fact that race was the subject of some of the disclosures had anything to do with anything that happened, and we do not think that the fact

> that the claimant had a mental health disability had any connection with any action that might be criticised. In so far as adjustments were needed, they were made. **It has also to be said that the actions of the claimant were sufficient to try and to exhaust the patience of any organisation.**
>
> …
>
> 64. By the time of his dismissal, the claimant had become a one-man industry for the Force, taking up huge amounts of management time, and it was clear from the medical reports that he was not able to function as a detective sergeant. He made many very lengthy complaints – typified by the application for a business interest of 21st June 2007 which ran to 22 pages most of which reiterated his public interest disclosures. When asked about this by the Judge, the claimant could (now) see that this was irrelevant to that application. A brief look through the thousands of pages of documents we have considered shows how many very lengthy discourses there have been from the claimant about his various grievances. There comes a point where the fact of a disclosure is overtaken by the campaign of the discloser to vindicate himself and champion those about whom those grievances were raised, and that point came far into the past. **It is why the actions of the Force are in no sense whatsoever connected with the public interest disclosures.**
> …
>
> 66. Our finding of fact, and our decision, is that the Force determined to rid itself of the claimant and did so in a manner that was not fair but was not in any sense whatsoever connected with the public interest disclosures he had made. It was the manner that he pursued them that caused the Force to act as it did. … where he did not agree with the way that the disclosures were handled he complained about that too, as further disclosures. When it got to the point, as it did, where he was critical of HMIC's and the Home Office's handling of the matter (see documents 178 on 26th October 2002 to HMIC and 759-761 on 28th May 2007 to the Home Office in both of which he said so), it is clear that unless the matters are handled as the claimant wished, then they would have been wrongly handled in his view, and he would not rest until he had altered that course of action."

Reasoning in the Narrative History as set out by the Tribunal

16. There then follows a narrative history of events. This history refers to the first three protected disclosures in about 2001 and 2002. It records that officers in the force were glad that Mr Panayiotou had raised the issues of the attitude of officers in the force to crimes involving race and domestic violence (see paragraph 88 of the written reasons). The tribunal also noted that the force was helpful to Mr Panayiotou in relation to his business interests applications between 2001 and 2006. The tribunal, in my judgment, was inferring that the fact that Mr Panayiotou had made the original disclosures was not a factor in any subsequent treatment of Mr Panayiotou (as the initial treatment of him did not involve subjecting him to detriments but rather involved assisting him). That is reinforced by the next sentence in paragraph 92 of its reasons which note the tribunal's view that it was at the latter stages that the Respondent tired of Mr Panayiotou's campaigns coupled with extended sickness absence which had no likelihood of ending.

17. The narrative history proceeds chronologically through the events which occurred indicating, at various points, the tribunal's view of whether the fact that Mr Panayotiou had made protected disclosures played any part whatsoever in the treatment to which he was subjected. By way of example, they deal with a complaint made by Mr Panayiotou on 10 October 2005 that there had not been a proper investigation of a racially motivated attack on a Lithuanian national. The tribunal considered that it was unsatisfactory that Mr Panayiotou had been let down and it was unsatisfactory that he had nowhere to go with a complaint that may well have been entirely legitimate. It concluded that this was a background fact to the later treatment and was supportive of the view that Mr Panayiotou was not being taken seriously about any matter that he raised (see paragraph 114 of the written reasons). However, it is also right to note that when Mr Panayiotou returned to work in May 2006, he then began to investigate the attack personally and accessed the police computer system. He then told the head of the Professional Standards Department ("the PSD") that he (Mr Panayiotou) was simply doing his job and trying to update the victim and he gave the officer the report that he, Mr Panayiotou, had sent to the Independent Police Complaints Commission about the matter. The tribunal regarded that as another example of the way in which Mr Panayiotou operated. I read that as being a reference to the view of the tribunal that, having made his complaint, if Mr Panayiotou was not satisfied with the action taken he then proceeded to investigate matters and seek to obtain the result that he considered appropriate.

18. The theme that Mr Panayiotou would campaign relentlessly if he were not satisfied with the action taken is referred to in other places in the tribunal's narrative of the history. By way of example, the tribunal considered carefully the position in relation to an application on 11 December 2006 for approval of a business interest. The tribunal considered that the reasons given for refusing it were not genuine reasons. In paragraph 128 of its reasons, it therefore

considers "whether our concerns at this letter should lead us to conclude that in some sense the motivation was the public interest disclosure or on the other grounds of the claimant's claims". Their conclusion, which is italicised, reads as follows:

> *"subsequent to October 2006, the Force collectively, had determined that that the claimant was to be allowed no leeway. He had hardly been at work so there was little opportunity for him to have matters about which to complain other than about himself (and in his own cause he was largely repeating what he had already written) but still he campaigned relentlessly and tirelessly for the causes which he championed, including his own wish to take up a role of his own designation within the force. That campaign has, in our considered judgment, nothing to do with disability (other than seeking to design a post to suit himself) nor the public interest disclosures which he had made. It is this reasoning that also leads us to take the same view of the application of regulation 7(6) [the business interest regulation] to the claimant".*

19. To give one further example, concerning the decision of the Police Authority to approve the decision to dispense with Mr Panayiotou's services on the grounds that he had an unauthorised business interest, the tribunal says this at paragraph 179, in italics:

> *"We think the Authority should have refused to approve the decision, and directed the Chief Constable to use the conduct regulations. The Authority followed the advice given to them by their legally qualified clerk, and we think that they should not have regarded that as binding (as in effect they did) and we think that advice flawed, as it was that the claimant had disobeyed a lawful order and continued with a conflicting business interest while saying that he has no such interest. However that opinion does not assist the claimant, as there is no credible evidence that matters of public interest disclosure, disability or race had anything at all to do with the process or decision of the Authority, given also the point above about the representations made to the Authority."*

20. For completeness, and given the significance attached to the matter during oral submissions, mention should also be made of one paragraph which deals with DC Plummer and DC Wright. They were the officers who were involved in the surveillance of Mr Panayiotou and the actions which led to his dismissal. Mr Panayiotou had made protected disclosures about both in about 2006. One related to the way that DC Plummer was said to have acted during a rape investigation. One related to DC Wright and a comment allegedly made by him which was said to be derogatory to persons of a particular ethnicity. At paragraph 119 of its reasons, the tribunal says this:

> "Subsequently DC's Plummer and Wright were involved in actions which led to the claimant leaving the Force. At paragraphs 429 and 430 the claimant sets out that after his return to work on 02nd May 2006 he had cause to speak to both these detective constables. DC Plummer had

> behaved inappropriately in a rape investigation where he had arranged for the victim and the suspect to pass one another in a corridor as an informal identity parade. At about the same time he says that he spoke to DC Wright who, he says, referred to those of Asian ethnicity as "rag heads". He indicates that they disliked him as a result, which had unfortunate consequences for him when both went off to join the PSD. As set out earlier, the claims pleaded refer to a 2001 episode about a rape investigation where the claimant had rebuked DC Plummer which the claimant feels led to DC Plummer disliking him. *Accordingly, on the claimant's own evidence the actions of DC's Plummer and Wright are motivated by dislike of the claimant for reasons totally unconnected with public interest disclosure of disability, and only tangentially with race."*

Reasoning in the Review Section of the Tribunal's Judgment

21. In reviewing the allegations, the tribunal reminded themselves, correctly, that in relation to section 47B of ERA the question was whether the action constituting the detriment was in no sense whatsoever influenced by the fact of the making of protected disclosures. It considered that the Respondents had established that was the case. The tribunal considered the individual actions in turn and referred to their earlier reasons for concluding that the particular action was not motivated by the fact of protected disclosures having been made. Important paragraphs reflecting their reasoning are paragraphs 189 which deals with the use of the business interests regulation to effect a dismissal and paragraph 191. They say as follows:

> "189…the use of Reg 7(6) of the 2003 Regs and the way that was implemented by the Force – we have made clear our views on this. It seems to us incumbent on a police force to recognise the rules of natural justice, and the claimant is right in saying that to decide to dismiss an officer without him knowing it was under consideration is unfair. The critical question is why this was done, and have set out that we do not think it was in any sense whatsoever for an unlawfully discriminatory reason. Long absence through sickness from which the claimant would never be returning, and the sheer effort required to deal with the claimant's correspondence and complaint, and exasperation at the way the claimant would never accept any answer save that which he sought, coupled with his tenacity and persistence, as well as the ever burgeoning area of complaint are all specific to the actions of the claimant not related to the PID, disability or race. Those matters are why he was in the situation, but are not relevant to how – the manner or the way – he pursued those matters."
> …..
>
> "191. … We think the claimant is correct in saying that the events of 06th October 2006, and the use of the regulation 7 procedure in the Police Regulations 2003 (as amended by the Police (Amendment) (Number 2) Regulations 2006) was entirely down to the relentless campaigning of the claimant over the preceding four or five years. These are matters of public interest disclosures, but the reason the Force was so disposed was because of the way the claimant acted rather than the fact of the public interest disclosures. The public interest disclosures themselves were initially welcomed; and we simply do not believe that many members of the Force and of the Authority, including Karen Scipio of the Hampshire Black Police Force Association, Ahmed Ramiz from a neighbouring force, the IPCC and the Home Office all took against the claimant because of those disclosures, or because of his mental health. Throughout, we have asked ourselves the question whether any fact is "in no sense whatsoever" connected with those disclosures, race or disability, and we have dealt with this earlier. Without the disclosures there would not have been the campaign by the claimant, but it is the claimant's campaign to right the wrongs which he considered he had disclosed that was the problem, and not the disclosures themselves. Further disclosures about failure to act properly about the first disclosures simply give us a Russian doll or (as the respondent's counsel suggested) an onion analogy, or perhaps an image of a person standing between two facing parallel mirrors with endlessly repeating

> images into infinity. The claimant's documents simply built one upon another allegation compounding upon allegation until a total of 50 allegations were reached, and that was before the Authority's hearing of 15th February 2008. We have concluded that it would be perverse to describe this as a causative link. Rather it was a preface to the story about which we have heard."

22. In relation to dismissal, the tribunal refers to the way (set out in paragraph 10) in which Mr Panayiotou had put his argument namely that:

> "…he was "viewed as being "problematic" due to his unwillingness to ignore serious errors being committed by his colleagues in their duties and his persistence in seeking to address those matters at the highest level where necessary."

23. At paragraph 202, the tribunal said this:

> "…It was this persistence, and addressing those matters in the way that he did, that caused him the problems that he has had. The use of the regulation 7(6) procedure was, we think, a device to get rid of the claimant. It cut off an appeal to the independent panel that would consider the matter quasi judicially which would inevitably follow use of the conduct regulations. However we do not think it was because of public interest disclosures or disability or race for the same reasons we given earlier."

24. At paragraphs 208 and 209, the tribunal said this:

> "208. We have great personal sympathy with the claimant, although we have not accepted his evidence in two particular regards, and while we note that there is an extant dishonesty conviction, we found him sincere. We think that he is correct in his beliefs that he was targeted by the Force from the summer of 2006 until his dismissal on 15th February 2008, and that the Authority was a rubber stamp. The difference between his view and ours is that we do not think this was because of his public interest disclosures, or because of his disability (or because his disclosures were about race, in part). It was because of the way he went about matters, and that this may well be because of mental health difficulties does not enable any of the claims to succeed."
>
> **"209. Our key finding is that (in short) the claimant had become completely unmanageable, and this was the reason he was treated as he was, and that was causally unconnected with unlawful discrimination or public interest disclosures (and race)."**

25. In relation to its review of the individual allegations involving the claim of victimisation on the ground of race, the tribunal said this at paragraphs 184 and 185:

> "184….. – revoking the business interest permission on the claimant's arrest on 06th October 2006 had nothing at all to do with matters connected with race."
>
> "185 The same is true concerning the rest of the allegations in this section. Refusal to consider the application of 25th June 2007 (93.1(g)) was not a fair decision, but it was made not because the claimant had made public interest disclosures, or that such disclosures were partly about race. It was because the senior members of the Force had simply had enough of the claimant telling them how they should be running their Force, how they should deal with matters he raised, and how they should create a role for him though he was simply not able to carry out his duties as a uniformed or CID officer."

26. The tribunal therefore dismissed the claims.

THE LEGAL FRAMEWORK

27. **The Public Interest Disclosure Act 1998** inserted new provisions into the ERA in order to protect individuals who made certain disclosures of information in the public interest. The provisions give protection for employees who make a protected disclosure and who are subjected to a detriment or dismissed.

28. In relation to subjecting an employee to a detriment, section 47B(1) of ERA provides that:

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

29. A protected disclosure is a qualifying disclosure made by a worker in accordance with any of sections 43C to 43H of ERA: see section 43A. A qualifying disclosure is defined in section 43B(1) as follows:

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

30. Sections 43C-H prescribe the persons to whom, or the circumstances in which, a disclosure is to be made if it is to be a protected disclosure. In addition, each subsection requires that the worker is making the disclosure "in good faith".

31. Section 43L provides that any reference to disclosure of information has effect if the person receiving the information is aware of it, as a reference to bringing the information to that person's attention.

32. Section 48(2) of ERA provides that on a complaint, amongst other things, that an employee has been subjected to a detriment in contravention of section 47B of ERA:

> "it is for the employer to show the ground on which any act, or deliberate failure to act, was done."

33. The Court of Appeal in **Fecitt v NHS Manchester (Public Concern at Work intervening)** [2012] ICR 372, deals with the question of causation. Elias L.J., with whom the other members of the Court agreed, held at paragraph 45 that:

> "…section 47B will be infringed if the protected disclosure materially influences (in the sense of being more than trivial influence) the employer's treatment of the whistleblower."

34. Underlying the adoption of that test was the view expressed by Elias L.J. at paragraph 43 that:

> "…unlawful discriminatory considerations should not be tolerated and ought not to have any influence on an employer's decisions. In my judgment, that principle is equally applicable where the objective is to protect whistleblowers, particularly given the public interest in ensuring that they are not discouraged from coming forward to highlight potential wrongdoing."

35. This was the test applied by the employment tribunal in relation to the claim that Mr Panayiotou had suffered a detriment on the ground that he had made a public interest disclosure. It asked if the public interest disclosure was more than a trivial component of the reason for the employer's action: see paragraph 15 of the tribunal's reasons.

36. In relation to dismissals, section 103A of ERA provides that:

> "An employee who is dismissed shall be regarded for the purpose of this Part as unfairly dismissed if the reason (or if more than one, the principal reason for the dismissal is that the employee made a protected disclosure".

37. It is for the employer to show the reason, or if more than one, the principal reason for the dismissal: see section 98(1) of ERA.

38. The third area of law relevant to this appeal is section 2 of "the 1976 Act" which was the provision in force at the material time. That section concerned discrimination against a person (described as the person victimised). That discrimination, or victimisation, will be unlawful if it involves less favourable treatment by reason of the fact that the person victimised has done one of the acts falling within section 2 of the 1976 Act. It was accepted that Mr Panayiotou had done an act which brought him within the protection of section 2. The essential question was whether any treatment he had been subjected to was by reason of that fact. In that regard, the relevant question was why was Mr Panayiotou subjected to the treatment that he was: was it on grounds related to race or was it for some other reason: see the observations of Lord Nicholls in **Nagarajan v London Regional Transport** [1995] ICR 877 at page 884E to G.

THE ISSUES

39. Against that background, I turn to the issues that arise on this appeal. There is one ground of appeal, namely that the tribunal made an error of law :

> "in finding that the claims of detriment, victimisation and whistleblowing failed because the "*fact of a disclosure is overtaken by the campaign of the disclosure*"

40. It is said that there are five interlocking reasons supporting that ground. In the light of the ground of appeal, as developed in the Appellant's skeleton argument and oral arguments, the following principal issues arose:

(1) did the tribunal conclude that, once the employee had made a number of protected disclosures, there came a time when subsequent disclosures of information were not protected disclosures but were part of a campaign so that any actions of the employer influenced by those later disclosures of information would not involve a breach of section 47B of ERA?

(2) was it permissible for the tribunal to conclude that the particular features of the way in which Mr Panayiotou pursued his complaints could be separated from the fact that he had made protected disclosures and to conclude that the actions were done by reason of the former not the latter and so did not involve a breach of section 47B of ERA?

(3) for the purposes of section 2 of the 1976 Act, and particularly having regard to the treatment described in paragraph 60 of the tribunal's reasons, did the tribunal correctly consider why Mr Panayiotou was subjected to the treatment and whether that was in no sense whatsoever connected with the doing of protected acts or did it apply a different, and incorrect test?

(4) for the purposes of section 47B of ERA, did the tribunal apply the correct test, namely that the making of protected disclosures need form only more than a trivial component of the reasons for the employer's actions, or did it apply a different and incorrect test? and

(5) was the decision that the reason, or the principal reason, for the dismissal was not the protected disclosures perverse or otherwise unlawful?

ANALYSIS

The First Issue

41. The first issue concerns the question of whether the employment tribunal took the view that there came a time when, as Mr Panayiotou had raised a number of protected disclosures previously, any subsequent disclosures of information did not need to be treated as protected disclosures so that actions of the employer influenced by those later disclosures did not involve a breach of section 47B of ERA. If the tribunal had, as a matter of law, adopted that approach, it would have erred. Later qualifying disclosures of information would not as a matter of law cease to be protected disclosures merely by reason of the fact that a claimant had made earlier protected disclosures. The real issue in relation to this ground of appeal is whether or not the tribunal did make that error.

42. Ms Apps, on behalf of Mr Panayiotou, placed particular reliance on one sentence of paragraph 64 of the decision, namely the reference to there coming a point in time when the fact of the disclosure was overtaken by the campaign of the discloser. Ms Apps invited me to read that as an indication that the employment tribunal concluded that there came a time after which any subsequent disclosures of information were not treated as protected disclosures meriting the protection afforded by the relevant provisions of ERA. Ms Apps, in effect if not in terms, invited me to treat the reference to the "campaign of the discloser" as being a reference to the possibility that disclosures of information which, in law amounted to protected disclosures, were not treated as such by the tribunal. On that basis, it was submitted that the tribunal erred in concluding that the actions of the employer were not influenced by the making of protected disclosures.

43. Decisions of employment tribunals should be read fairly, as a whole and in context. It will rarely, if ever, be appropriate to consider a phrase, or even a paragraph, of a decision in

isolation. It will not be appropriate to subject phrases in a decision to the degree of rigorous scrutiny used in relation to determining the proper interpretation of particular words of a statute. A decision must contain "an outline of the story" giving rise to the claim, the basic factual conclusions of the tribunal and a statement of the reasons for the tribunal's conclusions (see per Bingham LJ **Meek v City of Birmingham District Council** [1987] IRLR 250 at page 251) and should be approached on that basis.

44. In the present case, reading the decision of the tribunal as a whole, the tribunal was seeking to draw a distinction between the fact of making protected disclosures and the manner or way in which Mr Panayiotou subsequently pursued the issues raised. The tribunal found that the employer was motivated by the fact that Mr Panayiotou would campaign relentlessly if he were not satisfied with the action taken following his protected disclosures. That theme emerges repeatedly as indicated from the passages set out above. It was the fact that Mr Panayiotou would never accept any answer save that which he sought, and the sheer effort required to deal with the correspondence which he generated and the further complaints he made if he were not satisfied with the action taken, together with his long absence from sickness from which he would not be returning, which explained why the employer acted as it did. The tribunal was not purporting to say that, simply because Mr Panayiotou had made a number of repeated disclosures, qualifying disclosures after a particular time were not to be treated as protected disclosures. It was contrasting protected disclosures with the campaign that followed. It was not saying that disclosures of information, made as part of a campaign, could not be protected disclosures.

45. Even reading paragraph 64 alone, it is clear that the tribunal was seeking to distinguish between the making of protected disclosures and the amounts of management time being taken up by Mr Panayiotou, together with the fact that he had ceased to function as a police officer.

Read with paragraph 66, it is clear that the tribunal were distinguishing between the fact that Mr Panayiotou had made protected disclosures and the fact that, unless they were dealt with in the way that he wished, then he would not rest until he had altered that course of action. The "campaign" referred to was not the making of protected disclosures to ensure that information was drawn to the attention of his employers. It was the continued attempts made by Mr Panayiotou to ensure that all complaints were dealt with in the way that he considered appropriate. That features, too, in paragraph 191 of the decision of the tribunal which Ms Apps also submits indicates that the tribunal took an incorrect approach. In that paragraph, the tribunal were recognising that, if Mr Panayiotou made a protected disclosure, and if it were not dealt with as he wished, then he would continue to make further complaints about the failure to act properly, as he saw it, about the disclosure. The tribunal were not saying that Mr Panayiotou had made a number of protected disclosures and so, after a particular time, any further disclosures of information would not be protected. Rather, they were making a distinction between the making of a protected disclosure (that is, the disclosure of information indicating that one or more of the specified state of affairs referred to in section 43B of ERA may exist) and the way in which Mr Panayiotou dealt, subsequently, with matters when the employer did not respond to the information in the way that he, Mr Panayiotou, considered appropriate.

46. Ms Apps also submitted that the tribunal had erred when it said in paragraph 189 of its decision that the fact that Mr Panayiotou continued to make protected disclosures was "*not relevant*" to whether detriments were imposed, or Mr Panayiotou dismissed wholly or principally, for the reason of the protected disclosures (see paragraph 37 of the Appellant's skeleton argument). In fact, this is not what the tribunal said in paragraph 189. The tribunal was seeking, as is clear from the paragraph itself, to distinguish between the making of the protected disclosures and the combination of long absence together with the sheer effort of dealing with Mr Panayiotou's correspondence and complaints and the exasperation at the way in which he

would never accepted any answer save that which he sought. The tribunal was saying no more than the protected disclosures were the reason why Mr Panayiotou was in the situation which he was (that is, it provided the historic background) but they were not relevant to "the manner or the way" that he pursued those matters.

47. This matter is put beyond doubt when the decision is read as a whole. The summary, the comments on the historical narrative, and the review of the allegations all make it clear that the tribunal is not saying that there comes a time when the fact that a person has previously made a number of protected disclosures means that any subsequent disclosures are not protected disclosures. Rather, the tribunal is seeking to distinguish between the fact of making protected disclosures and the fact that the employee had "become completely unmanageable" because of the way in which he would not accept any answer other than that which he considered appropriate and the exasperation and time taken in dealing with that situation. The tribunal did not make the error alleged.

The Second Issue

48. The second issue emerged more fully in argument. In essence, Ms Apps submitted that it was not permissible in principle, or would be perverse on the facts of this particular case, for the tribunal to draw a distinction between the fact of making protected disclosures and the reaction of the employer to those protected disclosures. In essence, Ms Apps submitted that one could not separate out the fact of making a protected disclosure from the frustration of the employer at having to deal with the disclosures or the campaign to right the wrongs that Mr Panayiotou perceived had not been corrected. The tribunal, it was submitted, considered that the frustration of the employer at having to deal with the repeated protected disclosures did play a more than trivial part in the decision of the employer to submit Mr Panayiotou to the identified detriments. Consequently, it was submitted, that was sufficient to establish a breach of section

47B of ERA. Similarly, that frustration was the principal reason for the dismissal and so there was a breach of section 103A of ERA. Ms Apps relied, in particular, on the recent decision of the Employment Appeal Tribunal in **Woodhouse v West North West Homes Leeds Ltd** [2013] IRLR 773.

49. First, as a matter of statutory construction, section 47B of ERA does not prohibit the drawing of a distinction between the making of protected disclosures and the manner or way in which an employee goes about the process of dealing with protected disclosures. A protected disclosure is "any disclosure of information" which in the reasonable belief of the employee tends to show the existence of one of the state of affairs specified in section 43B(1) of ERA, e.g. that a criminal offence has been or is being committed or that a person is failing or is likely to fail to comply with a legal obligation or that a miscarriage of justice has occurred, is occurring or is likely to occur. There is, in principle, a distinction between the disclosure of information and the manner or way in which the information is disclosed. An example would be the disclosing of information by using racist or otherwise abusive language. Depending on the circumstances, it may be permissible to distinguish between the disclosure of the information and the manner or way in which it was disclosed. An employer may be able to say that the fact that the employee disclosed particular information played no part in a decision to subject the employee to the detriment but the offensive or abusive way in which the employee conveyed the information was considered to be unacceptable. Similarly, it is also possible, depending on the circumstances for a distinction to be drawn between the disclosure of the information and the steps taken by the employee in relation to the information disclosed.

50. Secondly, that distinction accords with the existing case law which recognises that a factor which is related to the disclosure may be separable from the actual act of disclosing the information itself. In **Bolton School v Evans** [2007] ICR 641, the Court of Appeal recognised a

distinction between disclosing information – in that case, that the school's computer system was not secure - and the fact that the employee hacked into the computer system in order to demonstrate that the system was not secure. Disciplining the employee on the ground that he had engaged in unauthorised misconduct by hacking into the computer system did not involve subjecting the employee to a detriment on the grounds that he had made a protected disclosure. The conduct, although related to the disclosure, was separable from it. The Court of Appeal noted, however, that a "tribunal should look with care at arguments that say that the dismissal was because of acts related to the disclosure rather than because of the disclosure itself" (see the comments of Buxton LJ at [2007] ICR 641 at paragraph 18).

51. The Employment Appeal Tribunal reached a similar conclusion in **Martin v Devonshires Solicitors** [2011] ICR 352. That case concerned discrimination contrary to section 4 of the **Sex Discrimination Act 1975** (essentially victimisation of a person for doing a protected act) rather than the provisions governing protected disclosures under ERA. The principle is, however, similar. The appellant in that case had made allegations of sex discrimination against two partners in the firm of solicitors involved. The statements were in fact untrue. However, the appellant, who had mental health difficulties, did not appreciate that they were untrue. The fact that the appellant had done protected acts, in that case making complaints of sex discrimination, formed part of the facts leading to her dismissal. The reason why the employer dismissed the appellant, however, was not the making of those complaints but rather the fact that the complaints involved false allegations which were serious, that they were repeated, that the appellant refused to accept that they were untrue and that she had a mental condition which was likely to lead to unacceptably disruptive conduct in future. The reason for the dismissal was that the appellant was mentally ill and the management problems to which that gave rise. The Employment Appeal Tribunal accepted that the reason for the dismissal constituted:

> "a series of features and/or consequences of the complaint which were properly and genuinely separable from the making of the complaint itself. Again, no doubt in some circumstances such a line of argument may be abused; but employment tribunals can be trusted to distinguish between features which should and should not be treated as properly separable from the making of the complaint."

52. Those authorities demonstrate that, in certain circumstances, it will be permissible to separate out factors or consequences following from the making of a protected disclosure from the making of the protected disclosure itself. The employment tribunal will, however, need to ensure that the factors relied upon are genuinely separable from the fact of making the protected disclosure and are in fact the reasons why the employer acted as it did.

53. That conclusion is not, in my judgment, altered by the decision in **Woodhouse v West North West Homes Leeds Ltd** [2013] IRLR 773. That case involved alleged victimisation. The appellant had lodged a series of grievances alleging racially discriminatory conduct against himself. The grievances had been investigated and ruled to be unfounded. The appellant, however, remained of the view that he had been subjected to racially discriminatory conduct and the fact that his grievances had been rejected reinforced that conclusion in his mind. The employer decided to dismiss the appellant. The appellant had always done his job properly and there were no doubts about his abilities when performing his job and that was not the reason for the dismissal. Rather, the tribunal found that the reason for the dismissal was that the employer considered that the appellant was convinced that the managers were treating him in a racially discriminatory fashion and so concluded that he, the employee, had lost trust and confidence in the employment relationship. The Employment Appeal Tribunal considered that, on the facts, there were no features which were separable from the fact of making the grievances. The features relied upon by the employer involved a view of the appellant's subjective state of mind and the possibility that he may make further complaints in future. In reality, the Employment Appeal Tribunal considered that, on an analysis of the tribunal's findings the reason for the dismissal, described in terms of a loss of confidence and trust by the employee in the

employment relationship, was the fact that the appellant had made complaints of racial discrimination. The factors relied upon were not therefore properly separable on the facts of that case from the doing of the protected acts.

54. The Employment Appeal Tribunal in **Woodhouse** suggested that, in such cases, it would only be exceptionally that the detriment or dismissal would not be found to be done by reason of the protected act. In my judgment, there is no additional requirement that the case be exceptional. In the context of protected disclosures, the question is whether the factors relied upon by the employer can properly be treated as separable from the making of protected disclosures and if so, whether those factors were, in fact, the reasons why the employer acted as he did. In considering that question a tribunal will bear in mind the importance of ensuring that the factors relied upon are genuinely separable and the observations in paragraph of 22 of the decision in **Martin v Devonshire Solicitors** [2007] ICR 352 that:

> "Of course such a line of argument is capable of abuse. Employees who bring complaints often do in ways that are, viewed objectively, unreasonable. It would certainly be contrary to the policy of the anti-victimisation provisions if employers were able to take steps against employees simply because in making a complaint they had, say, used intemperate language or made inaccurate statements. An employer who purposes to object to "ordinary" unreasonable behaviour as that kind should be treated as objecting to the complaint itself, and we would expect tribunals to be slow to recognise a distinction between the complaint and the way it is made save in clear cases. But the fact that the distinction may be illegitimately made in some cases does not mean that it is wrong in principle."

55. In the present case, the employment tribunal drew a distinction between the fact of making the protected disclosures and other features of the situation which were related to, but were separable from, the fact that Mr Panayiotou had made protected disclosures. The tribunal explained in its summary that unless matters were handled as Mr Panayiotou believed they should be, he would not rest until he had altered that course of action. If he did not agree with the way that a disclosure was handled, he would simply complain about that as well. By the time of his dismissal, he was occupying huge amounts of management time and, for medical reasons, was no longer able to function. As the tribunal said in their review of the allegations,

the reason why the employer acted as it did was not in any sense whatsoever for an unlawful discriminatory reason. It was a combination of long absence through sickness, from which Mr Panayiotou would never return, coupled with the sheer effort of dealing with the correspondence and complaints and the exasperation that Mr Panayiotou would never accept any answer save that which he sought. It was the combination of his long term absence and the way in which he pursued his views which was the reason for the employer's actions. As the tribunal put it in what it describes as its key finding, Mr Panayiotou "had become completely unmanageable".

56. In my judgment, it was permissible for the tribunal to treat the particular features of this case, and the consequences of the complaints that had been made, as separable from the fact that Mr Panayiotou had made protected disclosures. The tribunal were entitled on the material before it to conclude that the reason why the employer acted as it did was not the making of the protected disclosures but those other separable features. There was ample evidence before the tribunal which entitled them to reach that conclusion. Furthermore, the tribunal was careful in deciding which evidence, and which parts of the evidence given by particular witnesses, they believed. The tribunal did not accept parts of the evidence put forward on behalf of the employer. It went on carefully to consider the motivation for the employer's actions. It considered carefully the question of whether the making of protected disclosures was the reason for the employer's actions and concluded that it was not. By way of example only, the tribunal considered the impact of particular disclosures in the section detailing the narrative history of matters. It referred, for example, to the fact that Mr Panayiotou was not subjected to any detriment in relation to the initial disclosures and, indeed, the force continued to be helpful to him with his business interests between 2001 and 2006 (see paragraph 92 of the decision). It inferred from that that the making of those protected disclosures was not the reason why the employer acted as it did. Again, by way of example, the tribunal considered further protected

disclosures that Mr Panayiotou made in relation to a potentially racially motivated attack in October 2005. It considered that that was a background factor and was indicative of the fact that Mr Panayiotou was not being taken seriously by that time about any matter that he raised. It did not consider, however, that the making of that protected disclosure was the reason why Mr Panayiotou was subject to any of the detriments forming part of the claim (beginning with the revocation of the permission to hold any business interest on 6 October 2006). There was therefore no error on the part of the tribunal in their consideration of why the Respondents acted as they did.

The Third Issue

57. The third issue concerns the test or the approach taken by the tribunal to the claim that Mr Panayiotou had been the subject of discrimination on grounds related to race contrary to section 2 of the 1976 Act. At paragraph 41 of Mr Panayiotou's skeleton argument, the matter is put on the basis that the tribunal did not consider at paragraph 183 of its decision whether the detriments and dismissals (referred to in paragraph 60 of its reasons) were in no sense whatsoever to do with the fact that Mr Panayiotou had reported racial incidents. The skeleton argument draws particular attention to paragraph 119 of the tribunal's decision which referred to the fact that Mr Panayiotou had complained that one officer, DC Wright, had allegedly used racially inappropriate language when referring to a particular ethnic group.

58. The tribunal referred at paragraph 15 of its decision to certain cases to which it had been referred. In so far as the tribunal dealt there with one case dealing with victimisation, its comments are not clear and may not be accurate. It is, however, essential to read the decision as a whole and to consider the reasons for the conclusion that the fact that Mr Panayotiou had done a protected act for the purposes of section 2 of the 1976 Act was not the reason for subjecting him to any detriment or for dismissing him.

59. In the summary of its reasons, the tribunal conclude that the fact that race was the subject of some of the disclosures did not have anything to do with anything that had happened. In relation to paragraph 119, which appears in the narrative section dealing with the allegations relating to DC Wright's alleged use of inappropriate language, the tribunal concludes that the officers concerned were "motivated by a dislike of the claimant for reasons totally unconnected with public interest disclosure or disability, and only tangentially with race". That, read fairly, is an indication that the reason for their motivation is dislike of Mr Panayiotou and not race. The reference to being tangentially connected with race reflects the fact that one of the complaints he made about DC Wright related to remarks allegedly made which were inappropriate on racial grounds not because any factors to do with race affected the reason why DC Wright acted as he did. That is put beyond doubt in the tribunal's review of the individual allegations at paragraphs 184 to 186 of its reasons. The tribunal make it clear that the detriments that were the subject matter of the claim had nothing to do with race but were imposed for other reasons. The same applies in relation to the finding in relation to dismissal: see paragraph 202 of the decision. The complaint that the tribunal did not consider or analyse whether the detriments or dismissal were in no sense whatsoever to do with race is not made out. In its summary, in its narrative of the history and in its review, the tribunal considered whether the actions of the Respondents or the dismissal was done by reason of matters related to race and concluded that the treatment of Mr Panayiotou had nothing at all to do with matters connected with race. There is therefore no error in their approach to the claim under section 2 of the 1976 Act.

The Fourth Issue

60. The fourth issue concerns the submission that, when considering Mr Panayiotou's claim that he had been subjected to detriments on the ground that he had made protected disclosures,

the tribunal, in paragraph 191 elided the correct test with an incorrect test. The correct test is whether the protected disclosure formed a more than trivial component reason for the employer's actions. That is the test that the tribunal applied when reading the judgment fairly, as a whole and in context. The suggestion is that the tribunal erred and switched to a different, and impermissible test, of asking whether but for the protected disclosures the detriments would not have been imposed. Ms Apps sought to derive support for that submission by referring to the final sentence in paragraph 191 where the tribunal says that it would be perverse to describe the fact that it found as establishing a "causative link". It is clear, reading the judgment as a whole, that the tribunal approached the matter on the correct basis and used the phrase "causative link" as a shorthand description of that test. It was not seeking to substitute a different and impermissible test. There was no error on the part of the tribunal in relation to this matter.

The Fifth Issue

61. The fifth issue was only referred to briefly in paragraph 52 of Mr Panayiotou's skeleton argument and oral submissions. The gist of the complaint was that the investigatory process which led to Mr Panayiotou's dismissal was commenced or pursued by some of the officers involved, particularly it seems at the early stage, for a reason which was wholly or principally the fact that Mr Panayiotou had made protected disclosures. The implication is that later stages in the process would be tainted indirectly, even if not directly, by the fact that protected disclosures had been made and that was sufficient for a finding that the dismissal was automatically unfair by reason of section 103A of ERA. The fact is that the tribunal, in my judgment, did not find that any of the actions taken by any of the officers involved at any stage, or by the second Respondent when approving the recommendation for dismissal, were motivated by the fact that Mr Panayiotou had made protected disclosures. Consequently, this issue does not arise on the facts of this case.

ANCILLARY MATTERS

62. At various stages, a number of points were raised on behalf of Mr Panayiotou and a number of paragraphs of the decision of the tribunal were referred to. In this judgment, I have sought to deal with those points that it is necessary to consider in order to determine whether the ground of appeal, and the issues raised, were made out. I have not referred to each and every point made. Mr Panayiotou, and the Respondents, can, however, be assured that all the points raised, and all the material referred to, were considered. None of the points raised on behalf of Mr Panayiotou demonstrate any error or failure on the part of the tribunal.

CONCLUSION

63. The tribunal did not conclude that the fact that Mr Panayiotou had made a number of repeated disclosures in the past meant that subsequent disclosures of information were not protected. Rather the tribunal considered that the reasons for the actions of the Respondents were the combination of the period of time that Mr Panayiotou had been absent from work, coupled with the way in which he pursued his complaints. He had, for the reasons set out in the tribunal's judgment, become completely unmanageable. The tribunal was entitled to conclude that those particular features of this case, and the consequences of the way in which Mr Panayiotou pursued his complaints, were separable from the fact that he had made protected disclosures and that the employer acted as it did because of those factors. The tribunal did not err in its approach in deciding that Mr Panayiotou had not been subjected to detriments on the grounds that he had made protected disclosures or in deciding that the reason or principal reason for his dismissal was not the fact that he had made such disclosures. The tribunal did not err in its approach in finding that the dismissal and the detriments to which he was subjected had nothing at all to do with matters related to race. For those reasons, this appeal is dismissed.