EMPLOYMENT TRIBUNALS

Claimant: MRS BEE ANTHONY

Respondents: (1) GLYN RICHARD MEACHER-JONES

(2) MR DAVID MEACHER-JONES

(3) MEACHER JONES AND CO LIMITED

(4) MRS DAVINA MARJORIE MEACHER-JONES

(5) CHESTER BUSINESS SERVICES LIMITED

HELD AT: Liverpool **ON:** 7, 8, 9, 10, 11 & 14 August 2017.

BEFORE: Employment Judge Shotter

MEMBERS: Ms J Esme-Power
Ms D Kelly

REPRESENTATION:

Claimant: In person
Respondents: Mr Flynn, counsel

RESERVED JUDGMENT

The unanimous judgment of the Tribunal is as follows: -

1. The claimant's complaint of detriment numbered 1, 2 and 4 brought under Section 47B of the Employment Rights Act 1996 as amended, were not presented before the expiry of the statutory limitation period, the Tribunal was satisfied that it was reasonably practicable for the complaint to be

presented before the end of that period, it does not have the jurisdiction to consider complaints numbered 1, 2 and 4, which are dismissed. In the alternative, had complaint numbered 1, 2 and 4 been brought within the statutory time limit, the claimant was not subjected to any detriment by any act, or any deliberate failure to act, by the first, second or third respondent done on the ground that the claimant had made a protected disclosure and the claimant's claim for detriment numbered 1 to 5 brought against the first, second and third respondent in accordance with Section 47B Employment Rights Act 1996 as amended is not well founded and is dismissed.

2. The claimant's complaint of detriment numbered 3 and 5 brought under Section 47B of the Employment Rights Act 1996 as amended, were part of a series of similar acts, there was a continuous act and the complaints were presented before the expiry of the statutory limitation period, the Tribunal does have the jurisdiction to consider complaints numbered 3 and 5. In relation to complaint numbered 3, 5 and 6 the claimant was not subjected to any detriment by any act, or any deliberate failure to act, by the first, second or third respondent done on the ground that the claimant had made a protected disclosure.

3. The claimant's claim for detriment numbered 3,5 and 6 brought against the first, second and third respondent in accordance with Section 47B Employment Rights Act 1996 as amended is not well founded and is dismissed.

4. The claimant was not a worker employed by the fourth and/or fifth respondent and her claims for detriment brought against the fourth and/or fifth respondent in accordance with Section 47B Employment Rights Act 1996 as amended is not well founded and is dismissed.

5. The fourth and/or fifth respondent was not an agent of the third respondent acting with the third respondent's authority and the claimant's claim for detriment brought against the fourth and/or fifth respondent in accordance with Section 47B Employment Rights Act 1996 as amended is not well founded and is dismissed.

6. The claimant did not satisfy the conditions set out in Section 43G(1) of the Employment Rights Act 1996 and she did not make a qualifying disclosure in respect of the first respondent acting in his capacity as director of the third respondent, the fourth respondent and the fifth respondent, and her claim brought under Section 47B are dismissed.

REASONS

Preamble

1. By a claim form received on 12 August 2016 against the first, second and third respondent (date of receipt by ACAS of the EC notification 14 June 2016, date

of issue by ACAS of Early Conciliation Certificate ("ECC") 15 June 2016) the claimant alleged she had continued to suffer detriments after she had resigned from her employment with the third respondent alleging it had "persistently delayed" in buying out her shareholding without justification; failed to provide annual accounts or respond to an inquiry whether the company was being run lawfully and this resulted in a second protected disclosure to ICAEW on 22 August 2015. The claimant is seeking damages in the region of £7.2 million pounds having been offered £65,000 on an open basis to settle.

2. The claimant's claims were further clarified at a case management preliminary hearing that took place on 14 October 2016 and issues to be determined at liability hearing were agreed. These issues have been subsumed into those set out below.

3. It is notable nowhere in her claim form did the claimant assert she was an employee or worker of Chester Business Services, and nor did she claim the fourth respondent (who was joined later in the proceedings) was an employee, worker or agent of the third respondent. The claimant's position, accepted by the respondent, was that of an employee/worker of the third respondent.

4. The respondents deny the claimant's claims, maintaining the first respondent was not an employee, director or worker of the third respondent and should not be a named party. It pleaded many of the claimant's allegations were in connection with the first and fourth respondent in their capacity as directors of the fifth respondent, and neither were employees or workers of the third respondent. It was denied the claimant suffered a detriment and out of time jurisdictional issues were raised.

5. At a preliminary hearing held on 14 October 2016 the time limit in respect of allegation detriment 6 was extended, and time limits in respect of the earlier alleged detrimental acts were to be dealt with at the liability hearing once all of the evidence had been heard. Time limits were considered at this liability hearing as set out below.

6. At a further preliminary hearing held on 5 December 2016 detriment one was amended to an allegation that the third respondent failed to disclose information requested by the claimant in her letter dated 11 June 2015, contrary to section 48(1) of the Employment Rights Act 1996 as amended ("the ERA").

7. The claimant lodged further information concerning the claims and evidence in support of her application to amend her claim and join the fourth and fifth respondent. She maintained the following:

6.1 The fourth respondent was an employee of the third respondent working as an administrator for the third respondent under the claimant's supervision.

6.2 The fourth respondent was included in the holiday planner and organisational chart, and the fourth respondent had submitted a witness statement in previous Employment Tribunal proceedings case number 2103196/2014 describing herself as an employee of the third respondent.

6.3 The detriments claimed against the fourth and fifth respondent are those numbered 3, 5 and 6 in the 14 October 2016 preliminary hearing; as recorded below.

6.4 The claimant was a worker in the fifth respondent "throughout my employment with the third respondent", a company allegedly managed by her and the second respondent, and the fifth respondent's clients were engaged either by the second respondent or the claimant.

6.5 All client work within the fifth respondent was carried out by staff employed by the third respondent.

6.6 The claimant received commission from clients engaged by her on behalf of the fifth respondent "similar to the amount agreed in my contract of employment with the third respondent" included in her payslip as one figure generated by a separate calculation derived from the third and fifth respondent's sales ledgers.

8. In the response to the claimant's application to amend her claim filed on behalf of the fourth and fifth, it was denied the claimant was a worker in the fifth respondent; the claimant cannot be an employee of the third respondent (a fact not disputed between the parties) and a worker in the fifth respondent throughout her employment with the third, averring the statement was contradictory and did not fall within the definition of worker set out in S.230(3)(b) and 43K ERA. The position of the fourth and fifth respondent was that the fifth respondent was a client of the third respondent and visa-versa, and the claimant was not engaged by the fifth respondent, a separate corporate legal entity who cannot be a worker and be engaged in employment under S.47B(1A)(a) ERA), in a manner described by S.43K, and who had no control of the claimant's working practices.

9. On 24 January 2017, the claimant was granted permission to add the fourth and fifth respondent as named respondents. During the hearing the claimant agreed the issues as those set out in the judgment sent to the parties on 2 November 2016, which referred to post termination victimisation following a protected disclosure made during the course of employment. There was no reference to a protected disclosure having been made after termination of employment. The case management summary recorded the claimant's primary case was not that she was a worker for the fifth respondent; whether she was a worker was to be determined at this liability hearing.

10. In the fourth and fifth respondent's response (it was not expressly filed on behalf of the first respondent, who was a director of the fifth respondent) a number of points were raised in addition to the earlier response to the claimant's application to amend her claim. An explanation was given why the fourth respondent had confirmed previously in a witness statement she was an employee of the third respondent, and the Tribunal heard oral evidence in this regard, which has been dealt with below. In short, it was maintained the claimant was a worker for the third respondent only, she had no control over the running of the fifth respondent and the letters that allegedly caused the claimant a detriment (which was disputed) were written by the fourth respondent on behalf of the fifth respondent.

11. At a preliminary hearing held on 28 April 2017 an order for specific discovery was made via a number of case management orders. At this liability hearing the Tribunal was concerned with case management orders 2, 3 & 7 namely, the fifth respondent shall provide details of its professional indemnity insurance covering the years from 1 April 2012 to 31 March 2016, details of its registration as a tax agent with HMRC. The second respondent was ordered to provide the metadata in respect of an email sent by the claimant to the second respondent on 30 May 2014 at 16.15.20 from her email address to the computer provided for her use when employed by the third respondent and the metadata relating to the email sent by the claimant to her personal address at 16.35.49 on 30 May 2014. The 19 May 2016 was the date for compliance of the orders, the fifth respondent was to comply with order number 2 and presumably order number 3 which reads "respondent" only, and the third respondent order number 7. The failure to comply with the case management orders has been dealt with below.

Agreed issues

12. The issues agreed between the parties are as follows:

The first protected disclosure

2.1 Has the Claimant made a protected disclosure? The Claimant relies upon disclosures made during the course of her employment with the third Respondent as identified in her previous claim and referred to in the present proceedings as the "post-termination protected disclosure." All Respondents admit that this was a protected disclosure which is referred to within these proceedings as the "first protected disclosure."

The second disclosure

2.2 The Claimant relies on an email to the ICAEW on 22 August 2015 as a protected disclosure. The Second and Third Respondents only admit that the email of 22 August 2015 was a protected disclosure. In the relation to the First Respondent, it is admitted that the email is a protected disclosure in relation to the Third Respondent. He does not accept that it is a protected disclosure in his capacity as a director of the Fourth Respondent.

2.3 The Fourth and Fifth Respondents deny that the email of 22 August 2015 is a protected disclosure. They say:

i. It is admitted that the letter is capable of being a qualifying disclosure.

ii. However, they deny that it is a protected disclosure.

iii. The ICAEW is the regulatory body for Chartered Accountants.

iv. None of the First, Fourth or Fifth Respondents are Chartered Accountants.

v. The ICAEW has no legal responsibility for the First, Fourth or Fifth Respondents.

vi. The Claimant was aware that the ICAEW had no legal responsibility for the First, Fourth or Fifth Respondent.

vii. The disclosure of information to the ICAEW was not a disclosure to the Claimant's employer per section 43C ERA.

viii. The disclosure of information to the ICAEW was not a disclosure to a person who has legal responsibility for the alleged actions of the First, Fourth or Fifth Respondent so as to amount to a responsible person under section 43C ERA.

ix. The ICAEW is not a prescribed person for the purposes of section 43F ERA.

Detriments

2. The Claimant alleges that she suffered 6 detriments on the ground that she made a protected disclosure. These are particularised in the order of EJ Horne, dated 14 October 2016. All Respondents deny that the Claimant suffered detriment as a consequence of having made a protected disclosure.

Detriment 1: letter dated 11 June 2015

3. The Claimant alleges that the Third Respondent failed to disclose information requested by her in a letter dated 11 June 2015. The Claimant says that the First and Second Respondent also failed to disclose this information as workers/agents of the Third Respondent.

4. The Tribunal is required to consider:

a. Could the Claimant reasonably perceive the failure to disclose the information as being detrimental to her?

b. If so, can the First, Second and Third Respondents show that the decision not to disclose this information was not influenced significantly by the fact that the Claimant had made a protected disclosure?

i. The First, Second and Third Respondent deny that the decision to withhold information was on the grounds that the Claimant made a protected disclosure.

ii. The First, Second and Third Respondents say that the failure to disclose the information was part of on-going correspondence relating to a shareholder dispute. The First, Second and Third Respondent, following legal advice, believed that the information requested was irrelevant and not disclosable as part of that shareholder dispute.

iii. Further, the First Respondent avers that there is no evidence of his involvement in this process so as to be liable.

c. If the Claimant has suffered detriment on the grounds of having made a protected disclosure, can she prove that the First and Second Respondent were acting as workers for the Third Respondent during the course of their employment and/or agents of the Third Respondent in causing this detriment?

Detriment 2: 10 November 2015 letter from Allington Hughes

5. The Claimant alleges that on 10 November 2015, Allington Hughes, on instructions from the Third Respondent, wrote to the Claimant making detrimental allegations.

6. The Tribunal is required to consider:
   a. Could the Claimant reasonably perceive the passages in the letters as being detrimental to her?

   b. If so, can the Third Respondent show that its instruction to Allington Hughes was not influenced significantly by the fact that the Claimant had made a protected disclosure?

      i. The Third Respondent denies that its instruction to Allington Hughes was on the grounds that the Claimant had made a protected disclosure.

      ii. The Second and Third Respondents say that letter was written as part of on-going correspondence relating to a shareholder dispute, an alleged breach of the Claimant's employment contract and a breach of the COT3 agreement signed on 27 April 2015. The Third Respondent, following legal advice, believed that such claims had merit and was seeking to assert/protect its legal rights.

Detriment 3: letter dated 11 November 2015 to Morris & Co.

7. The Claimant relies upon a letter written by the Fourth Respondent, on the Fifth Respondent's headed paper, dated 11 November 2015 to Morris & Co.

8. The Tribunal is required to consider:

   a. Could the Claimant reasonably perceive the writing of this letter as being detrimental to her?

   b. If so, can the Claimant prove that the First and/or Second Respondent connived with the Fourth and Fifth Respondent to write this letter and in doing so, exercised authority on behalf of the Third Respondent (section 47B(1A)(b)?

i. This is denied by all Respondents.

ii. All Respondent aver that the letter was written by the Fourth Respondent in her capacity as a director of the Fifth Respondent.

c. Alternatively, can the Claimant prove that the Fourth Respondent was a worker for the Third Respondent and that, in writing this letter, she was acting in the course of her employment with the Third Respondent (section 47B(1A)(a)?

i. All Respondents deny that the Fourth Respondent was a worker for the Third Respondent.

ii. Further, all Respondents aver that, even if the Fourth Respondent was a worker for the Third Respondent, the letter was written by the Fourth Respondent in her capacity as a director of the Fifth Respondent and not in the course of her employment with the Third Respondent.

d. Alternatively, can the Claimant prove that she was a worker for the Fifth Respondent and that the Fourth Respondent wrote the letter as an agent/worker of the Fifth Respondent (section 47B(1)?

i. All Respondents deny that the Claimant was a worker for the Fifth Respondent.

ii. It is admitted that the Fourth Respondent wrote the letter as a director of the Fifth Respondent.

e. If the Claimant can show that she has reasonably perceived the letter of 11 November 2015 to be detrimental and that one of paragraphs 8(b) to (d) apply, then can the Respondents (as applicable) show that the decision to write this letter was not influenced significantly by the fact that the Claimant had made a protected disclosure?

i. The Fourth and Fifth Respondent say that the letter was written for the purpose of protecting the Fifth Respondent's business interests. In her email of 4 November 2015, the Claimant had admitted that she had in her possession confidential information belonging to the Fifth Respondent and had made use of this information. The Fourth Respondent believed that the Claimant was guilty of theft. The Claimant had also sought to undermine the First, Fourth and Fifth Respondents reputation in the profession in which they practiced.

ii. The Fourth and Fifth Respondent also aver that the letter was written to the Claimant's employer, Morris & Co to warn them that he Claimant had in her possession confidential client lists

belonging to the Fifth Respondent in the hope of avoiding misuse of said information.

Detriment 4: letter written by Allington Hughes dated 7 December 2015

9. The Claimant avers that on 7 December 2015, Allington Hughes, on instructions from the Third Respondent, wrote to the Claimant making detrimental allegations.

10. The Tribunal is required to consider:

    a. Could the Claimant reasonably perceive the passages in the letters as being detrimental to her?

    b. If so, can the Third Respondent show that its instruction to Allington Hughes was not influenced significantly by the fact that the Claimant had made a protected disclosure?
        i. The Third Respondent denies that its instruction to Allington Hughes was because the Claimant had made a protected disclosure.

        ii. The Third Respondents say that letter was written as part of on-going correspondence relating to a shareholder dispute, an alleged breach of the Claimant's employment contract and a breach of the COT3 agreement signed on 27 April 2015. The Third Respondent, following legal advice, believed that such claims had merit and was seeking to assert/protect its legal rights.

Detriment 5: letter dated 23 December 2015

11. The Claimant relies upon a letter written by the Fourth Respondent to her, on the Fifth Respondent's headed paper, dated 23 December 2015.

12. The Tribunal is required to consider:

    a. Could the Claimant reasonably perceive the failure to disclose the information as being detrimental to her?

    b. Can the Claimant prove that the Fourth Respondent was a worker for the Third Respondent and that, in writing this letter, she was acting in the course of her employment with the Third Respondent (section 47B(1A)(a)?

        i. All Respondents deny that the Fourth Respondent was a worker for the Third Respondent.

        ii. Further, all Respondents aver that, even if the Fourth Respondent was a worker for the Third Respondent, the letter was written by the Fourth Respondent in her capacity as a

director of the Fifth Respondent and not in the course of her employment with the Third Respondent.

c. Alternatively, can the Claimant prove that she was a worker for the Fifth Respondent and that the Fourth Respondent wrote the letter as an agent/worker of the Fifth Respondent (section 47B(1)?

   i. All Respondents deny that the Claimant was a worker for the Fifth Respondent.

   ii. It is admitted that the Fourth Respondent wrote the letter as a director of the Fifth Respondent.

d. If the Claimant can show that she has reasonably perceived the letter of 11 November 2015 to be detrimental and that one of paragraphs 12(b) and (c) apply, then can the Respondents (as applicable) show that the decision to write this letter was not influenced significantly by the fact that the Claimant had made a protected disclosure?

   i. The Fourth and Fifth Respondent say that the letter was written for the purpose of protecting the Fifth Respondent's business interests. In her email of 4 November 2015, the Claimant had admitted that she had in her possession confidential information belonging to the Fifth Respondent and had made use of this information. The Fourth Respondent believed that the Claimant was guilty of theft.

   ii. The Fourth and Fifth Respondent also aver that the letter was written with the intention of securing the return of its confidential information without the need to involve the police.

Detriment 6: letter dated 10 March 2016

13. The Claimant relies upon a complaint made by the Fourth Respondent to the ACCA on 10 March 2016.

14. The Tribunal is required to consider:

a. Could the Claimant reasonably perceive the failure to disclose the information as being detrimental to her?

b. Can the Claimant prove that the Fourth Respondent was a worker for the Third Respondent and that, in making this complaint, she was acting in the course of her employment with the Third Respondent (section 47B(1A)(a)?

   i. All Respondents deny that the Fourth Respondent was a worker for the Third Respondent.

ii. Further, all Respondents aver that, even if the Fourth Respondent was a worker for the Third Respondent, the complaint was made by the Fourth Respondent in her capacity as a director of the Fifth Respondent and not in the course of her employment with the Third Respondent.

c. Alternatively, can the Claimant prove that she was a worker for the Fifth Respondent and that the Fourth Respondent made the complaint as an agent/worker of the Fifth Respondent (section 47B(1)?

i. All Respondents deny that the Claimant was a worker for the Fifth Respondent.

ii. It is admitted that the Fourth Respondent made the complaint as a director of the Fifth Respondent.

d. If the Claimant can show that she has reasonably perceived the complaint to be detrimental and that one of paragraphs 14(b) and (c) apply, then can the Respondents (as applicable) show that the decision to make the complaint was not influenced significantly by the fact that the Claimant had made a protected disclosure?

i. The Fourth and Fifth Respondent say that the complaint was made for the purpose of protecting the Fifth Respondent's business interests. In her email of 4 November 2015 the Claimant had admitted that she had in her possession confidential information belonging to the Fifth Respondent and had made use of this information. The Fourth Respondent believed that the Claimant was guilty of theft.

ii. The Fourth and Fifth Respondent also aver that the complaint was made with the intention of securing the return of its confidential information without the need to involve the police.

Jurisdiction

15. The Claimant's complaint was presented to the Employment Tribunal on 12 August 2016. EJ Horne extended the time for the Claimant to present her claim in relation to Detriment 6. There is no time limit issue in relation to Detriment 6. However, there is in relation to all other Detriment.

16. The Tribunal is required to consider whether any detriments that the Claimant is found to have suffered as a consequence of having made a protected disclosure are part of a series of similar acts or failure to Detriment 6.

a. If they are, then the Claimant's complaints are within time (section 48(3)(a)).

b. If they are not part of a similar series of acts or failures, then they are out of time (section 48(3)(a).

Witness evidence

13. The Tribunal heard evidence from the claimant on her own account, and it heard evidence given on her behalf by Michael Paul Hodgson, Utility Warehouse Broker, and XieHong Lee Hodgson, former sub-contractor marketing executive to the third respondent and wife to Michael Paul Hodgson.

14. On behalf of the third respondent the Tribunal heard from the second respondent, who also gave evidence on his own account. It heard evidence from the fourth respondent who gave evidence on her own behalf and on behalf of the fifth respondent. The Tribunal was not presented with any evidence from the first respondent, who had not provided a witness statement and did not appear to give oral evidence due to ill-health. A medical report dated 20 June 2017 prepared by Dr A McNutt was put before the Tribunal, which it had no reason to question. Dr McNutt confirmed the first respondent was a 75 -year old patient "not medically fit" to attend the hearing. Several long-term medical conditions were listed. The Tribunal, in the light of this medical evidence did not raise adverse inferences by the first respondent's failure to give evidence, satisfied that the fourth respondent, who did give oral evidence on her own account and on behalf of the fifth respondent, was able to deal with all of the agreed issues. There is only one matter which she did not have first hand knowledge of, and that was whether the first respondent had discussed with the second and fourth respondent the fourth respondent's letter sent to Morris & Co complaining about the claimant, and the ensuing correspondence with the claimant sent to her, before May 2016. The fourth respondent's evidence was that he had not, and there was no reason to disbelieve this, even taking into account the family relationship, given the other evidence before the Tribunal.

15. The signed witness statement by Joanne Lark dated 4 July 2016 was put before the Tribunal. Joanne Lark as not called to give oral evidence. The claimant was invited to give an indication of what information in the witness statement she disagreed with in order that the Tribunal could assess what weight to give it. The claimant at first indicated she did not agree with paragraph 5; after an overnight adjournment, she disagreed with the entire statement and submitted the Tribunal should give it no weight. The Tribunal, who considered the statement in detail, has only given weight to evidence which was not disputed by the claimant during these proceedings, namely, paragraphs 1 to 5, 7, 10, 12-15. The remaining paragraphs were given no weight taking into account the claimant's inability to test disputed evidence by cross-examination of Joanne Lark.

16. Turning to credibility, the Tribunal found there were issues in relation to the evidence given by the claimant, Michael Paul Hodgson, XieHong Lee Hodgson and the fourth respondent in respect of their honesty and the cogency.

17. With reference to Malcolm Paul Hodgson when it was put to him on cross-examination the fifth respondent carried out bookkeeping on behalf of the third respondent he agreed and yet there was no mention of this in his witness statement. Mr Hodgson also agreed it was the second respondent on behalf of the third respondent that ordered the review of utilities, and gave him the authority to talk to the fourth respondent alleging it was the fourth respondent "who made the decision."

On being questioned by the Tribunal Mr Hodgson described how he had been given the "impression" the fourth respondent was the decision maker, evidence the Tribunal found was far from persuasive. The Tribunal, preferring the evidence given by the second respondent, found the fourth respondent was not the decision maker, and her role limited to providing details of utility suppliers.

18. Xiegong Li Hodgson, the wife of Malcome Hodgson, was found not to have been a credible witness. She was an inaccurate historian. A key statement in her witness statement was deleted prior to Xiegong Li Hodgson confirming its truth, namely, that she had met the fourth respondent in her capacity as worker for the third respondent a number of times. The statement was amended to never meeting the fourth respondent despite many visits to the third respondent. Xiegong Li Hodgson confirmed in cross-examination the witness statement was written in her own words and the reference to meeting the fourth respondent in the plural was put down to language difficulties. Xiegong Li Hodgson's explanation for the difference was far from credible; she stated that she had heard about the fourth respondent and "thought she must have worked" for the third respondent. This evidence was given in direct contrast to the claimant's closing submission that Malcome Hodgson assisted Xiegong Li Hodgson to prepare her statement, Xiegong Li Hodgson in oral evidence confirmed the "information was my own." There was a direct conflict of evidence between the claimant and her witness, which brought into question the claimant's credibility.

19. The Tribunal found it was not credible Xiegong Li Hodgson first discovered the morning on which she was to give oral evidence under oath that she had "guessed" it was the fourth respondent she had seen whilst visiting the office in Chester. When asked to clarify the position she confirmed; "I realised it was a guess," and the Tribunal took the view her witness evidence was not true and more importantly, the reference in the witness statement to the fourth respondent being a worker of the third respondent could only have been inserted at the request of the claimant as she was the only one who knew the status of the fourth respondent as worker was a key element in this case, Xiegong Li Hodgson's statement having been completed and signed on 29 June 2017. The Tribunal found the credibility of the claimant had been somewhat undermined by the conflicting evidence given by Xiegong Li Hodgson and Malcolm Hodgson, and her illogical explanation for why she delayed making the second disclosure until 22 August 2015 when the chronology recorded it was earlier in November 2013 she "discovered about payroll anomalies", a fundamental issue that undermined her evidence concerning motivation. The Tribunal has dealt further below with the claimant's credibility and its impact on the facts.

20. The Tribunal found the second respondent to have been a credible witness who acknowledged his mistakes and errors, for example, the fact engagement letters were not always sent out by the third respondent despite its obligation to do so, and the fact he had not thought to inform the NatWest bank, who held a debenture over the property leased by the third respondent, that the fifth respondent was also occupying it and paying rent. The Tribunal particularly noted the second respondent's response to questions concerning when he had been informed of the fourth respondent's actions, including the Morris & Co letter and the aftermath to this; from his reaction and demeanour it accepted the second respondent had no

knowledge until May 2016. The Tribunal explored the cogency of that evidence with questions put to the first and fourth respondent on the basis of their family relationship and the sharing of information within that context exploring the possibility that the second and fourth respondent were protecting each other, and their respective companies from this litigation. Having considered the matter in some detail, and taken into account the contemporaneous evidence, the Tribunal accepted on the balance of probabilities, the second respondent knew nothing of the fourth respondent's actions until he received the communication from the claimant in May 2016. Apart from the documentation generated by the fourth respondent, there was no contemporaneous piece of evidence pointing to the second respondent being involved. The Tribunal considered the possibility the lack of documentation hide the truth of the second respondent's involvement behind the actions of his mother, concluding on balance, the fourth respondent went on a frolic of her own and kept this hidden from her son.

21. Turning to the fourth respondent, the Tribunal did not find her to be credible in respect of her motivation for sending the Morris & Co letter; concluding there was a mixed motive as explored further below. With reference to the fourth respondent's explanation as to why she described herself as the third respondent's employee in a witness statement made in the first Employment Tribunal hearing, the Tribunal accepted on balance, that it was a genuine mistake caused by the fourth respondent being under pressure. The reason it accepted this evidence was the first respondent was undeniably suffering from ill-heath during this period (an issue raised by the fourth respondent on numerous occasions), the clear evidence that the third and fourth respondents were separate legal entitles and the fourth respondent was a director of the fifth respondent in respect of which she received a dividend only. In short, there was no other concrete evidence before the Tribunal the claimant was an employee or worker of the third respondent applying the usual legal tests, as set out below.

Issues arising during the liability hearing

Amendment to claim and issues

22. At the outset of the hearing the claimant made an application to adduce an additional bundle of documents consisting of documents disclosed after the trial bundle had been agreed. The Tribunal took the preliminary view, accepted by the respondents, that it was just and equitable and in the interests of justice to allow the claimant's documents to be adduced in evidence and they formed part of the third lever arch file that included witness statements produced by and on behalf of the claimant.

23. The claimant raised an issue concerning legal arguments put forward by Mr Flynn concerning the external disclosure made in respect of the first respondent in his capacity as director of the fifth respondent only, and the fourth and fifth respondent. The claimant submitted that as this had not been pleaded the argument could not be relied upon. The Tribunal did not accept the claimant's submission. It was required to consider in detail the provisions set out in S.43G ERA. Given the claimant's status as a litigant in person, it was agreed the claimant would have the opportunity to read and absorb the respondent's legal arguments on the protected

disclosure and detriment prior to giving oral evidence. Consequently, she produced a written response which the Tribunal considered. From the outset of the liability hearing the claimant was made aware that whilst the pre-COT3 protected disclosure was accepted on behalf of the respondents, the disclosure to ICAEW was not, on the basis that ICAEW was not legally responsible for the fourth and fifth respondents who were not chartered accountants, and thus the disclosure was not protected. S.43D does not apply and under S.43F ICAEW was not a prescribed person.

24. The claimant reinstated her position was that she was a worker of the fifth respondent and employee of the third, the fourth respondent being an employee of the third respondent and that was the basis of liability, the fourth and fifth respondent having made disclosures to the first and second respondent.

Amendment

25. An issue arose as to whether the claimant's claim was limited to the protected disclosures summarised in the order of 14 October 2016 and had been perused on the basis that the protected disclosure she relied upon were made during her employment with the third respondent and not the report she made to ICAEW on 22 August 2015 which post-dated her employment and first Tribunal claim. The respondent submitted the claimant was altering her case taking into account the issues agreed and recorded in preliminary hearings, and her application to amend should not be granted on the basis that the respondent would be caused "overwhelming" hardship and injustice.

26. The claimant was given time overnight to deal with the respondent's arguments, and following the claimant providing a written response together with an indication from the Tribunal that it is clear from documents filed by the claimant with the Tribunal, she had referred to the 22 August 2015 disclosure and should be given some leeway as a litigant in person, the respondent did not proceed with any argument that the claimant was required to amend her claim, it being accepted, sensibly, no amendment was necessary and the claimant could rely on the 22 August 2015 disclosure.

27. Given the complexities of the case, Mr Flynn, at the request of the Tribunal, kindly agreed to draw all the issues together in one document and provide it to the claimant that evening, in order that she could prepare her cross-examination. The Tribunal thanks Mr Flynn again for his consideration; it being in the interests of all concerned with this case that the claimant understood the issues and was best able to prepare her case for cross-examination. The issues as drafted by Mr Flynn reflected previous agreements reached with the claimant, and case management orders with further clarification as discussed with the parties at the outset of these proceedings. The claimant agreed she understood the issues, to which she was referred to throughout, especially when it came to cross-examination and oral submissions. In particularly, she was aware the fourth and fifth respondent disputed the 22 August 2015 disclosure was protected, it did not dispute it as a potential disclosure made in the public interest as no issue was taken on this point by the respondent. Prior to oral closing submissions the claimant was given time to absorb the respondent's written closing submissions and offered an adjournment following

the respondent's oral submissions prior to making oral submissions supplementing her written ones.

The second respondent's failure to comply with case management orders

The alleged tampering of the 30 May 2014 email

28. This was an important matter for the claimant, her argument being that it went to credibility issues and it was considered by the Tribunal when assessing credibility of the second respondent, there being no suggestion the fourth respondent was involved in any alleged tampering. This was a serious issue given the possibility that the second respondent was allegedly perverting the course of justice.

29. The Tribunal considered whether adverse inferences should be made as a result of the second respondent's failure to comply with the 28 April 2017 case management orders, and given the correspondence produced during the liability hearing, it accepted the second respondent's evidence that he had not tampered with the 30 May 2014 email sent at 16.15.20 by the claimant from her email address to the computer provided for her use by the third respondent. It was not a relatively straight-forward matter for the third respondent to recover the metadata. Nevertheless, producing indecipherable screen shots within the bundle was unsatisfactory and resulted in the Tribunal and parties sharing the original screenshots which were re-copied.

30. A bundle of emails marked "R5" were produced on behalf of the second and third respondent. One email had been created on 19 May 2016 when an engineer, employed by Pro-Networks (a computer specialist employed by the third respondent) was instructed to locate email from the claimant's account. The documents clearly show the second respondent made the request on 19 May 2017 for the email he received on 30 May 2014 to be recovered and the job sheet recorded the claimant's account had been converted to a shared mailbox. This was followed up by an email sent 8 August 2017 and a response stating the relevant engineer was on annual leave. The second respondent's evidence, with reference to the screenshots, was that only one version of the 30 May 2014 email was located, and the email that had been allegedly tampered with could not be found. It would have been preferable to the Tribunal had Pro-networks written an independent report to confirm the position concerning the 30 May 2014 metadata, the irrecoverable file and missing email, however, this had not been provided for within the case management orders.

31. Having considered the emails produced by the second respondent, the Tribunal was satisfied attempts had been made to recover the email via the IT consultant instructed on behalf of the third respondent. The emails were not a sham, and there was no cause for the Tribunal to disbelieve the second respondent's evidence that the file could not be recovered, the email sent by the claimant to the second respondent on 30 May 2014 at 16.15.20 from her email address to the computer provided had been recovered; the metadata relating to the email sent by the claimant to her personal address at 16.35.49 on 30 May 2014 had not. The position of the second respondent that he had not been sent the tampered email and therefore it had not shown up on the search; he had found it lose in a box of papers.

32. The Tribunal considered the differences in the two emails, which it has set out below in the findings of facts, and concluded that whilst it accepted the second respondent's evidence on the balance of probabilities that he had not tampered with the email he had received, the Tribunal was unable to state who had produced the second email and its provenance remains a mystery.

The fourth respondent's failure to comply with case management orders

33. Taking into account issues concerning the fourth respondent's credibility, the Tribunal drew adverse inferences from the fourth respondent's breach of the 28 April 2017 case management orders. It was a relatively straightforward matter for the fifth respondent's professional indemnity insurance and details of its tax registration to have provided, and yet the information given was minimal in respect of the former and non-existent in respect of the latter.

34. The claimant submitted the email disclosed concerning indemnity insurance with Hiscox covered the period from February 2015 and not indemnity certificates covering the period 1 April 2012 to 31 March 2016, which is what the claimant would have expected to see. The Tribunal agreed. It was not sufficient for the fourth respondent to assert that she had been writing to Hiscox for the information; one would have expected the fifth respondent to have retained details of its indemnity insurance given its importance.

35. The emails attached to the fourth respondent's supplemental statement are dated 7 August 2017. The fourth respondent requested copies of insurance certificates for 3 years from 2015. They were not provided although there was a reference to the insurance having been renewed and the Tribunal concluded that at some stage the fifth respondent had taken out PI insurance with Hiscox at least from 2016 onwards. This fact supports the fourth respondent's evidence to some extent that prior to 2015 the third and fifth respondent was on the same PI insurance, and this information may cast light on the inter-relationship between the fifth and third respondent, which the fourth respondent has sought to underplay.

36. The same point applies to the fifth respondent's registering as a tax agent with HMRC, and the Tribunal agreed with the claimant that it was "unbelievable" the fifth respondent did not have details of the its tax registration and the fourth respondent, in her capacity as a director in the fifth respondent, was unable to produce this evidence. The Tribunal noted that recorded delivery letters had been sent to Hiscox and HMRC seeking the information, and the HMRC has yet to respond.

37. It transpired during oral evidence that the fifth respondent's tax registration changed from dual tax returns submitted on behalf of the third and fifth respondent to sole tax returns 3 years ago, and there was no reason for the Tribunal to question the validity of this evidence, but it did question why the relevant documentation was not produced in support of it.

38. The Tribunal concluded that prior to approximately the financial year 2015 the third and fifth respondent were both named on the same PI policy and submitted dual tax returns, the later due to the limitation of the IT equipment. For a period of 3 years since the third and fifth respondent have had separate PI policies and tax returns. Applying the words of the statue, the key question for the claimant being whether the disclosure of information, in her reasonable belief, tends to show a state of affairs identified in section 43B, the Tribunal found the claimant believed that the information she was disclosing tended to show the state of affairs in question, and objectively, that belief was reasonable given the information before her, including the dual insurance policy and tax registration.

The claimant's issues arising after the evidence had closed, written submissions provided and oral submissions given

39. After proceedings closed and the Tribunal had commenced its consideration in chambers with the aim of delivering oral judgment in the afternoon on the sixth hearing day, emails were sent by the claimant to the Tribunal on 13 August 2017 indicating new evidence had come to light over the weekend. To paraphrase, the claimant maintained she had overlooked an email sent to her by the ACCA that included a copy letter sent to ACCA by the fourth respondent on behalf of the fifth respondent on 1 June 2016. A copy of that letter was attached together with a number of other documents, which the Tribunal considered concluding that a number of these had been disclosed previously, and if they had not, nothing hung on the non-disclosure.

40. It is not disputed the letter dated 1 June 2016 had not been disclosed to the claimant by the fourth or fifth respondent, and the fourth respondent can be criticised for this given its duty of ongoing disclosure throughout the litigation process.

41. A hearing was convened with the parties to consider the claimant's application to adduce the 1 June 2016 letter after evidence had closed following the liability hearing, and for the fourth respondent to explain why disclosure had not taken place given the ongoing duty of disclosure. The Tribunal also required clarification from the claimant as to the relevance of the 1 June 2016 letter to these proceedings, and the grounds for her allegation that the letter had been deliberately withheld, false evidence was given to the Tribunal deliberately by the respondents (in the plural) who were perverting the course of justice and should be referred to the Crown Prosecution Service.

42. At the reconvened hearing the claimant repeated her submission that the 1 June 2016 letter indicates the following:

44.1 It "proves" the fourth respondent's intention as not to protect the business interests of the fifth respondent, she did not enquire about the return of the "stolen" information and the "unfounded complaint" was made because the claimant had made a protected disclosure against the third respondent and its directors.

44.2 The second respondent "allowed" the fourth respondent to make the complaint.

44.3 The second respondent provided the fourth respondent with documents including an email the claimant had sent to Joanne Lark in September 2014, in order that she could make the complaint.

44.4 . The second and fourth respondent "connived" with the third respondent in submitting the complaint to ACCA.

44.5 The fourth respondent's intention was to portray the claimant as a trouble maker.

44.6 The second and fourth respondent had contradicted their evidence, the second respondent having stated he did not discuss the matter until May 2016, the fourth respondent giving evidence that she did not discuss it with the second respondent for a period of 6-months later.

43. On behalf of the respondent it was conceded that the 1 June 2016 should have been disclosed, it had not been on the basis that the fourth respondent did not think it was relevant or necessary in accordance the case management order, and in hindsight, the contents supported the respondent as opposed to the claimant by the reference to "my complaint" and the fourth respondent's reference to her concern about the "pressure my son will be put under if I continue."

44. The Tribunal accepted it was just and equitable and in the interests of justice for the 1 June 2016 letter to be included within the evidence and it has dealt with the letter, together with the arguments made by both parties, within the finding of facts and conclusion. The supporting documentation attached to the claimant's email of 13 August 2016 has also been included and considered as part of the fact-finding process. The fourth and fifth respondent can be criticised for failing to disclose the ACCA letter and ignoring their ongoing duty of disclosure. The claimant's arguments concerning the effect of the letter on the second and fourth respondent's credibility were not supported by a commonsense reading of the letter and in context. The Tribunal did not find the claimant's argument as set out above were supported by the evidence; the fourth respondent sent the letter motivated by concerns for the second respondent, threats made by the claimant and the conflict it created if the ACCA complaint were to proceed.

45. The Tribunal was referred to 2 agreed bundles of documents together with a bundle produced by the claimant, and a number of additional documents duly marked produced by both parties before and after the liability hearing. It also took into account 2 chronologies, which were not agreed, opening submission made by both parties, oral submissions and written submissions presented by the parties which the Tribunal does not intend to repeat, but has attempted to incorporate the points made within the body of this Judgment with Reasons, we have made the following findings of the relevant facts.

Facts

46. Chester Business Services ("CBS") the fifth respondent is a limited company registered with Companies House under number 05162881 incorporated 25 June

2004. It was formed by the second respondent and former business partners but did not trade until shares in the company were transferred to the first and fourth respondent, parents of the second respondent. It was intended CBS would provide administration support and accountancy services and since it commenced trading it has employed a number of sub-contractors including the third respondent to whom it outsourced a number of services ranging from the maintenance of accounting records/booking, credit control and typing as and when required for which it charged a fixed fee agreed at the start of each financial year.

47. The fifth respondent's turnover has never exceeded £70,000 and it is not registered VAT; it is a small business with 40-50 clients at any one time. CBS was exclusively managed by the first and fourth respondent, and neither the second respondent nor the claimant took an active role in its management.

48. The registered office of CBS is based at Meacher-Jones & Co ltd, 6 St John's Court, Chester. There exist two plaques on the outside of the office, one for the third, and the other for the fifth respondent. Office space was and continued to be rented from the third respondent. The rental payments were billed but not differentiated in the accounts from other payments made by the fifth respondent for services provided to it by the third respondent.

49. On the 25 June 2004, the second and fourth respondents were appointed co-directors. The first respondent was appointed a director on 31 December 2004 and Andrew James Woods on the same date. As at the end of 2004 there were 4 directors of CBS. Ratiocinator Limited t/a Meacher-Jones, Hargreaves & Woods acted as secretary having been appointed on 25 June 2004.

50. The responsibility for running the fifth respondent lay exclusively with the first and fourth respondent. Glyn Meacher-Jones (an associate of the Institute of Bankers and Fellow of the Institute of Chartered Secretaries and Administrators) was not a chartered accountant. He was an experienced accountant previously employed by a group of companies having completed an accountancy course but not taken the exam. His role was to deal with relatively straightforward accountancy matters for small clients, several of whom were not VAT registered.

51. The fourth respondent was not an accountant and nor was she responsible for compilation accounts on behalf the fifth's respondent's clients. Her role was marketing, bookkeeping and administration. Between the first and fourth respondent they slowly built up the business of CBS over the years.

52. By the time the claimant commenced her employment with the third respondent only on 2 April 2012 the position concerning the fifth respondent was that the third respondent had been appointed secretary to CBS on 1 June 2007 following the resignation of Ratiocinator and that remained the case until its resignation on 26 June 2016, well after the claimant's resignation from her employment. The second respondent had resigned his directorship of CBS on 31 December 2004 the same date as the resignation of Andrew James Wood.

53. During the period, relevant to these proceedings the first and fourth respondent were the only directors of CBS, and they were responsible for the

running of the business, instructing sub-contractors, carrying out client work including straight-forward accounts managed by the first respondent, arranging conferences, bookkeeping, personal protection insurance and general administration including working in other businesses covering maternity leave on the part of the fourth respondent. The first and fourth respondents were not paid a salary and received dividends from CBS.

54. The first respondent resigned his directorship from CBS on 31 March 2016, the requisite form having been filed with Companies House on the 4 April 2016. The fourth respondent is the sole remaining director.

Ratiocinator Limited t/a Meacher-Jones, Hargreaves & Woods

55. Ratiocinator Limited company number 04507820 was incorporated 9 August 2002 and on that date the first and second respondents was appointed directors together with three other directors. Both resigned by 4 July 2007.

56. On 1 June 2007 Ratiocinator resigned as secretary of the third respondent.

Share purchase agreement

57. On 4 July 2007, the second respondent sold shares to Ratiocinator Limited the consideration being a transfer to the third respondent client contracts and equipment and furniture. Schedule 3 of the Sale Agreement marked "DMJ clients" included CBS. CBS at that point became a client of the 2nd respondent.

Meacher Jones & Company Limited (MJC)

58. MJC, the third respondent, is a limited company registered in Companies House under number 04516868 incorporated 22 August 2002, dormant until July 2007 when it traded as an accountancy practice regulated by the Institute of Chartered Accountants in England & Wales ("ICAEW").

59. The first respondent was appointed secretary on 22 August 2002 until his resignation on 8 January 2014, and was appointed a director from 8 January 2014 until resignation on 31 March 2016.

60. The second respondent was appointed director on 22 August 2002 and he remains a director to this day.

The status of the fourth respondent in connection with the third respondent.

61. The Tribunal finds on the balance of probabilities, the fourth respondent has never held office in the third respondent, did not hold herself out as holding officer, was not an agent of and has not been appointed to the role of director of the third respondent at any time. The first and fourth respondent have not received salary from the third respondent; they have no oral or written contract of employment with the third respondent and are not obliged to undertake any work or perform work for the third respondent on an individual basis. Neither the first nor fourth respondent was subsumed into the business of the third respondent; they were not subject to

any of its employment policies and procedures, did not time keep and were under no other person's control. The claimant did not line manage the fourth respondent on behalf of the third respondent or at all.

62. The third respondent had no control over the first and fourth respondent, and the Tribunal did not accept as credible the claimant's assertion that she supervised the fourth respondent in her capacity as employee of the third respondent, the claimant at the same time being a worker of the fifth respondent. This scenario made little sense given the undisputed evidence that the fourth respondent was a director of the fifth, the fifth respondent instructed the third respondent to carry out work on its behalf (as accepted by the claimant) and bearing in mind the evidence heard by the Tribunal during this liability hearing, it is inconceivable the fourth respondent would have allowed herself to have been supervised by the claimant in any capacity. The true position is that there was no mutuality of obligation on the part of the first or fourth respondent to carry out any work for the third respondent. The claimant accepted in cross-examination, someone other than the first and fourth respondent "in practice" could have carried out the work referred to the third respondent by the fifth respondent. The Tribunal concluded the only contractual obligation was between the third and fifth respondent, and it was up to the individual companies to sub-contract the work out, which was a regular occurrence.

63. There was no evidence before the Tribunal, apart from the claimant's supposition, that the first and fourth respondents were workers of the third respondent. The fact the fourth respondent's photograph is on the web page described as administrator, does not prove she was an employee of the third respondent. It was the practice of the third respondent to photograph contractors and sub-contractors who provided a service. It was also the practice to include contractors and sub-contractors in the organisational chart, which was roughly drawn and the Tribunal accepted the second respondent's evidence as credible, that it did not denote the claimant supervised the fourth respondent or that the fourth respondent was an employee, his intention being to produce a organisational chart covering employees, contractors and sub-contractors in line with the type of work they performed. The Tribunal did not accept the claimant would not have understood this, bearing in mind she was second in command, a shareholder and assisted the second respondent prepare the organisational chart which clearly refers to people who were not employees or workers.

64. The fact the fourth respondent was included in the holiday planner does not denote she was an employee of the third respondent, and the Tribunal accepted the evidence given by the fourth respondent, on the balance of probabilities, that in her capacity as an administrator working for the third respondent on behalf of the fifth respondent, who was billed as a consequence, it was common sense that the fourth respondent's holiday dates would be made available. The claimant could not refute the evidence that the fourth respondent chose as and when she wanted to take holidays, and did not require the authority of the third respondent in order to do so. As the alleged supervisor of the fourth respondent, one would have expected the claimant to have had some say in the fourth respondent's allocation of holiday dates; she had none and the fourth respondent was free to attend the office whenever she liked, and carry out work without any controls on her. In short, the fourth respondent's actions reflected the fact she was a director and shareholder of the fifth

respondent in receipt of a dividend only, carrying out work for the third respondent on behalf of the fifth respondent.

65. The secretary of the third respondent as at 8 January 2014 was Joanne Lark who took over from the first respondent. Joanne Larkin, as practice manager in the third respondent, allocated work from the fifth respondent to contractors and employees working for the third respondent, including the claimant. The second respondent's evidence that the claimant did not do a great deal of account work but concentrated on marketing was not disputed by the claimant, and given this fact it is difficult to comprehend how she came to fundamentally misunderstand the inter-relationship between the two companies and the individuals who ran them to the extent that the claimant believed she was as worker for the fifth respondent when an employee in the third respondent, and the line manager of the fourth respondent.

The business connection between the third and fifth respondent

66. At the start of each financial year a discussion took place between the second respondent acting on behalf of the third respondent, and the fourth respondent acting on behalf of the fifth respondent concerning the reciprocal service that would be offered and the fixed sum paid. The arrangement was straightforward and essentially that either company could refer work to the other. In respect of the accountancy services the general practice was to subcontract the more valuable client with more complex accountancy requirements to the third respondent, who would in turn via the practice manager, allocate the work to the third respondent's employees, consultants and sub-contractors. During the period of the claimant's employment she was allocated work by the 3rd respondent that had been sub-contracted from the fifth respondent. The client referral was fluid and informal, a reciprocal arrangement that benefitted both companies. The only person carrying out accountancy work in the fifth respondent was the first respondent. Complex accounts were carried out by employees/consultants/subcontractors of the third respondent under the direction of the second respondent.

67. The claimant conceded there were no articles of association that showed the two companies were being run in conjunction and that the third and fifth respondents were legally separate companies. She stated in oral evidence "I agree from a legal perspective the second respondent had no power over the fifth respondent." That statement reflected the reality of the situation as found by the Tribunal.

68. Initially the claimant disputed the third and fifth respondent were clients of each other, maintained the invoices passing between the two were a sham even though the accounts filed by both with Companies House showed the expenses passing between them. When it was put to her the directors would instruct the third respondent to carry out work on their behalf and visa-versa, the claimant answered in the affirmative, and confirmed CBS clients were managed by her, the second and third respondent.

69. In oral closing submissions, the claimant disputed she had conceded the fifth respondent subcontracted accountancy work to the fourth respondent, and that this work was invoiced monthly. The Tribunal has re-visited its notes of the claimant's cross-examination, and she is recorded as saying that invoices were raised in one

company to reduce profit in another company and in contradiction to this, disputed the validity of the invoices raised between the companies as set out in the bundle, alleging they were sham documents. It is clear from the evidence invoices were raised and whether or not those invoices were a sham is not a matter this Tribunal is qualified to determine and nor do the agreed issues in this case require it to do so. Suffice to say at the time of her employment with the third respondent she did not raise this as a protected disclosure.

70. Prior to the financial year 2015 the third and fifth respondent were named on the same PI policy and submitted dual tax returns, the later due to the limitation of the IT equipment, and for a period of 3 years since the third and fifth respondent have had separate PI policies and tax returns. Whilst this points to a possibility of the two businesses being integrated or legally connected in some way, based on the evidence before it the Tribunal found (as admitted by the claimant) the third and fifth respondents were separate legal entities and distinct companies. As submitted by Mr Flynn on behalf of the respondent, there was no group structure, no articles of association, no board meetings or other documentation that showed the third and fourth respondent operated as part of a group structure. There was no evidence profits were held on account for each other, as maintained by the claimant. It is undisputed both file accounts separately with Companies House.

71. The claimant complains the third respondent terminated its appointment as company secretary of the fifth respondent by filing the TMO2(f) on 31 December 2015 the date of termination being 26 June 2015 which is the date given by Companies House as the date of resignation. The claimant's argument is the forms submitted were a sham, requesting the Tribunal to lift the corporate veil on the basis that she had raised the second protected disclosure prior to the termination of the third respondent's appointment. The evidence before the Tribunal was Companies House accepted the TMO2(f) as the 26 June 2015 resignation and the Tribunal accepted this was the formal date of resignation. The claimant did not put to the second respondent that the TMO2(f) was a sham.

72. The Tribunal concluded the third respondent intended to terminate its company secretary appointment on 26 June 2015, the formal notification of this was lodged with Companies House on 31 December 2015 and the relevant date of resignation was 26 June 2015 following which the third respondent no longer acted in this capacity after this date. The Tribunal took the view it was not unreasonable for the claimant to assume, based on this information, the third and fifth respondent were connected in some way, without further clarification of the relationship.

<u>The status of the claimant in respect of the fifth respondent</u>

73. There was no satisfactory evidence before the Tribunal that the claimant was a worker in the fifth respondent. During the period of her employment the fifth respondent contracted with the third respondent to carry out bookkeeping, credit control and administration. The claimant was instructed by the second respondent on behalf of the third respondent, her employer, to carry out work on the clients of the fifth respondent. The claimant was not instructed to carry out work personally on behalf of the fifth respondent, whose accountancy work was allocated to her at times via the practice manager.

74. There was no evidence the claimant worked directly for the fifth respondent, who had no control over what work she did or how she carried out the work and was not obliged to provide her with work. There was also no obligation on the fifth respondent to offer work to the claimant. The second respondent's evidence that the claimant did not undertake a great deal of accountancy work during her employment with the third respondent, and was involved more in the marketing side, was not disputed by the claimant. The claimant accepted she was not required to provide personal service to the fifth respondent, and had she left the employment of the third respondent the work would have been delegated by the third respondent, and not by the fifth respondent, to someone else working within the third respondent, whether they be employees, workers, subcontractors or contractors.

The claimant's employment with the third respondent

75. The claimant, a certified chartered accountant regulated by the ACCA, commenced her employment with the third respondent on 2 April 2012. The claimant entered a written contract of employment, her role being to assist the second respondent to whom she reported.

76. In addition to a salary paid by the third respondent the claimant was entitled to receive monthly commission from the third respondent paid on invoices generated by the claimant for work done on existing client accounts. The claimant brought with her several clients to the third respondent, including Chinese clients as the claimant was fluent in mandarin, and she was paid commission on these clients based on records of work carried out. It is undisputed the commission payments paid in relation to clients the claimant brought into the respondent's business, (who were transferred to the fifth respondent on the basis that small uncomplicated accounts were better suited to the fifth as opposed to third respondent, who dealt with larger more complicated accounts) amounted to approximately £20 per month in comparison to the commission she earned when working on the third respondent's clients accounts, that totalled between £800 to £2000 pr month in addition to annual salary. It was not disputed the £20 was paid by the third respondent, not the fifth and it was not recouped.

77. The claimant does not dispute several clients, such as Mrs Y Lu, Mrs Williams and Ruth Randall were sent invoices by the fifth respondent for work carried out, which were paid. A number of invoices were included within the bundle, for example, at page 594 Y Lu trading as Mayflower was invoiced on 17 September 2014 for £720 by the fifth respondent. The same invoice is referred to in a letter dated 1 December 2014 from the third respondent who confirmed payment had been received by the fifth respondent in relation to that invoice but not an earlier one. There was no satisfactory evidence before the Tribunal to show these documents were a sham, and it was conceded by the claimant that Mrs Y Lu had paid the invoices. As submitted by counsel, Mrs Y Lu would not have paid invoices had the work not been carried out either by or on behalf of the fifth respondent, and the claimant's explanation that Mrs Y Lu was not sufficiently versed in English to understand the difference between the companies was not credible, bearing in mind Mrs Y Lu ran a business and she had been provided with correspondence from both the third and

fifth respondent on headed notepaper, which was clearly different in form and content.

78. The Tribunal preferred the evidence of the second respondent, supported by contemporaneous documents, to the suspicions of the claimant which were not supported, that the true position was the fifth respondent outsourced work to the third respondent and visa-versa. Clients of the fifth respondent, such as Mrs Y Lu, who had been brought into the business by the claimant during her employment with the third respondent, were worked on by the claimant in her capacity as an employee of the third respondent, and for which she received commission paid for by the third respondent. The cost to the third respondent was included in the monthly fee agreed at the outset of the financial year charged to the fifth respondent. The fifth respondent did not recover commission paid to the claimant, it amounted to approximately £20 per month and it was unconcerned with such a small amount. The clients, such as Mrs Y Lu, were sent an invoice by the fifth respondent, and the monies paid reflected in the fifth respondent's accounts filed with Companies House.

79. In contrast to the claimant's arguments that the invoices were a sham and not authentic, on the face of the documentation in the bundle, this did not appear to be the case and on the balance of probabilities, the Tribunal accepted the documents reflected the true position that the third and fifth respondent were legally independent to each other, and the second respondent only controlled the third and not the fifth respondent, which was in the control of his parents. The Tribunal formed the view, as in many family businesses, the lines between companies can be blurred, but that does not mean to say that they are no longer legal entities in their own right, or become a group of companies or linked in some other way purely as a result of family ties.

80. An issue arose under cross-examination concerning whether the fifth respondent had been invited regularly to meetings held at the beginning of the month chaired by the claimant and attended by the second and fourth respondent. This was disputed by the second and fourth respondent, and taking into account the information set out within the invite and its format. The Tribunal accepted as credible the explanation of the second respondent that there were no monthly meetings and the claimant had not chaired any monthly billing meeting. It was not credible the claimant had supervised the fourth respondent in respect of billings for both the third and fifth respondent. The document relied upon by the claimant was not an invitation to attend a meeting but reminder to "close last month's billing." The Tribunal found it difficult to understand how the claimant could so inaccurately record the history of her employment, when it is undisputed that the billings of both the third and fifth respondent were allocated by way of commission to the claimant's earnings paid by the third respondent.

<u>Shareholders agreement</u>

81. The claimant entered a Shareholders Agreement in July 2013 for the transfer of shares in the third respondent to her.

The email of 30 May 2014.

82. On 30 May 2014, the claimant emailed the second respondent at 16.50.20 following a telephone conversation, which concluded "Due to the unpleasant nature of the telephone conversation, I suggest you put other comments in the future in writing." This email followed a chain of emails and it is not disputed the second respondent received it.

83. A second version of this email was produced by the second respondent that included the addition "If you do not give me what I want then I will do everything I can to put your company in liquidation…I told everyone I love you and you have humiliated me." This email appeared not to follow a chain and was stand-alone.

84. The second respondent refers to this email at paragraph 33 of his statement, setting out beforehand personal issues with the claimant within the workplace, which the Tribunal does not intend to repeat. It was alleged the claimant in her email of 30 May 2014 "made a threat to do everything she could to put the company into liquidation." This threat is borne out in the email, the inference being that it had been sent to the second respondent. In a question put to the second respondent by the Tribunal he confirmed the email had been found early pre-March 2017 in boxes of documents described as "mountains of paper" built up over several years by the claimant, and he had not questioned its authenticity.

85. The Tribunal considered the second version of the email in some detail in an attempt to establish who had written it and the motivation behind the changes made, and was unable to reach a conclusion on the basis that it could conceivably have been written by any of the parties either following the fall out of the personal relationship on the part of the claimant, or in anticipation of the litigation on the part of the respondents, particularly the second respondent. Either way, the email points to the total breakdown in the personal and working relationship between the parties during the relevant period and this fact underpinned the acts and omissions that followed the breakdown in relationship and the claimant's resignation.

The first protected disclosure

86. The Tribunal accepts the claimant's chronology that the first protected disclosure was made in or around late 2013/early 2014 and it concerned the third respondent's audit registration status. In its content it was different to the disclosure made on 22 August 2015, despite the information relied on the claimant in the second disclosure being known to her when she made the first disclosure and yet she said nothing at the time.

Termination of the claimant's employment with the third respondent

87. The claimant did not have a contract of employment with the fifth respondent and she was not a worker. The claimant was an employee of the third respondent until her resignation on 20 August 2014. She also held shares in the third respondent as at 31 February 2013 and that continued to be the case throughout this litigation and was a bone of contention between the parties resulting in litigation threats, it formed the basis for what transpired in 2015/2016 and this claim.

88. The claimant made an application before this Tribunal for the redaction of paragraphs 27 and 28 in the second respondent's witness statement on the basis that she did not want this information to become public knowledge, and the third respondent agreed to this course of action. Nevertheless, it is clear to the Tribunal the personal intimate relationship between the second respondent and claimant is relevant to the factual matrix, explaining the imploding breakdown between the parties and how they reacted to events as they unfolded including the repeated litigation threats. The relationship between the second respondent and claimant was not that of a straightforward employee and employer, and this impacted on the second respondent's parents, particularly the fourth respondent whose aim was to protect her son, her husband who was suffering from ill health and business.

The claimant downloaded confidential information

89. On 7 August 2014 at 23.39 the claimant downloaded confidential documents to which she had access as part of her duties with the third respondent. The claimant appeared not to understand the documents she retained illegally were the property of and confidential to the third and fifth respondent. A small number of these documents were included in the bundle in accordance with case management orders. The claimant retained on to these documents after her resignation unbeknown to the third and fifth respondent. Her evidence that the documents belonged to the third respondent only was not borne out by a straight-forward interpretation of those documents that clearly related to the fifth respondent. The claimant did not have the consent of either the first, second, third, fourth or fifth respondent to retain onto the confidential documents, which included the names of clients, financial details relating to clients, customer activity, customer sales reports, all in her possession and downloaded from the third and fifth respondent prior to her resignation.

The November 2013 information before the claimant that gave rise to the disclosure on 22 August 2017.

90. There was no mention of the information that gave rise to the second disclosure dated 22 August 2015 either before or after the claimant had terminated her employment and on this issue, she remained silent for a period in excess of 20-21 months. There was no evidence that any new information had come to the claimant's attention which explained the delay in her making it, and when asked for an explanation the claimant stated that she had waited to see how the third respondent would deal with the first protected disclosure a response which bore little logic if the claimant believed in late 2013 the third and fifth respondent were involved in fraud. In the 22 August 2015 disclosure, the claimant referred to events allegedly discovered as far back as November 2013, she not raised a protected disclosure at the time, despite raising the first protected disclosure in late 2013 early 2014.

91. The Tribunal concluded the 22 August 2015 disclosure referred to allegations that went as far back as November 2013, the allegations were not disclosed to the ICAEW at the time of the first protected disclosure and were disclosed for the first time on 22 August 2015, approximately 20-21 months after the claimant had a "notion" the first, fourth and fifth respondent were embroiled in VAT and tax evasion.

92. The first protected disclosure related to the third respondent's audit registration status, was made to the second respondent and ICAEW and there was no overlap with the second disclosure and so the Tribunal found. This finding is relevant to the Tribunal's consideration of whether it was a protected disclosure, and conclusion that the 22 August 2015 disclosure was not a protected disclosure in respect of the first respondent in his capacity as director of the fifth respondent, the fourth and fifth respondent.

<u>The dispute over the claimant's shareholding valuation and alleged breach of restrictive covenants</u>

93. Following the claimant's resignation communications took place regarding the sales and purchase of her shareholding in the third respondent and a disputed valuation. In a letter dated 27 August 2014 Hillyer McKeown acting on behalf of the claimant offered to sell the shares to the third respondent at a valuation of £100,000.

94. In a letter dated 2 September 2014 the second respondent wrote to the claimant reminding her of restrictive covenants which he would have "no hesitation" in enforcing.

95. In a letter dated 17 September 2014 the second respondent on behalf of the third respondent offered £6000 for the shareholding, indicating that a service could no longer be provided to the clients she previously dealt with and who required a Chinese speaking accountant acting for them.

96. On 20 October 2014, the claimant commenced employment with Morris & Co, a firm of accountants based in Chester and the North West.

97. Mentor acting on behalf of the third respondent emailed Hillyer McKeown on 27 October 2014 confirming the claimant had obtained employment with Morris & Co, alleging clients had been approached by Morris & Co. The non-solicitation clause in the claimant's contract was referred to. In a number of letters dated between 21 and 27 October 2014 from Morris & Co information concerning the transfer of clients was requested. It is not disputed a number of clients moved from the fifth respondent to Morris & Co, causing a substantial loss of business. It is undisputed approximately 29 clients out of the 50-60 clients instructing the fifth respondent moved to Morris & Co, and this loss of business was a blow to the fifth respondent. At this stage the respondents were unaware the claimant held commercially sensitive information concerning the fifth respondent's clients, including fee calculations and billing.

98. The third respondent sent a letter dated 30 October 2014 to Morris & Co that referred to the "29 of our clients have chosen to instruct you," and it is undisputed the third and fifth respondent lost clients to Morris & Co during this period. There was no similar letter from the first or fourth respondent on behalf of CBS; Morris & Co had not written to the fifth respondent in similar terms. The loss of clients is relevant to what transpired later, and the motivation of the second and fourth respondent for their actions.

99. On 13 January 2015 Hillyer McKeown sent a letter before action concerning the share valuation to the second and third respondent. Allington Hughes, instructed on behalf of second and third respondent responded and there was a clear issue over the shareholding and a list of the claimant's clients currently instructing Morris & Co was requested. This related to an alleged breach of the claimant's restrictive covenants. Party to party correspondence ensued and at an unknown date proceedings were issued by the third respondent against the claimant for training fees allegedly owed by the claimant (who was the defendant in the proceedings). It is clear from the contemporaneous correspondence the dispute continued concerning the shareholding and restrictive covenants and it is against this background the claimant entered into a COT3.

COT3- dated 27 April 2015

100. The COT3 was agreed on the basis the claimant would be paid £20,000 by the third respondent without admission of liability. In accordance with clause 6 the parties agreed and undertook not to criticise the other or publish personal, derogatory or disparaging remarks about their working and private relationship. The first, second and third respondents in the present case were the only respondents in case number 2403196/2014 and it is accepted a protected disclosure was made for the purposes of the claimant's present action. The Tribunal has not seen the first protected disclosure (which was not included in any bundle) however, it is agreed between the parties the first protected disclosure was different to the disclosure made post-termination on 22 August 2015.

101. The claimant was not happy with the COT3 outcome and felt she had been pressured into signing it by her solicitors. The claimant's GP recorded on 27 April 2015 the settlement was not the intended outcome.

102. After the COT3 was signed acrimonious party-to-party correspondence relating to shares continued and on 11 and 28 May 2015 Allington Hughes reserved the right to issue court proceedings in relation to the claimant's alleged breach of the Shareholder's Agreement. It is against this background that the first alleged detriment took place, allegedly as a result of the claimant making the pre-termination protected disclosure.

The first alleged detriment

103. In a letter dated 11 June 2015 to Allington Hughes, the claimant requested information in order to "appoint an expert value for my shareholdings." The alleged detriment was the third respondent failing to disclose the information, and the first and second respondent's failure as agent/workers for the third respondent. It is not disputed the information was not provided, and the Tribunal accepts on the balance of probabilities, the second respondent did not provide the information on behalf of the third respondent because they were at odds with the claimant concerning the share valuation and litigation was a possibility. The first respondent had no impact on this state of affairs, and was not a decision maker in this regard, the second respondent being entirely responsible for decisions made with reference to the third respondent. For the avoidance of doubt, having considered the second respondent's motivation, the Tribunal is satisfied there was no causal connection with the earlier

protected disclosure; the clear link was to the dispute over the shareholding valuation and the threat of litigation.

104. The Tribunal found the second respondent deliberately refused to provide the information sought by the claimant, but this was not done on the ground the claimant had made the first protected disclosure.

The claimant's threat to issue a derivative claim and to report the respondents to the ICAEW

105. The claimant in a letter dated 19 June 2015 to Allington Hughes wrote, "I intend to apply for a derivative claim against him [second respondent] and the other officers…". The claimant referred to the first protected disclosure as follows "It came to light to me in April 2014 that Mr Meacher-Jones failed to comply with ICAEW's regulations and caused the company's audit registration to be removed by ICAEW in early February 2014…I also have evidence that Mr Meacher-Jones further breached legislations by continuing to promote the company as registered auditors and signing auditors reports when he was not authorised to do so."

106. The claimant referred to alleged tax evasion on behalf of the second respondent for the first time as follows; "…I believe Mr David Meacher-Jones has caused the company to commit illegal conducts amounting to tax evasion. **In December 2013, I came across the notion** [my emphasis] that payments made to employees in the company including director Mr Glyn Meacher-Jones were not processed through the company's PAYE system. Further to my inquiries I also have reason to believe Mr Meacher-Jones caused the company to commit VAT fraud by siphoning income received from a separate entity, Chester Business Services Limited…In the events that your client does not agree or fail; to respond, I'll commence proceedings to apply for a derative claim in court. I will also apply for a Wallersteiner order that the company shall both fund the costs of the proceedings and indemnity in respect of adverse costs orders…I will also contact ICAEW and HMRC." Based on a straightforward interpretation of this letter the Tribunal found the report to ICAEW was threatened as part of the derivative claim and costs order.

107. It was submitted on behalf of the respondent the 19 June 2015 letter was written in the context of the claimant threatening to bring a derivatives claim having made an offer to settle the shareholders dispute, and the threat was an attempt to apply pressure during the course of pre-litigation correspondence. Taking into account the factual matrix and contemporaneous correspondence, on the balance of probabilities, the Tribunal agreed. The claimant criticises the second respondent for divulging the contents of her letter to the first and fourth respondent soon after its receipt. Given the allegations of tax fraud against the first, second, third and fifth respondent it was not unexpected and contrary to the claimant's belief, there was no prohibition in the letter being shared. It is what transpired following the 22 August 2015 disclosure to ICAEW that is relevant to these proceedings and not the threat to do so, the claimant relying on the disclosure made on 22 August 2015 as the basis of her claim.

108. Allington Hughes responded in a letter dated 29 June 2015 disputing the claimant had the locus standi to bring a derative claim against the second

respondent on behalf of the third respondent adding "you are not acting in good faith in attempting to bring this claim. You appear to be perusing a personal vendetta against Mr Meacher-Jones." The earlier protected disclosure was referred to and it was denied the third respondent had committed tax evasion, maintaining "the first respondent was not remunerated by the third respondent and therefore does not need to be accountable for under the PAYE system." The claimant was warned she breached clause 6 in the COT3 and the third respondent would seek repayment of £20,000 plus damages.

109. For the avoidance of doubt there was no documentary evidence pointing to the first respondent ever being remunerated by the third respondent at any stage, and it was irrefutable the first and fourth respondent received no remuneration from either the third or fifth respondent other than the issue of dividends by the fifth respondent in their capacity.

The second disclosure dated 22 August 2015.

110. On 22 August 2015 the claimant made a referral to ICAEW as follows: "In November 2013 I found out whilst David's parents work four days a week for the company and payments were made to them, they were not in the company's payroll…I knew they had never filled any self-assessment tax returns for income they received from the company…I queried David as to why there is another company incorporated by his parents in which some work was invoiced from Chester Business Services (CBS) was incorporated by his parents but essentially all works were carried out by Meacher-Jones staff using Meacher-Jones resources but CBS wasn't VAT registered…I was told to put smaller clients that weren't VAT registered through CBS…in my most recent correspondence to David's legal representative, I have asked for him to either confirm or dispel my suspicions of VAT and tax evasion…"

111. A new case with ICAEW was set up to establish whether there was potential liability for disciplinary action as a result of the information provided by the claimant. The respondents were unaware of the referral. It is not disputed ICAEW had no regulatory powers over the first, fourth or fifth respondent and the Tribunal finds ICAEW was not a prescribed person for the purpose of section 43F ERA.

112. It is clear to the Tribunal from the acrimonious correspondence the parties were at odds, and this flowed from a number of sources, not least the outstanding shareholding issue, the claimant's belief that it should be valued at £100,000 and she should be paid this sum. It is notable the claimant does not refer or suggest a complaint in the terms of the second disclosure until it becomes apparent to her, via the contemporaneous correspondence, that the shareholding valuation was in dispute and she may have to litigate. The threat of litigation escalated as time went by, and in a letter dated 27 August 2015 Allington Hughes threatened proceedings for breach of the non-solicitation clause alleging a number of business clients had been transferred to Morris & Co, claiming £70,500 damages inn compensation. It is notable this letter was written during a period when the respondents were unaware the claimant had followed up on her threat and written to ICAEW.

Email sent by the claimant to Allington Hughes on 4 November 2015

113. The exchange of party-to-party correspondence continued to deal with these issues, including the email sent by the claimant to Allington Hughes on 4 November 2015. In this email for the first time the claimant referred to compiling and forwarding evidence to the "firm's regulator," set out the documents relied upon that went as far back as 2012 and included organisational charts drafted by her and the second respondent, holiday planners for 2013, invoices and sales ledgers dated 2014 and a September 2014 letter concerning a cross-option policy insurance. The Tribunal noted that these were documents in the claimant's possession prior to and as at the termination of her employment some 15 months earlier on 20 August 2014, and yet she did not complain or refer to any of these matters post 20 August 2014 until the shareholder dispute and other threats of litigation. Taking into account the claimant's unsatisfactory explanation for the delay in raising the issue with ICAEW, the Tribunal inferred on the balance of probabilities the claimant's motivation flowed directly to the failure by the third respondent in valuating her shares at £100,00, the threat of litigation for breach of the restrictive covenants and claim for damages. Had the claimant genuinely believed it was in the public interest to make the second disclosure, she could have done so much earlier. The Tribunal has inferred that in failing to do she had no thought for the public interest and later, when subsumed by litigious correspondence and the prospect of not being paid £100,000 for her shares, her primary motivation was personal gain, secondary motivation to put pressure on the second respondent to gain the edge in the threatened litigation and so the Tribunal found on the balance of probabilities. It is the case the claimant when making the disclosure objectively held a reasonable belief the respondents were involved in criminal tax fraud, and the disclosure fell within S.43B. it does not matter whether the claimant was right in her belief, all that is required is that she actually believed that the respondents were involved in criminal activity and that belief was reasonable for the purpose of establishing part of the test for a protected disclosure.

114. Given the fact the claimant had retained confidential client documents, including client fees and payment schedules, relating to the fifth respondent, which had been first bought to the fourth respondent's notice following the email of 4 November 2015, it was accepted by the Tribunal that the fourth respondent believed there was a high possibility the documents would be misused to the detriment of her family and the businesses. Her concerns formed the backdrop to the 11 November 2015 letter sent to Morris & Co.

The second alleged detriment

115. In a letter dated 10 November 2015 from Allington Hughes to the claimant, the third respondent's position concerning the derivates claim, shareholding valuation and COT3 was reiterated, and it was alleged "that you are already in breach of the COT3 Agreement and we suggest that you take no further action to publish detrimental, derogatory statements in relation to our clients."

116. The Tribunal concluded, taking into account the contemporaneous documentation, the 10th November 2015 letter was written in response to the claimant's letter of 4 November 2015 and ongoing litigious party-to-party correspondence on which the second and third respondent had taken legal advice,

and there was no causal connection with the first protected disclosure made against the first, second and third respondent. The reference to the claimant taking no further action to publish detrimental derogatory statements was a reference to the COT3 and allegations she had made concerning alleged fraud against the first, second, third, fourth and fifth respondent and so the Tribunal found on a commonsense interpretation of the 10 November 2015 letter.

The 11 November 2015 letter from the fourth respondent to Morris & Co.

117. In a letter dated 11 November 2015 the fourth respondent wrote to the directors of Morris & Co on the fifth respondent's headed notepaper. The fourth respondent marked it as a formal complaint and confirmed it was written on behalf of "my husband and I" referring to the earlier letters dated 19 June and 4 November 2015 alleging tax fraud and disputing the allegations. She wrote "As accountants you can appreciate that allegations such as these are very serious and we are extremely disappointed that one of your employees should be making such unfounded and untrue statements about us and reporting them to various government and regulatory bodies." The second part of the complaint related to the claimant having possession of "various confidential accounting records and client reports" relating to the fifth respondent. The fourth respondent did not ask Morris & Co for their return, she wrote; "In our opinion Mrs Anthony would appear to be perusing a vendetta against not only my son but also my husband and I following the withdrawal of her claim in April 2016. I trust that you take this complaint seriously and it can be resolved to our satisfaction through your own internal procedures within the next 14-days."

118. In oral evidence the fourth respondent explained she had written this letter to protect the fifth respondent's business, her husband and herself. Her intention was not for the claimant to have been disciplined by Morris & Co, but for the confidential documents to have been returned using Morris & Co's internal procedure.

119. The Tribunal found, as submitted by the claimant, she reasonably perceived the writing of this letter as being detrimental to her given the fact that it was written to her existing employer and concerned allegations described as "serious." The Tribunal were of the view that the fourth respondent's motivation may well have been to protect given the fact it had only recently been brought to her attention that the claimant had retained confidential documents capable of damaging and undermining the business, however, it was also to make trouble for the claimant in the eyes of her new employer as a result of the loss of business caused by clients transferring to Morris & Co and the claimant threatening to raise a complaint with ICAEW. There was no reference to the earlier protected disclosure and this was not in the fourth respondent's mind when she wrote the letter to Morris & Co.

120. The Tribunal fund there were mixed motives for the fourth respondent writing this letter, and the predominant primary motivation was to protect the first, second and fifth respondent's good name, the business and individual protection, especially given the health of her husband. The claimant had no satisfactory evidence before the Tribunal, other than her suspicions, that the first and second respondent were in cahoots with the fourth respondent in writing this letter. The Tribunal accepted, on balance, the second respondent's evidence that he did not know of this letter until

May 2016 and the fourth respondent's evidence that she spoke with her husband soon after the letter had been sent.

121. In an email sent 18 November 2015 by ICAEW to the claimant reference was made to part of the claimant's complaint being put forward for investigation and further evidence was sought in subsequent emails from the claimant concerning other complaints, for example, a cross-option policy the second respondent had allegedly "lied" about.

Disclosure of the claimant's correspondence to ICAEW to the respondents.

122. In an email sent 16 October 2015 from ICAEW the claimant was asked for consent to disclose her correspondence and documents to be provided to the second respondent, which she agreed to. It is clear from the emails the respondents had not been informed of the ICAEW complaint by ICAEW prior to the 11 November 2015 letter to Morris & Co being sent, however, the fact the claimant had raised the issue with the ICAEW was known by the fourth respondent who was aware the allegations were serious.

The fourth alleged detriment

123. The Claimant alleges that on 7 December 2015, Allington Hughes, on instructions from the Third Respondent, wrote to the Claimant making detrimental allegations as follows; "Our clients have now become aware of allegations you have made to the ICAEW against our client. This is a clear breach of the COT3 agreement…in that you have made and published detrimental or derogatory statements concerning matters relating to our clients…we have now instructed counsel to settle court pleadings…"

124. The Tribunal found the Claimant could not have reasonably perceive the passages in the letters as being detrimental to her, given the earlier correspondence relating to litigation, which the claimant has not pleaded as detriments. Had the claimant shown detriment, which she did not, the Tribunal would have gone on to find the second and third Respondent's instruction to Allington Hughes was not influenced by the claimant's pre-termination of employment protected disclosure; it was however influenced by the 22 August 2015 disclosure.

The fifth alleged detriment- letter dated 23 December 2015 to the claimant from the fourth respondent

125. The claimant alleges a letter written by the Fourth Respondent to her, on the Fifth Respondent's headed paper, dated 23 December 2015, caused her a detriment. With the knowledge of the first respondent but not the second respondent, the fourth respondent wrote to the claimant on 1 December 2015 further to the fourth respondent's contact with ICAEW and "…having read the letters and enclosures you have sent to Meacher-Jones & Company Limited's solicitors," she accused the claimant of "dishonestly appropriating property belonging to my company Chester Business Services…The data is…very confidential…and is relating to clients of Chester Business Services and as you were employed by Meacher-Jones & Company Limited and not Chester Business Services Limited you should not have

taken any of this information…if you do not return the documents to me…I will have no alternative but to make a report of theft to Cheshire constabulary and also make a complaint to the Association of Chartered Certified Accountants…"

126. The fourth respondent sent a letter 23 December 2015 chasing a reply to the to the 1 December 2015 letter, which the claimant had not given. The fourth respondent wrote;" I therefore have no alternative but to make a formal complaint to the Association of Chartered Certified Accountants."

127. The Tribunal accepts a complaint to a governing body can amount to a detriment, and the claimant could reasonably perceive a formal complaint to the Association of Chartered Certified Accountants ("ACCA") may result in an investigation and this could be detrimental to her.

128. Even if the Claimant can show that she has reasonably perceived the letter of 23 December 2015 to be detrimental, the fourth respondent's motivation in writing this letter was not influenced significantly by the fact that the Claimant had made a protected disclosure pre-termination of employment or disclosure on 22 August 2015 and so the Tribunal found. The Fourth Respondent motivation was to protect the Fifth Respondent's business interests and the return the confidential documents she reasonably believed the claimant had misappropriated, bearing in mind in her email of 4 November 2015 the Claimant had admitted that she was in her possession confidential information belonging to the Fifth Respondent and had made use of this information via Morris & Co. The Fourth Respondent believed that the Claimant was guilty of theft, and her threat to involve the police was an attempt to recover the documentation by this threat, and it had no causal connection with the pre-termination protected disclosure or the disclosure on 22 August 2015. In short, as indicated below in its conclusion, the Tribunal found the 23 December 2015 letter was not done on the ground the claimant had made a protected disclosure.

<u>The sixth alleged detriment</u>

129. The Claimant relies upon a complaint made by the Fourth Respondent to the ACCA on 10 March 2016. The complaint form gave the name and contact details of the second respondent as a person who could assist the investigation and the details of the complaint related to conduct outside work. An earlier letter sent to ACCA on the 12 February 2016 was attached to the 10 March 2016 complaint. In the 12 February 2016 letter to ACCA the fourth respondent alleged the claimant had "removed confidential accounting information from my company whilst being employed by my son's accountancy practice. This came about as my business and his shares the same practice…She has accused my husband and I of tax evasion."

130. There was no indication from the claimant that she had not received the ACCA complaint form and 12 February 2016 letter which refers clearly to two separate companies and the fourth respondent's belief that her business was the fifth respondent.

131. There was no satisfactory evidence before the Tribunal that the first and second respondents were party to the ACCA complaint, and had known of it beforehand. The fact the second respondent was referred to by name is not

indicative that he agreed to or knew of the complaint, something more was needed. This was a matter explored by the Tribunal at the liability hearing given the possibility that the second respondent could avoid liability by blaming his mother when they engineered the correspondence together, wishing to protect their respective businesses and family members. The Tribunal accepted the fourth respondent's evidence that first respondent was displeased and told her he wanted nothing to do it. The Tribunal accepts on the balance of probabilities, neither the first, second or third respondent were party to the ACCA complaint, and that the fourth respondent did not have the power to bind the third respondent by her action. The fourth respondent made the position clear in a letter to ACCA sent 19 May 2016 when she confirmed the first or second respondent were not party to the claim. The second respondent was angry and swore at his mother when he became aware of the situation in late May 2016, as related below.

132. The claimant was made aware of the ACCA complaint by a letter dated 20 May 2016 together with enclosures, and she was informed the matter was to be investigated.

133. In a letter dated 25 May 2016 the claimant, not to the fourth respondent but to the second respondent, complained the terms of the COT3 had been released to the fourth respondent, who was neither a director nor officer of the third respondent. It is notable she did not say the fourth respondent was an employee or worker of the third respondent. The ACCA complaint made by the fourth respondent was referred to, and in view of that complaint "post termination victimisation" was alleged "following harassment and defamation due to Mr G and Mrs D Meacher-Jones actions."

134. The claimant did not say the second or third respondent was responsible, maintaining breach of the COT3 had taken place (neither the first, fourth or fifth respondent were party to the COT3) and had caused her detriment. Attached to the 25 May 2016 letter was appendix 1, a copy of the complaint letter dated 11 November 2015 to Morris & Co. The claimant threatened to issue Employment Tribunal proceedings unless: (a) the fourth respondent withdrew the ACCA complaint, (b) the first and fourth respondent withdrew their complaint and allegation raised with Morris & Co (the claimant not alleging the second and third respondent were part of that allegation), (c) a written apology from the first and fourth respondent, and (d) £65,000 compensation for post-termination victimisation. The Tribunal have been informed by both parties the sum of £65,000 was offered to the claimant on an open basis without admission of liability to settle the proceedings and refused, the claimant seeking seven million three hundred and three thousand, two hundred and fifty-three pounds eighty-three pence revised to six point one million pounds.

<u>The second respondent's knowledge of the fourth respondent's actions</u>

135. The 25 May 2016 letter from the claimant was the communication which resulted in the second respondent being made aware for the first time of the fourth respondent's complaint to Morris & Co, and ACCA. The second respondent was questioned by the judge on his state of knowledge, as was the fourth. The Tribunal, took into account contemporaneous documentation, the second and fourth respondent's response to the questions and the manner in which their evidence was

given, was satisfied on the balance of probabilities, that both were telling the truth. Upon being informed of the position the second respondent gave evidence, which he was reluctant to admit to, that he had sworn at his Mother, and showed his displeasure with her. A copy of the letter 25 May 2016 was provided to the fourth respondent by the second respondent.

The 1 June 2016 letter from the fourth respondent written on behalf of the fifth respondent to ACCA

136. The claimant has today produced an email trail, together with a previously undisclosed letter dated 1 June 2016 from the fourth respondent writing on behalf of the fifth respondent to ACCA. The claimant had come upon this letter accidently after closing submissions and made an application to introduce the evidence, requesting the Employment Tribunal refer the matter to the Crown Prosecution Service on the basis that the respondent's witnesses had committed perjury. The claimant also maintained the second respondent could not have realistically discussed the matter at length with his mother, given her oral evidence before the Tribunal that she had not raised the issue with the second respondent between May 2016 and November 2016.

137. The Tribunal have revised their notes of the evidence, and it is clear the fourth respondent's evidence was that she did not discuss the matter with the second respondent between November 2015 to May 2016, and not the dates given by the claimant.

138. The 1 June 2016 letter reads as follows; "Further to your email of 19 May 2016 my son received the enclosed letter and documents from Mrs Anthony on 25 May 2016…She appears to be making a claim against my son's business unless I withdraw my complaint to ACCA and my son pays her £65,000…My son…finds this communication from Mrs Anthony to be very stressful. From my point of view this has put me in a extremely difficult position in that if I do not withdraw my complaint a claim will be brought against my son by Mrs Anthony…I am appalled by the fact that upon receiving confirmation of your inquiry into her conduct the first thing Mrs Anthony did was make threats against my family and certainly this is not something I would expect from a member of the Association of Chartered Certified Accountants. Having discussed this at length with my son he has confirmed that this is not the first-time Mrs Anthony has made threats against him or a member of his staff trying to obtain money from them whilst threatening legal action against them and I enclose a copy of an email dated 3 September 2014 from Mrs Anthony to Joanne Lark, who is an employee of my son's company. I was wondering if there was any assistance the ACCA can provide in situations such as these, as I feel that is important that I continue with the complaint against Mrs Anthony but I am concerned about the pressure my son would be put under if I continue."

139. The evidence from both the second and fourth respondent was that the second respondent was very upset when he became aware of the ACCA complaint, and the fact he provided the fourth respondent with documentation (referred to by her in the 1 June 2016 letter) is not evidence of a conspiracy, and nor is there any basis for the Tribunal to conclude the second and fourth respondent were attempting to pervert the course of justice.

140. Taking into account the factual matrix and context in which the 1 June 2016 letter was written, the Tribunal found it reinforced the evidence given by the second respondent that he was unaware of the fourth respondent's actions until receipt of the 25 May 2016 letter from the claimant, and that the fourth respondent's motivation was to protect her family and business against a backdrop of recriminations, threats and litigation.

Law

Public Interest Act Disclosure

S47B Employment Rights Act 1996

141. S.47B(1) Employment Rights Act 1996 ("the ERA") provides- "(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.

142. S.47B(1)A ERA provides "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 (a) by another worker of W's employer in the course of that other worker's employment, or (b) by an agent of W's employer with the employer's authority, on the ground that the worker has made a protected disclosure.

143. S.47B(1B) Where A is subjected to detriment by anything done or mentioned in subsection 1(A) that thing is treated as also done by the worker's employer.

144. S47B(1C) for the purpose of subsection 1(B) it is immaterial whether the thing done is with the knowledge or approval of the worker's employer.

Post- employment detriment

145. It is not disputed S.47B ERA gives a right not to be subject to detriment after termination of employment. The Court of Appeal decision in Woodward v Abbey National Plc (no 1) [2006] ICR 1436, CA found S.47B complaints dealt with the same concept as discrimination legislation and the definition of worker under S.230(3) ERA extends to those who have worked under the relevant contract.

146. In Onyango v Berkely (t/a Berkely solicitors) [2013] ICR D17 the EAT held that protection is not the limited to disclosures made during employment and includes those made after employment had ended.

Definition of worker

147. References to a worker's contract, employment and to a worker being employed are to be construed regarding the definition of "worker" is set out in S.230(3) ERA and S.43K ERA.

148. A "worker" is defined by section 230(3) of ERA 1996 as:

> "An individual who has entered into or works under (or, where the employment has ceased, worked under) -

(1) a contract of employment; or
(2) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual."

149. Section 43K ERA extended the definition of 'worker' in the context of protected disclosure. It states as follows:

(1) For the purposes of [Part IVA of ERA 1996] "worker" includes an individual who is not a worker as defined by section 230(3) but who –
a) Works or worked for a person in circumstances in which –
i. he is or was introduced or supplied to do that work by a third person, and
ii. the terms on which he is or was engaged to do the work are or were in practice substantially determined not by him but by the person for whom he works or worked, by the third person or by both of them…
(2) For the purposes of [Part IVA of ERA 1996] "employer" includes-
a) in relation to a worker falling within paragraph (a) of subsection (1), the person who substantially determines or determined the terms on which he is or was engaged..."

150. In the extended definition of worker in the context of protected disclosures set out in s.43K ERA. the Tribunal is required to consider who the claimant's employer was and whether the extended definition made the fifth respondent her employer, the claimant having agreed the third respondent was her employer when she made the first protected disclosure during her employment, with a view to deciding whether the term on which the claimant was engaged to do work was in practice decided by the third or fifth respondent, or both. The Tribunal decided she was not engaged to do work that was in practice decided by the third and fifth respondent, all of her work was decided by the second respondent on behalf of the third respondent business who was the sole employer of the claimant who exclusively determined the terms on which she was engaged.

151. On behalf of the respondent the Tribunal was referred to the EAT decision in Day v Lewisham & Greenwich NHS Trust and another [2016] EKEAT/0250/15 in which it was found "substantially means "more than trivially." It was submitted on behalf of the respondent "substantially" in s.43K(1)(a)(ii) means "in large part." The Tribunal noted the Court of Appeal in the same case citation [2017] EWCA Civ 329 held the fact that an individual was a "worker" within the meaning of the S.230 ERA did not preclude them from also falling within the extended meaning of "worker." "The wording of s.230(2) could not be read literally. An agency worker who had a second job as a waitress, and was therefore a 'worker' under s.230, could not sensibly be precluded from seeking to rely on the extended definition of work with respect to the agency work. Some words had to be added to the provision to limit the impact of those words." The Court of Appeal agreed that the provision should read "'worker'

includes an individual who as against a given respondent is not a worker as defined in s.230(3).” It concluded “the whistleblowing legislation was to be given a purposive construction. If a training body did not determine the terms of a worker's engagement at all, it could not be an employer within the wider definition. It could therefore subject a whistleblowing trainee to detriment without risk of legal sanction. Some words had to be read into the provision because a literal construction could not be what Parliament intended…There was no obvious rationale which stated that if the individual was an s.230(3) worker in respect of one party, he could not rely on the extended definition against the other.” The test to be applied by the Tribunal was set out; “There had been no recognition that the trust and HEE could substantially determine the terms of engagement. The Tribunal had not engaged directly with the question whether HEE itself substantially determined" the terms on which the doctor was engaged.”

Qualifying disclosures

152. S43A and B sets out the meaning of qualifying disclosures as defined by S.43B ERA.

153. . S.43B(1) provides in this part a “qualifying disclosure” means any disclosure of information which, in the reasonable belief of the worker making the disclosure; tends to show one or more of the following: (a) criminal offence, (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) miscarriage of justice, (d) that the health and safety of any individual has been, is being or is likely to be endangered, (e) environmental damage, and (f) that information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed. The claimant is relying on (a) and (b).

154. It is not sufficient for a worker to have made the qualifying disclosure in order to gain protection; the disclosure must fall within one of the six the requirements set out under ss.43C-43H ERA.

155. S43(C) provides for the disclosure to his (a) employer or other responsible person. The Enterprise and Regulatory Reform Act 2013 s 18 (“the 2013 Act”) removed good faith as a formal requirement in Ss 43C and Ss. 43E-43G with effect from 25 June 2013, although under S.s 49(6A) and 123(6)(A) ERA the Tribunal has the power to reduce damages arising out a detriment where the disclosure was not made in good faith. Providing a worker has met the public interest test it is possible he or she may have ulterior motives but still hold a reasonable belief that the disclosure is made in the public interest. In respect of the claimant the Tribunal found she had ulterior motives and held a reasonable belief the disclosure was in the pubic interest.

156. Disclosures to employers have the least stringent conditions, disclosures to any other person whom the worker reasonably believes to be responsible for the relevant failure have “intermediate” conditions and the most stringent conditions cover disclosures to any other person or body including those of “exceptionally serious” failures which the Tribunal will refer to as “external disclosures.” This is not a case involving exceptionally serious failures and S.43F disclosure to prescribed persons is not relevant as it is not disputed the claimant did not make a disclosure to

a prescribed person. The Tribunal is concerned with a disclosure made under S.43C to the employer (the third respondent) and S.43G in respect of the disclosure made to the Institute of Chartered Accountants in England & Wales("ICAEW").

157. In relation to external disclosures made under S.43G ERA the worker must circumnavigate a number of hurdles to claim whistleblowing protection, unless the disclosure concerns an "exceptionally serious failure" which is not an argument that has been put forward by the claimant in this case. The claimant does not rely on the argument that the disclosures was made to a "prescribed person" as set out in Schedule 1 to the Public Interest Disclosure (Prescribed Order) 2014. The list does not include disclosure of information to the ICAEW, the professional body to chartered accountants.

S.43G ERA

158. In order to gain protection under the ERA a worker must satisfy 4 conditions set out in S.43G (1) as follows-

159.1 the worker must reasonably believe that the information disclosed, and any allegation contained in it, is substantially true – 43G(b).

159.2 the worker must not have made the disclosure for personal gain (i.e. the claimant's predominant/primary motivation if there are mixed motives should be considered) – 43G(C)

159.3 any one of the conditions in subsection S43G(2) must have been met.

Subsection 43G(2) ERA sets out the following conditions:

S43G(2)(a) provides that, at the time he makes the disclosure, the worker reasonably believes that he would be subject to a detriment by his employer if he makes a disclosure to his employer or in accordance with S.34F, (b) that, in a case where no person is prescribed for the purpose of S43F in relation to the relevant failure,

S.43G(2)(b) provides the worker reasonably believes that it is likely that evidence relating to the relevant failure will be concealed or destroyed if he makes a disclosure to her employer (i.e. considering whether the worker perceives a threat either to herself or the relevant evidence applying a subjective test, or

S.43G(2)(c) that the worker has previously made a disclosure of substantially the same information - (1) to his employer, or (ii) in accordance with S43F (i.e. that the information is not being disclosed for the first time to the employer or prescribed person), or

159.4 in all the circumstances of the case it must be reasonable to make the disclosure.

S43G(3) ERA

159. S43G(3) provides in determining for subsection (1)(e) whether it is reasonable for the worker to make the disclosure, regard shall be had in particular to-

(a) The identity of the person to whom the disclosure is made,

(b) The seriousness of the relevant event (i.e. having regard to the seriousness of the threat to the public interest).

(c) Whether the relevant failure is continuing or is likely to occur in the future,

(d) Whether the disclosure is made in breach of a duty of confidentiality owed by the employer to any other person (e.g. confidential information that arises in a client business/relationship).

(e) In a case falling with subsection 2C(i) or 2C(ii), any action which the employer or the person to whom the previous disclosure in accordance with S43F was made has taken or might reasonably be expected to have taken as a result of the previous disclosure…(4) for the purposes of this section a subsequent disclosure may be regarded as a disclosure of substantially the same information as that disclosed by a previous disclosure as mention in subsection 2(c) even though the subsequent disclosure extends to information about action taken or not taken by any person as a result of the previous disclosure.

Detriment

160. In a claim for detriment the claimant must prove that she has made a protected disclosure and that there has been detrimental treatment on the balance of probabilities, the burden is then on the respondent to prove the reason for the treatment. S.48 ERA sets out the burden of proof, s48(2) provides that on a complaint of detriment in contravention of S.47B it is for the employer to show the ground on which any act, or deliberate act, was done — S.48(2). Where a claim is brought against a fellow worker or agent of the employer under S.47B(1A), then that fellow worker or agent is treated as the employer for the purposes of the enforcement provisions in Ss.48 and 49, and accordingly bears the same burden of proof as the employer — S.48(5)(b). Once all the other necessary elements of a claim have been proved on the balance of probabilities by the claimant — i.e. that there was a protected disclosure, there was a detriment, and the respondent subjected the claimant to that detriment — the burden will shift to the respondent to prove that the worker was not subjected to the detriment on the ground that he or she had made the protected disclosure.

161. If the Tribunal find that the worker was subjected to a detriment it is necessary for the claimant to establish that the detriment arises from an act, or a deliberate act, by the employer. In the well-known EAT decision in London Borough of Harrow v Knight [2002] EAT/0790/2001 it clearly established that the question of the "ground" on which the employer acted in victimisation cases requires an analysis of the mental processes (conscious or unconscious) which caused him so to act. The Tribunal considered the mental process of the respondents in relation to the six detriments alleged by the claimant.

162. The term "detriment" is not defined in the ERA, but it has been construed in discrimination law which is applicable to S.47B detriment claims. A detriment will be established if a reasonable worker would or might take the view that the treatment

accorded to them in all the circumstances had been to their detriment. It is clear from case law reporting a worker to a professional body can amount to a detriment and on behalf of the respondent this point was conceded.

163. The Tribunal was, on behalf of the respondent, referred to Aspinall v MSI Mech Forge Ltd UKEAT/891/01 and NHS Manchester v Fecitt [2012] IRLR 64. In the case of a detriment, the Tribunal must be satisfied that the detriment was "on the ground that the worker has made a protected disclosure" (section 47B(1), ERA 1996). The EAT has held that the detriment must be more than "just related" to the disclosure. There must be a causative link between the protected disclosure and the reason for the treatment, in the sense of the disclosure being the "real" or "core" reason for the treatment.

164. In Fecitt the Court of Appeal held where an employer satisfies the Tribunal that it acted for a legitimate reason, then that necessarily means that it has shown that it did not act for the unlawful reason being alleged. One of the main issues before the Court of Appeal concerned the causal link between making the protected disclosures and suffering detriment, and it was held that s.47B will be infringed if the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer's treatment of the whistleblower. "Where a whistleblower is subject to a detriment without being at fault in any way, tribunals will need to look with a critical – indeed sceptical- eye to see whether the innocent explanation given by the employer for the adverse treatment is indeed to genuine explanation…if the reason for the adverse treatment is the fact that the employee has made the protected disclosure, that is unlawful." Lord Justice Elias at paragraph 41 set out the following: "Once an employer satisfies the tribunal that he has acted for a particular reason – here, to remedy a dysfunctional situation – that necessarily discharges the burden of showing that the proscribed reason played no part in it. It is only if the tribunal considers that the reason given is false (whether consciously or unconsciously) or that the tribunal is being given something less than the whole story that it is legitimate to infer discrimination in accordance with the Igen principles." This test is particularly relevant to the present case and was applied by the Tribunal when considering the evidence, particularly that of the second and fourth respondent's explanations.

Conclusion – applying the law to the facts

The first protected disclosure

165. With reference to the first issue, namely, has the Claimant made a protected disclosure during the course of her employment, the Tribunal found that she had, the Respondents admitting that the first disclosure was a protected disclosure.

The second protected disclosure

166. With reference to the second disclosure, namely, had the claimant made a disclosure when she emailed ICAEW on 22 August 2015, the Tribunal found that she had in respect of the first, second and third respondent. On behalf of the First, Second and Third Respondent it was admitted that the email of 22 August 2015 was a protected disclosure and the First, Second and Third respondent are bound by the admission, given with the benefit of legal advice.

167. Turning to the First Respondent, it is admitted that the email is a protected disclosure in relation to his directorship of the Third Respondent only. The first respondent does not accept that it is a protected disclosure in his capacity as a director of the Fourth Respondent.

168. The 22 August 2015 letter was capable of being a qualifying disclosure, in accordance with S.43B(1) - tending to show a criminal offence and/or the respondents have failed, are failing or likely to fail to comply with any legal obligation to which they are subject. It is the manner of the disclosure to an external body, the ICAEW that has caused the claimant difficulties in establishing the disclosure was protected against all the respondents.

169. S43(C) provides for the disclosure to the claimant's employer or other responsible person. In respect of the second and third respondent disclosure was made to the ICAEW, a body responsible for the second and third respondent only. ICAEW is the regulatory body for Chartered Accountants and the First, Fourth or Fifth Respondents are not chartered accountants. ICAEW has no legal responsibility for the First, Fourth or Fifth Respondent, and the claimant was aware of this. The disclosure of information to the ICAEW was not a disclosure to a person who has legal responsibility for the alleged actions of the First, Fourth or Fifth Respondent so as to amount to a responsible person under section 43C ERA. The ICAEW is not a prescribed person for the purposes of section 43F ERA. In respect of the first respondent in his capacity as director of the fifth respondent, the fourth and fifth respondent, the claimant made a disclosure to a complete outsider on 22 August 2015 and under S.43G ER in order to gain protection she must satisfy the 4 conditions set out in S.43G (1).

170. The claimant must reasonably believe that the information disclosed, and any allegation contained in it, is substantially true – 43G(b). With regard to whether the claimant reasonably believed that the information disclosed, and any allegation contained in it, was substantially true, the Tribunal found on the balance of probabilities that she did, having come across the "notion" in November 2013. In her letter dated 19 June 2015 to Allington Hughes the claimant referred to the disclosure in the following terms; "…I believe Mr David Meacher-Jones has caused the company to commit illegal conducts amounting to tax evasion. In December 2013, I came across the notion that payments made to employees in the company including director Mr Glyn Meacher-Jones were not processed through the company's PAYE system. Further to my inquiries I also have reason to believe Mr Meacher-Jones caused the company to commit VAT fraud by siphoning income received from a separate entity, Chester Business Services Limited…"

171. The 22 August 2015 referral to ICAEW is in much stronger terms as follows: "In November 2013 I found out whilst David's parents work four days a week for the company and payments were made to them, they were not in the company's payroll…I knew they had never filled any self-assessment tax returns for income they received from the company…I queried David as to why there is another company incorporated by his parents in which some work was invoiced from Chester Business Services (CBS) was incorporated by his parents but essentially all works were carried out by Meacher-Jones staff using Meacher-Jones resources but CBS wasn't VAT registered…I was told to put smaller clients that weren't VAT registered through CBS…in my most recent correspondence to David's legal representative, I have

asked for him to either confirm or dispel my suspicions of VAT and tax evasion…" It is the Tribunal's view the claimant reasonable believed VAT and tax evasion were taking place in November 2013. It is incomprehensible that the claimant, who was a shareholder in the third respondent, did not raise her "notion" when the first protected disclosure was made, and why she then waited in excess of approximately 21 months before raising such a serious issue for the first time. The claimant was aware of the whistle-blowing process, having made serious allegations in a protected disclosure in late 2013/early 2014. Taking into account the factual matrix the Tribunal concluded the claimant made the disclosure for personal gain, and preferred submissions made on behalf of the respondents on this point.

172. With reference to the requirement that the claimant must not have made the disclosure for personal gain, the issue is not whether the claimant made a personal gain but whether her purpose in making the disclosure was to make a personal gain, and the Tribunal took the view the claimant's primary motivation was to pressurise the second respondent as director of the third respondent with regards to the threatened litigation, particularly the shareholder's dispute in which she sought payment of £100,000. Given the substantial passage of time between the alleged fraud being brought to the claimant's notice and the disclosure, the manner and timing of the 22 August 2015 letter in relation to acrimonious and litigious party-to-party correspondence, the Tribunal concluded the claimant's motive in making the allegations was not a desire to protect the third respondent from alleged fraud by the first, second and fourth respondent and/or inform the public, despite the fact that she was a shareholder in the third respondent for a substantial time during the relevant period when the alleged fraud was taking place. The Tribunal found on the balance of probabilities, taking into account the contemporaneous documentation and oral evidence before it, the claimant's sole motive was to put pressurise on the second respondent so as to resolve the shareholding dispute in her favour and ward off any prospect of litigation enforcing the restrictive covenants coupled with a damages claim and repayment of the COT3 settlement monies.

173. Turning to Subsection 43G(2), ERA S43G(2)(a) is not applicable, turning to S.43G(2)(b) there was no suggestion the claimant reasonably believed evidence relating to the relevant failure will be concealed or destroyed if she made a disclosure to the second/third respondent, the claimant having retained a number of documents which she provided to ICAEW when the disclosure was made. In short, between November/December 2013 and the claimant's resignation nothing changed in relation to the alleged fraud reported on 22 August 2015, except for the claimant downloading a number of confidential documents before her resignation. Turning to S.43G(2)(c) it is undisputed the claimant had not made a disclosure of substantially the same information when she made the first protected disclosure prior to termination of her employment.

174. Finally, in all the circumstances of the case it must be reasonable to make the disclosure in accordance with S43G(3) ERA which provides in determining whether it is reasonable for the worker to make the disclosure, regard shall be had in particular to the fact the disclosure was made to ICAEW, who the claimant knew had no authority over the first, third and fifth respondent and could not take any action against them. With reference to whether the relevant failure is continuing or is likely to occur in the future, the Tribunal was referred to a report prepared by Mercier dated 3 March 2016 (after the claimant had made the disclosure) following a review

of the ICAEW's Practice Assurance Regulations, including laws, regulations, professional standards, and tax. In the summary of findings, the third respondent was found to have demonstrated satisfactory compliance with the Practice Assurance standards. An undated VAT report was also obtained from "The VAT People" to which the Tribunal was referred which confirmed the third and fifth respondent had operated successfully as separate businesses and there was a cross-over in term of them supplying services. The Tribunal took the view that as the reports were compiled after the claimant had made the disclosure, they did not assist the respondent other than to show the claimant's criticisms were not borne out by the evidence as at March 2016.

175. The Tribunal took the view the claimant did not give consideration to the possibility of the relevant failure continuing or likely to occur in the future; had she done so she would have made the disclosure earlier than she did. Finally, in providing ICAEW with confidential documents belonging to the fifth respondent it is arguable the claimant was in breach of a duty of confidentiality owed by the third respondent to the fifth respondent given the fact the confidential information arose in a client business/relationship when the claimant was carrying out work for the third respondent when the third respondent was acting on behalf of the fifth respondent in accordance with a contractual agreement reached at the outset of every financial year.

176. In conclusion, the Tribunal finds the email to ICAEW on 22 August 2015 did not amount to a protected disclosure in relation to the first respondent in his capacity as director of the fifth respondent, the fourth and fifth respondent. Given the concessions made on behalf of the first respondent in his capacity as director of the third respondent, the second respondent and third respondent, the Tribunal finds the 22 August 2015 email amounted to a protected disclosure, and thus is required to consider the six detriments relied upon by the clamant. There is no requirement to deal with the fourth and fifth respondent in connection with the alleged detriments the Tribunal having found there was no protected disclosure. However, if the Tribunal is wrong on this point, and given the time spent in evidence dealing with the alleged detriments, the Tribunal has proceeded, in the alternative, to deal with the issues in the same order as they were agreed.

<u>Detriment 1: letter dated 11 June 2015</u>

177. The Claimant alleges that the Third Respondent failed to disclose information requested by her in a letter dated 11 June 2015. The Claimant says that the First and Second Respondent also failed to disclose this information as workers/agents of the Third Respondent.

178. With reference to the first issue, namely, could the Claimant reasonably perceive the failure to disclose the information as being detrimental to her, the Tribunal did not agree with the respondents that she could not reasonably perceive the failure to disclose information to be detrimental to her. The claimant believed the information was necessary in order for her to value the shareholding dispute. The Tribunal accepts however, given the tone of the party-to-party correspondence during this period, the claimant should reasonably have recognised there was an ongoing shareholder dispute and the second/third respondent's failure to divulge the information formed part of pre-litigation confrontation.

179. With reference to the second issue, namely, can the First, Second and Third Respondents show that the decision not to disclose this information was not influenced significantly by the fact that the Claimant had made a protected disclosure, the Tribunal held that it can on the balance of probabilities. The contemporaneous correspondence clearly show the failure to disclose information related to the litigious dispute, and there was no suggestion it was linked in any way to the earlier protected disclosure made before the claimant resigned and entered a COT3. All of the parties were legally advised during this process, and following that legal advice the Tribunal accept the second respondent believed the information sought by the claimant was not relevant and not disclosable, and it was his decision alone to refuse the information she sought.

180. There was no evidence before the Tribunal to the effect that the First Respondent was involved in the process so as to be liable. The fact that he was a director of the third respondent during this period is not sufficient to attract personal liability, and it is clear from the relevant documents the second respondent only was in charge, instructing solicitors and dealing with the pre-litigation. The claimant has not discharged the burden of proving that the First Respondent was as a worker for the Third Respondent. For the reasons set out above, he was not an employed by the Third Respondent, was not instrumental in any decisions and thus no personal liability can attach to him. The claimant accepted during the liability hearing that she had no cogent argument as to how either the first or fourth respondent could be agents for the third respondent, and there was no evidence before the Tribunal pointing to the possibility that they were agents; accordingly, the Tribunal found they were not.

181. With reference to the second and third respondent's liability this turns on whether the claimant was subjected to the detriment *on the ground that* she had made the first protected disclosure. S.48(2) ERA provides that the second respondent will bear the burden of proving, on the balance of probabilities, the grounds on which he had refused to provide the information. In Aspinall cited above, the EAT held that the words 'on the ground that' in S.47B require a causal nexus between the fact of making a protected disclosure and the decision of the employer to subject the worker to the detriment. The EAT in London Borough of Harrow v Knight cited above, ruled that the test required by the statute necessitated a determination of whether the act or omission complained of was 'on the ground that' the employee had made a protected disclosure. The question was whether the protected disclosure formed part of the motivation (conscious or unconscious) of the employer in subjecting the employee to the detriment. The Tribunal considered the evidence in the light of this test concluding the second respondent was not influenced in any way, whether consciously or unconsciously, by the fact the claimant had made the first protected disclosure and on the balance of probabilities, the claimant has failed to prove the causal link between the disclosure and the detriment.

182. The claimant's complaint with regard to detriment number 1 would thus have been dismissed, had the Tribunal not found the claim was lodged out of time as set out below.

Detriment 2 – 10 November 2015 letter from Allington Hughes

183. The Claimant alleges that on 10 November 2015, Allington Hughes, on instructions from the Third Respondent, wrote to the Claimant making detrimental allegations.

184. With reference to the first issue, namely, could the Claimant reasonably perceive the passages in the letters as being detrimental to her, the Tribunal found that she could not. The letter must be read in context. It is a response setting out the third respondent's position concerning the derivates claim, shareholding valuation and COT3. As indicated above, the Tribunal concluded, taking into account the contemporaneous documentation, the 10th November 2015 letter was written in response to ongoing litigious party-to-party correspondence on which the second and third respondent had taken legal advice, and there was no causal connection with the first protected disclosure. The reference to the claimant taking no further action to publish detrimental derogatory statements was to the allegations she had made concerning alleged fraud against the first, second, third, fourth and fifth respondent, who at the time were unaware of the 22 August 2015 disclosure to the ICAEW other than through references in the claimant's correspondence when it was threatened. It cannot therefore be said the third respondent's instruction to Allington Hughes was influenced significantly by the fact that the Claimant had made a protected disclosure because at the time of the letter the respondent's knowledge was limited to a threat the claimant had made on 19 June 2015 to report the respondents for tax evasion in the context of issuing proceedings to apply for a derivative claim and costs.

185. Had the claimant satisfied the Tribunal she had been subjected to detriment number 2, it would have gone on to find the instruction to Allington Hughes was not on the grounds a protected disclosure had been made on 22 August 2015 but .as part of on-going correspondence relating to a shareholder dispute, an alleged breach of the Claimant's employment contract and a breach of the COT3 agreement signed on 27 April 2015. The Tribunal accepted the Second Respondent followed legal advice, and was seeking to assert/protect the third respondent's legal rights.

186. The claimant's complaint with regard to detriment number 2 would thus have been dismissed, had the Tribunal not found the claim was lodged out of time as set out below.

Detriment 3 – letter dated 11 November 2015 to Morris & Co.

187. The Claimant relies upon a letter written by the Fourth Respondent, on the Fifth Respondent's headed paper, dated 11 November 2015 to Morris & Co.

188. With reference to the first issue relating to detriment 3, namely, could the Claimant reasonably perceive the writing of this letter as being detrimental to her, the Tribunal found that she could for the reasons set out above. It accepted the fourth respondent was aggrieved and concerned over the claimant's actions, not least, the fact she had retained and allegedly used to her own benefit, sensitive confidential information belonging to the fifth respondent, which she had no business in retaining after she resigned, and she was suspected of poaching clients. The fourth respondent was intent on causing the claimant mischief with her new employer, and

that was the motivation behind the letter which could conceivably damage the claimant and put her new employment at risk, or at the very least, cause difficulties for her.

189. With reference to the second issue, namely, can the Claimant prove that the First and/or Second Respondent connived with the Fourth and Fifth Respondent to write this letter and in doing so, exercised authority on behalf of the Third Respondent (section 47B(1A)(b), the Tribunal found on the balance of probabilities that she had not, accepting the letter was written by the Fourth Respondent in her capacity as a director of the Fifth Respondent without the knowledge or input by the first and second respondent, and therefore it cannot be said to have been done during the course of employment and does not fall within s.47(1A)(a) ERA. The first respondent was made aware of the fact that his wife had written the 11 November 2015 letter shortly after it had been sent, the second respondent became aware in late May 2016 after he had received the claimant's letter dated 25 May 2016.

190. For reasons already given, the claimant has not produced any coherent evidence to prove that the Fourth Respondent was a worker for the Third Respondent and that, in writing this letter, she was acting in the course of her employment with the Third Respondent (section 47B(1A)(a) ERA). The letter was written by the Fourth Respondent in her capacity as a director of the Fifth Respondent and not in the course of her employment with the Third Respondent. The Tribunal found the fourth respondent was not engaged as a worker or employee of the fifth respondent. It was submitted on behalf of the respondent the claimant in paragraph 4 of her "Response to Order of 5 December 2016" stated "with all intent and purpose MMJ [the fourth respondent] was an employee of MJC [the fifth respondent]" and fell short of saying the fourth claimant was an employee of the third respondent because she was not. The Tribunal agreed, having considered tests such as mutuality of obligation, control, and integration into the third respondent, and taking into account the explanations, which the Tribunal accepted on balance, given as to why a photograph of the fourth respondent was on the third respondent's website with the title of administrator and why the fourth respondent had provided her holiday dates. To reiterate its findings, the clear evidence before the Tribunal was that the fourth respondent performed work for the fifth respondent without salary but with payment of a divided, the fifth respondent contracted with the third respondent to provide services to it and visa-versa and it is in that capacity the fourth respondent worked on behalf of the fifth respondent carrying out administrator duties for the third respondent.

191. The claimant has not made out her case that she was a worker for the Fifth Respondent and that the Fourth Respondent wrote the letter as an agent/worker of the Fifth Respondent (section 47B(1). The claimant was not engaged by the fifth respondent in accordance with S.43K; she carried out work for the fifth respondent under the contract between third and fifth respondent. The provisions set out in S.471(A) ERA did not apply and the Tribunal accepted submissions made on behalf of the respondents that the fifth respondent is a corporate entity and cannot be a worker engaged in employment for the purpose of S.47B(1A)(a).

192. With reference to the third issue, namely, if the Claimant can show that she has reasonably perceived the letter of 11 November 2015 to be detrimental and that one of paragraphs 8(b) to (d) apply, then can the Respondents (as applicable) show

that the decision to write this letter was not influenced significantly by the fact that the Claimant had made a protected disclosure, the Tribunal found on the balance of probabilities the fourth respondent, who was solely responsible for writing the letter, can show it was not influenced significantly by the fact the claimant made a protected disclosure. It was submitted on behalf of the respondents the Fourth and Fifth Respondent say that the letter was written for the purpose of protecting the Fifth Respondent's business interests, and the evidence points to this. In her email of 4 November 2015, the Claimant had admitted that she had in her possession confidential information belonging to the Fifth Respondent and had made use of this information. The Fourth Respondent believed that the Claimant was guilty of theft. The Claimant had also sought to undermine the First, Fourth and Fifth Respondents reputation in the profession in which they practiced. The Fourth Respondent believed the claimant was poaching clients who instructed Morris & Co soon after the claimant commenced her employment, and she wanted the return of the confidential client information and lists belonging to the Fifth Respondent in the hope of avoiding misuse of said information. These are all of the matters that influenced significantly the fourth respondent when she wrote the letter to Morris & Co, and whilst the Tribunal finds the fourth respondent was aware of the claimant's threats in connection with ICAEW she had not knowledge of the 22 August 2015 disclosure to the ICAEW until some date in December 2015 which resulted in the fourth respondent sending to the claimant the letter dated 23 December 2015, alleged detriment five below.

193. The claimant's complaint with regard to detriment number 3 was found to be part of a series of similar acts carried out by the fourth respondent and as there was a continuous act between the 3rd, 5th and 5th detriment the Tribunal found the claim was lodged in time as set out below, and it had the jurisdiction to consider the complaints.

Detriment 4- letter written by Allington Hughes dated 7 December 2015

194. The Claimant avers that on 7 December 2015, Allington Hughes, on instructions from the Third Respondent, wrote to the Claimant making detrimental allegations.

195. With reference to the first issue, namely, could the Claimant reasonably perceive the passages in the letters as being detrimental to her, the Tribunal found that she could not as it was written in response to earlier correspondence against a backdrop of litigation threats. The Tribunal repeats the same points it has made in relation to Detriment 2 with the exception of one matter; by 7 December 2015 the respondents were aware of the disclosures made by the claimant to ICAEW for the first time and on a straight-forward interpretation of the letter Allington Hughes was threatening to issue proceedings for breach of the COT3 resulting from the "allegations" made by the claimant to the ICAEW. The 7 December 2015 letter cannot be considered in a vacuum; and should be viewed in context there having been earlier threats of litigation to recover the COT3 settlement monies if the claimant continued to publish detrimental or derogatory statements resulting from her attempting to put pressure for a settlement to be reached in respect of the shareholding, damages for breach of restrictive covenants and retention of confidential information. In short, the threat of litigation was nothing new, should not have taken the clamant by surprise and nor could she reasonably perceive it to be

detrimental to her given the general litigious tone of correspondence between the parties. For the avoidance of doubt, had it been the case that the 7 December 2015 letter was a stand-alone document without the previous threats of litigation emanating from the claimant and the confrontational correspondence from both parties, the Tribunal could in those circumstances have found it would have been reasonable for the claimant to have perceived the passage in the 7 December 2015 letter detrimental to her.

196. With reference to the second issue, namely, can the Third Respondent show that its instruction to Allington Hughes was not influenced significantly by the fact that the Claimant had made a protected disclosure, the Tribunal found that it can, accepting on the balance of probabilities the second respondent's evidence that the letter was written as part of on-going correspondence relating to a shareholder dispute, an alleged breach of the Claimant's employment contract and a breach of the COT3 agreement signed on 27 April 2015. The Tribunal accepted also the second respondent followed legal advice given in relation to the third respondent by Allington Hughes seeking to assert/ and/or protect its legal rights.

197. The claimant's complaint with regard to detriment number 3 would thus have been dismissed, had the Tribunal not found the claim was lodged out of time as set out below.

Detriment 5- letter dated 23 December 2015

198. The Claimant relies upon a letter written by the Fourth Respondent to her, on the Fifth Respondent's headed paper, dated 23 December 2015.

199. With reference to the first issue, namely, could the Claimant reasonably perceive the failure to disclose the information as being detrimental to her, the Tribunal found in the context of the 23 December 2015 letter there was no issue concerning failure to disclosure information. The issue, as recorded in promulgated judgment sent 29 March 2017 at paragraph 12.5 is that the 23 December 2015 letter contains detrimental allegations and at the time the fourth respondent was a worker for the third respondent, despite purportedly acting on behalf of the fifth respondent she wrote the letter in the course of her employment with the third respondent, and in so doing contravened S.47B(1)(a).

200. The first issue is therefore could the Claimant reasonably perceive the passages in the letter as being detrimental to her, and the Tribunal found that she could not, the letter having clearly been sent as a result of the fourth respondent's belief the claimant had misappropriated commercially sensitive documents belonging to the fifth respondent having "read the letters and enclosures you have sent to Meacher-Jones & Company Limited's solicitors." Within the body of the 23 December 2015 letter there are accusations of The claimant of "dishonestly appropriating property belonging to my company Chester Business Services…The data is…very confidential…and is relating to clients of Chester Business Services and as you were employed by Meacher-Jones & Company Limited and not Chester Business Services Limited you should not have taken any of this information…if you do not return the documents to me…I will have no alternative but to make a report of theft to Cheshire constabulary and also make a complaint to the Association of Chartered Certified Accountants…"

201. As indicated earlier the Tribunal accepts a complaint to the police or a body such as the Association of Chartered Certified Accountants can amount to a detriment, and the claimant could reasonably perceive a formal complaint may result in an investigation, and this could be detrimental to her.

202. With reference to the second issue concerning the fourth respondent's worker status in respect of the third respondent, the Tribunal has dealt with this above, finding she was not a worker or an employee. Had she been either, in respect of the third issue the Tribunal would have gone on to find the letter was written on the fifth respondent's letter headed notepaper by the Fourth Respondent in her capacity as a director of the Fifth Respondent and not in the course of her employment with the Third Respondent.

203. With reference to the fourth issue, had the Claimant shown that she has reasonably perceived the letter to be detrimental, the Tribunal finds on the balance of probabilities, the decision by the fourth respondent to write this letter was not influenced significantly by the fact that the Claimant had made a protected disclosure. The Tribunal accepted the fourth respondent's intention was to securing the return of confidential information, there had been a number of requests in the past ignored by the claimant and this exacerbated the situation. In short, the Fourth Respondent's motivation was to protect the Fifth Respondent's business interests; given her belief that it had lost clients and confidential documents had misappropriated.

204. In her email of 4 November 2015, the Claimant had admitted that she was in her possession confidential information belonging to the Fifth Respondent and had made use of this information via Morris & Co. The Fourth Respondent believed that the Claimant was guilty of theft, and her threat to involve the police was an attempt to recover the documentation by this threat, and it had no causal connection with the pre-termination protected disclosure or the disclosure on 22 August 2015. In submissions Mr Flynn asked the Tribunal to conclude the claimant's retention of confidential business documents printed out just before midnight on 7 August 2014 shortly before her resignation, was for nefarious purposes, i.e. to poach clients. Whether or not the Tribunal believe the claimant's motivation to have been nefarious is beside the matter; the real issue is what was in the mind of the fourth respondent. The Tribunal finds she believed the claimant's retention of confidential documents capable of damaging the business to be nefarious, and on the basis of what had transpired with the loss of clients to Morris & Co, the claimant's new employer, her belief in this regard may have been borne out by the reality and it is this fact that underpinned the fourth respondent's motivation for acting as she did. In short, the fourth respondent was concerned the claimant would continue to cause damage to the business by her use of confidential information.

205. Taking into account the contemporaneous correspondence and factual matrix, the Tribunal accepts on the balance of probabilities, the fourth respondent wrote the letters of 1 and 23 December 2015 primarily in order to recover the fifth respondent's confidential information held by the claimant.

206. The claimant's complaint with regard to detriment number 5 was found to be part of a series of similar acts carried out by the fourth respondent and as there was a continuous act between the 3rd, 5th and 5th detriment the Tribunal found the claim

was lodged in time as set out below, and it had the jurisdiction to consider the complaints.

Detriment 6- letter dated 10 March 2016

207. The Claimant relies upon a complaint made by the Fourth Respondent to the ACCA on 10 March 2016.

208. With reference to the first issue, it is not whether the Claimant could reasonably perceive the failure to disclose the information as being detrimental to her, but as recorded in promulgated judgment sent 29 March 2017 at paragraph 12.6 and the Preliminary Hearing case Management Orders made on 14 October 2016 promulgated 2 November 2016, does liability rests with MJC as for Detriment 3 i.e. that the fourth respondent was a worker for the third respondent at the time, and wrote the letter during the course of her employment with it the 10 March 2016.

209. Whilst the Tribunal accepts a complaint to ACCA can amount to a detriment, as indicated earlier, at the time the fourth respondent was not a worker for the third respondent, she did not purportedly act on behalf of the third respondent and nor did she write the letter in the course of her employment with the third respondent. The fourth respondent did not contravene S.47B(1)(a). The letter to ACCA was written by the Fourth Respondent in her capacity as a director of the Fifth Respondent and not in the course of her employment with the Third Respondent.

210. As indicated previously, the Claimant has not proved on the balance of probabilities she was a worker for the Fifth Respondent and that the Fourth Respondent made the complaint as an agent/worker of the Fifth Respondent and in this regard also the requirements set out in section 47B(1) has not been met.

211. Had the claimant shown that she had reasonably perceived the complaint to be detrimental and that the third, and/or fourth respondent attracted liability (which she did not) the Tribunal would have gone on to find the fourth respondent's decision to make the complaint was not influenced significantly by the fact that the Claimant had made a protected disclosure. As was the case with earlier complaints and letters sent to the claimant, the 10 March 2016 complaint cannot be read in a vacuum, and must be interested in the light of the ongoing party-to-party correspondence, the fact the fifth respondent had lost business to Morris & Co, alleged breaches of restrictive covenants, the retention of confidential information and the contentious dispute concerning the claimant's shareholding, its valuation and alleged breaches of the COT3. It is against this background the Tribunal accepted, on the balance of probabilities, the complaint was made for the purpose of protecting the Fifth Respondent's business interests and the first and fourth respondent who believed they were being accused of tax evasion.

212. The claimant's complaint with regard to detriment number 6 is dismissed, the Tribunal having found on the balance of probabilities, even had the claimant made a protected disclosure in respect of the fourth and fifth respondent, which she had not for reasons above, having heard from the fourth respondent and taken into account the contemporaneous correspondence, the Tribunal would have gone on to find the complaint to ACCA was not influenced significantly by the fact that the Claimant had

made a protected disclosure. The motivation was to protect the fifth respondent's clients and recover confidential business information.

Jurisdiction

213. The Claimant's complaint was presented to the Employment Tribunal on 12 August 2016. EJ Horne decided to extend the time for the Claimant to present her claim in relation to Detriment 6. There is no time limit issue in relation to Detriment 6; there is in relation to all other Detriment.

214. With reference to whether any detriments that the Claimant is found to have suffered as a consequence of having made a protected disclosure are part of a series of similar acts or failure to act, the Tribunal found there was no continuous act between the 1st, 2nd and 4th detriment which all involved the second respondent exclusively, and Allington Hughes acting on his instruction, and the claimant's complaints are out of time under section 48(3)(a) ERA, it being reasonably practicable for the claimant to have presented her claims within the statutory time limit.

215. A complaint that a worker has been subjected to a detriment for making a protected disclosure must be presented to an employment tribunal before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates, or, where the act or failure to act is part of a series of similar acts, the last such act or failure to act —S.48(3)(a) ERA.

216. In a complaint that a worker has been subjected to a detriment the Tribunal will need to consider the point in time at which the alleged detriment is said to have occurred, and not the point in time at which the disclosure or disclosures relied upon were made — Canavan v Governing Body of St Edmund Campion Catholic School *EAT 0187/13*.

217. The claimant has alleged detriments 1 to 6, a number of acts by different people, including a firm of solicitor, were so connected that they formed part of a 'series of acts that were 'similar' to one another and not isolated incidents or a discrete act. It is undisputed they occurred outside the 3-month period, and an extension of time was granted in respect of Detriment 6, which became the last act. The last act (or failure) within the 3 month may be treated as part of a series of similar acts (or failures) occurring outside the period. If it is, a complaint about the whole series of similar acts (or failures) will be treated as in time as being connected to Detriment 6, taking into account all of the evidence before it given at the liability hearing. There must exist some link between them, a relevant connection between the acts which makes it just and reasonable for them to be treated as in time and for the claimant to be able to rely on them under S.48(3) ERA. The Tribunal found Detriment 3 and 4 involved the fourth respondent and were connected to Detriment 6 and each other, and were "similar" to one another.

218. In order to ascertain this Tribunal took into account all the circumstances surrounding the detriments alleged, including the personnel involved in them and when considering jurisdiction explored the possibility of any connection between them i.e. were the respondents in cahoots as suspected by the claimant, the second respondent giving instructions to the fourth respondent to act in the way she did and

if not, why did the individuals and / or solicitors act as they did. The Tribunal has dealt with this in its finding of facts above and conclusions. To recap in short, it found the alleged detriments carried out by the fourth respondent were unknown to the second respondent until May 2016. There was no satisfactory evidence the respondents organised their actions so as to cause the claimant the detriments she alleges; the overwhelming evidence before the Tribunal was that the communications perceived by the claimant to amount to detriments were causally connected to the threatened litigation involving the second and third respondent over a myriad of matters, not least the threats to that business as a result of a belief the claimant's had breached her contract of employment in respect of the restrictive covenants and duty of confidentiality.

219. The alleged detriments amount to a series of distinct acts taking place over a period and the time limit begins to run when each act occurred. In short, the Tribunal is satisfied that Detriments 1, 2 and 4 concerned different incidents and ought to be treated as individual matters, Detriments 3, 5 and 6 involved similar acts relating to the fourth respondent and can be considered as part of a continuing act and, in consequence, are in time.

220. In respect of Detriments 1, 2 and 4 the Tribunal has the power to extend the time limit for a reasonable period if it is satisfied that it was not reasonably practicable for the complaint to have been presented in time — S.48(3)(b). There was no evidence before the Tribunal it was not reasonably practicable, the reverse given the fact the claimant was represented by solicitors throughout the relevant period and she was involved in other litigious matters involving threats of litigation. There was nothing to prevent the claimant from issuing proceedings within the statutory time limit apart from her motivation. The claimant's intention was to put pressure on the second and third respondent in relation to resolving the shareholders dispute, warding off court proceedings to enforce the restrictive covenants and a claim for damages and repayment of the COT3 settlement monies.

221. In conclusion, the claimant's complaint of detriment numbered 1, 2 and 4 brought under Section 47B of the Employment Rights Act 1996 as amended, were not presented before the expiry of the statutory limitation period, the Tribunal was satisfied that it was reasonably practicable for the complaint to be presented before the end of that period, it does not have the jurisdiction to consider complaints numbered 1, 2 and 4, which are dismissed. In the alternative, had complaint numbered 1, 2 and 4 been brought within the statutory time limit, the claimant was not subjected to any detriment by any act, or any deliberate failure to act, by the first, second or third respondent done on the ground that the claimant had made a protected disclosure and the claimant's claim for detriment numbered 1 to 5 brought against the first, second and third respondent in accordance with Section 47B Employment Rights Act 1996 as amended is not well founded and is dismissed.

222. The claimant's complaint of detriment numbered 3 and 5 brought under Section 47B of the Employment Rights Act 1996 as amended, were part of a series of similar acts, there was a continuous act and the complaints were presented before the expiry of the statutory limitation period, the Tribunal does have the jurisdiction to consider complaints numbered 3 and 5. In relation to complaint numbered 3, 5 and 6 the claimant was not subjected to any detriment by any act, or any deliberate failure

to act, by the first, second or third respondent done on the ground that the claimant had made a protected disclosure.

223. The claimant's claim for detriment numbered 3,5 and 6 brought against the first, second and third respondent in accordance with Section 47B Employment Rights Act 1996 as amended is not well founded and is dismissed.

224. The claimant was not a worker employed by the fourth and/or fifth respondent and her claims for detriment brought against the fourth and/or fifth respondent in accordance with Section 47B Employment Rights Act 1996 as amended is not well founded and is dismissed.

225. The fourth and/or fifth respondent was not an agent of the third respondent acting with the third respondent's authority and the claimant's claim for detriment brought against the fourth and/or fifth respondent in accordance with Section 47B Employment Rights Act 1996 as amended is not well founded and is dismissed.

226. The claimant did not satisfy the conditions set out in Section 43G(1) of the Employment Rights Act 1996 and she did not make a qualifying disclosure in respect of the first respondent acting in his capacity as director of the third respondent, the fourth respondent and the fifth respondent, and her claim brought under Section 47B are dismissed.

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Employment Judge Shotter
26.09.2017

REASONS SENT TO THE PARTIES ON

2 October 2017

FOR THE SECRETARY OF THE TRIBUNALS