Case Number: 3325370/2017
3325851/2017

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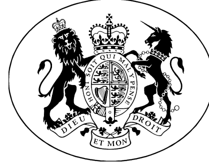

EMPLOYMENT TRIBUNALS

Claimant		**Respondents**
Ms J Shergill	**v**	**1. Mr Gurmail Singh Malhi (on his own behalf and as President for the time being of Sri Guru Singh Sabha Southall, an unincorporated association)**
		2. Mr Manjit Singh Buttar **3. Mr Gurbachan Singh Athwal** **4. Mr Avtar Singh Buttar** **5. Mr Gursharan Singh Mand** **6. Mr Balwant Singh Gill**

Heard at: Watford

On: 10, 11, 12, 14, 17, 20 & 24 September 2018
And in chambers on 25 & 26 September 2018 and 11 December 2018

Before: Employment Judge R Lewis
Mrs S Boot
Mrs I Sood

Appearances

For the Claimant: Mr Jagdeesh Singh, representative
For the Respondents: Mr E Legard, counsel

CORRECTED RESERVED JUDGMENT

1. The claimant has made protected disclosures.

2. The claimant has been subjected to detriments on the ground of having made protected disclosures.

3. The claimant's claim of constructive unfair dismissal is upheld.

4. The claimant's claim of automatic constructive unfair dismissal is dismissed.

5. The claimant's claim of sex discrimination is dismissed.

6. The claimant's claim to holiday pay is dismissed.

7. **The portions of this Judgment shown in bold have been corrected in accordance with the provisions of rule 69 and rule 70 of the Tribunal Rles of Procedure 2013.**

REASONS

Introduction

1. In this judgment the term "the respondent" is used to refer to the unincorporated association identified above, which in the course of this hearing was referred to as "the Gurdwara".

2. Where reference is made to any respondent as an individual, including Mr Malhi, that person is referred to by name, or with reference to the numbering given above (eg a reference to R5 is a reference to Mr Mand).

3. References to pages in the bundle refer to those in what was described during the hearing as the main bundle (pages 1-815). Any reference to the claimant's supplemental bundle is identified as for example C25.

4. This was the hearing of claims presented by the claimant on 28 June and on 5 August 2017. The claims were the subject of a preliminary hearing before the present judge on 28 September 2017 (110), order sent 12 October. The present listing was given on that occasion.

5. The parties were informed at the start of the hearing that not all listed days were available, and we were grateful to the parties and representatives for an efficient use of time. We were also grateful to them for their flexibility in accommodating administrative arrangements.

6. The parties agreed at the start of this hearing that the hearing would deal with issues of liability on all claims; with Polkey issues, if any, in the dismissal claim; and with liability and calculation if appropriate in the claim for holiday pay. In the event, we did not reach a decision on Polkey, which is reserved. The remedy hearing provisionally listed for **Monday 11 February 2019** is confirmed, and a separate case management order made for that hearing.

7. The tribunal had a main bundle in excess of 800 pages to which a relatively modest number of additions were made. The arrangement and presentation of the bundle were not easy to follow. The claimant's supplemental bundle contained a very modest number of documents to which reference was made. A greater degree of professional co-operation in preparation, which could well have included an agreed core bundle, would have assisted.

8. In addition to her own evidence, the claimant had served the statement of Mr SS Sangha. Mr Sangha's evidence did not assist the tribunal. It dealt extensively with his own issues with the respondent, which were not matters before this tribunal. It set out his understanding of the claimant's issues, drawing on his interpretation of documents and what he had been told, which could not be evidence which was of assistance. In cross-examination he readily agreed that his intention in giving evidence was to further his own separate disputes with the respondent and with Mr Malhi.

9. The claimant had also served a statement from Mr GS Dhillon. Mr Legard stated that on grounds of relevance he did not have questions for Mr Dhillon, whose evidence accordingly was taken as read unchallenged.

10. The respondents called the six individual respondents. Mr MS Buttar was cross-examined for nearly a day, and Mr Malhi for over two hours. They were the main witnesses.

11. The parties had agreed a hearing timetable, for which we were grateful, and provided reading lists. Mr Legard produced a cast list, but the chronology produced on behalf of the claimant was so scanty as to be of next to no assistance.

12. At the request of the respondents, an interpreter was present to assist Mr Malhi if required. In the event, the interpreter was called upon to translate one sentence of the oral evidence. The parties were informed that one of the tribunal members is a Punjabi speaker.

13. Having heard the evidence and submissions, and received written submissions in closing from both sides, the tribunal reserved judgment. We apologise that for a number of reasons related both to this case and other work demands, it has taken the tribunal longer than we would wish to send out this judgment.

14. In our findings below, we have departed from strict chronology. We have also interwoven discussion and conclusions with our findings of fact. Both of these steps have been taken because we think that they will render this judgment easier to follow.

Executive Summary

15. It may be useful, in light of the length of this document, to summarise it. The respondent is the largest Sikh temple/congregation in Europe. The individual named respondents are members of its Executive Committee, except for Mr Gill, who is a trustee. The claimant is a Sikh, but not a member of the respondent, because she lives outside its geographical catchment. The claimant was employed between 2014 and 2017 by the respondent to undertake a range of office administrative duties, of which the major related to general administration and human resource responsibilities, including payroll. It was common ground at this hearing that until early 2017 she enjoyed a harmonious working relationship with her employers, and that the relationship deteriorated badly between about early March and the beginning of July.

16. We were mainly concerned with events between about the end of January 2017 and the beginning of July 2017 when the claimant's employment ended. During that period the claimant became involved with a number of external agencies and regulators, including the London Borough of Ealing (LBE); the Home Office (HO); the Charity Commission (CC); and the police. In the course of those events, we find the claimant made protected disclosures. It was common ground that while the respondent knew at the relevant time that the claimant had made some protected disclosures, most were made without its knowledge.

17. The claimant complained that in a number of events, interactions and decisions she was subjected to detriments on the ground of having made protected disclosures. We have upheld a minority of those claims.

18. It was common ground at this hearing that during part of the claimant's employment the respondent paid a monthly allowance of £300 to two small groups of employees, all of whom were men (priests or chefs) who did not live in accommodation provided by the respondent. The claimant was a female employee who resided in her own accommodation. Her complaint of sex discrimination in relation to the failure to pay her the £300 allowance fails. This tribunal finds that it has no jurisdiction to entertain that claim, which should properly have been brought as an equal pay claim if at all.

19. It was common ground at this hearing that the claimant was entitled by her contract to 28 days' holiday per calendar year and that her terms and conditions of employment stated that holiday could not be carried forward from a previous year. The claimant claimed that she was by custom and practice (a) entitled to carry forward holiday from 2016, and (b) entitled to the entire untaken year's holiday due to her in her year of end of employment. We accept the respondent's case, which is that the claimant was entitled to her pro-rata holiday entitlement calculated up to the end of her employment, for which she has been paid. We find that the framework of the claimant's case has not been proven.

20. In March 2017 the claimant presented a formal grievance. The respondent did not have a grievance procedure. Mr Mand was appointed to investigate. He interviewed the claimant and a number of other individuals, and reported at the end of May. He rejected the claimant's grievance, and recommended steps to improve the governance of the respondent. The claimant wished to appeal, but no appeal hearing ever took place.

21. There were two pivotal incidents in the case. The first was the arrest of Mr P Singh on 7 March 2017. We find that the claimant was one of a number of individuals who were instrumental in bringing Mr P Singh to justice. We do not agree that she made the first and only emergency call to the police. We agree that she legitimately felt that she did not receive a fair share of credit for the arrest. The second concerned an offensive Whatsapp message which appeared on about 29 June 2017. We do not find that it was sent by or on behalf of Mr Malhi, as the claimant alleged.

22. The claimant's claims of constructive dismissal required the tribunal to find whether at the time of her resignation, the respondent had without proper cause

conducted itself towards her, analysed objectively, in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between them, such as to indicate an intention no longer to be bound by the contractual relationship; and that the claimant terminated the relationship in response.

23. The tribunal finds that events which we find were detriments, and events which we find were acts likely to seriously damage the employment relationship were together an effective cause of the claimant's resignation. Her claim of constructive unfair dismissal succeeds. We reject her claim of automatic unfair dismissal fails.

24. Although at the start of this hearing the tribunal stated that it would deal with Polkey issues at the liability stage, in the event, it seemed to us fair to reserve Polkey evidence and submissions to the remedy hearing.

Points of general approach

25. We preface our findings of fact with a number of general observations.

26. Evidence in this case touched on a wide range of matters, some of them in depth. Where we have made no finding about a matter of which we heard; or where we have made a finding, but not to the depth to which the parties did, our approach is not a matter of oversight or omission. It reflects the extent to which the point was truly of assistance to us, no matter how strongly a party or witness felt about it.

27. While the above observation is true in many cases, it was particularly relevant in this case, in light of the apparent wish of both sides and most witnesses to broaden the scope of this hearing into an inquiry into grievances about the governance and history of the respondent.

28. As the tribunal stated during the hearing, on a number of occasions, our task is limited to adjudication of the legal issues before us. If we make any finding or observation about any aspect of the respondent's governance, we do so only because we consider it necessary to our task.

29. The parties had agreed a brief glossary of Punjabi terms to which reference was made. In closing submission, Mr Singh commented that the glossary definition of "Sewa" was simplistic, though accurate. We accept that bare translation of a religious term may not convey a full understanding. We have conducted the case on the understanding conveyed by the agreed glossary. We do not accept that the tribunal needed a more sophisticated understanding of the framework of Sikhism.

30. Where evidence referred to the history of "political" disputes within the respondent, we make no finding on those matters, save that they form part of an acrimonious background. It was no part of our role to make any finding about any dispute which any other individual may have had with the respondent.

31. Where we have been called upon to make findings about actions of an individual respondent, we confine ourselves to matters which were relevant to the issues before this tribunal. We make no finding about, for example, the personal integrity or business affairs of any individual, despite the material in the supplemental bundle.

32. The tribunal was aware that the parties had met for the purposes of judicial mediation. The tribunal knew nothing of what took place at judicial mediation, and intervened when the claimant appeared in evidence about to refer to something said at mediation. The judge reminded the parties of the strict confidentiality attaching to everything said at mediation.

33. We heard allegations about individuals working in breach of immigration control. In correspondence at the time the claimant repeatedly used the phrase "illegal immigrants". We do not adopt that label, which appears to us inappropriate for a number of reasons. Where we refer to issues of this nature, it is to individuals working allegedly in breach of immigration control.

34. The case proceeded on a definition of the issues which was less than precise, and which the present judge accepts he should have subjected to more rigorous scrutiny at the hearing in September 2017.

35. A series of documents prepared by and on behalf of the claimant, notably her grievance of 28 March 2017 (347), her two claim forms, and her witness statement, were at times prolix, discursive and repetitive. They were not presented in plain chronological order and the events in them were at times inadequately analysed. We took as our primary working documents the tabular summaries contained at paragraphs 21 and 176 of the first ET1 (16 and 51) supplemented by paragraph 10 of the second ET1 (85).

36. At this hearing the claimant and Mr J Singh on her behalf sought to introduce new material and allegations, which would have constituted additions to the claim. No application to amend was made. In cross-examination for example, the claimant sought to rely on alleged protected disclosures to HMRC, and to authorities responsible for fire safety. Those were not pleaded and she was not permitted to do so. In closing, Mr Singh, for the first time, submitted that the claim for holiday pay was based on custom and practice. That was not the pleaded claim, and he made no application to amend. There had been no coherent pleading or evidence to make good a custom and practice based claim.

37. We note other features about documentation and evidence in this case. The tribunal has considerable experience of cases in which evidence is based on text, email, WhatsApp, and/or social media. The tribunal is aware that none of those is a medium which encourages thoughtful drafting. Material produced almost instantaneously is not written to be the subject of artificial forensic dissection months later. We must approach such material with caution. The additional cautions to be applied in this case are that the material before us was frequently presented in the bundle out of context, with an incomplete indication of source. It was sometimes produced anonymously, cross-referring to events or individuals unconnected with these proceedings.

38. Correspondence on both sides at the time was notable by the uninhibited use of emotive language on a spectrum from overblown rhetoric to personalised abuse. This style was present in the claimant's pleadings, evidence and submissions. Both sides raised questions as to whether letters and emails from each other were really written by their signatories: we can make no finding on that point on either side, except to say that someone who endorses another person's draft accepts the draft as his or her own.

39. We approach the language issues with great caution. We must bear in mind that an overwritten submission may be factually accurate; and that an allegation expressed in emotive or even abusive terms may be well-founded. We must take care not to permit our distaste for such language to blind us to its potential accuracy or utility. Equally, we must take care not to be swayed by mere rhetorical overstatement. We have chosen to quote few examples, if any. As the language to which we refer was of almost no assistance, it would not be right to give it wider publication in this Judgment.

40. The claimant (with Mr Sangha's support) advanced a binary case. We mean that she presented herself as blameless in these events; presented the respondents as wholly at fault; and did not acknowledge anything positive said or done by a respondent. The respondents defended their side on a similar footing, with occasional, striking concessions of their own shortcomings. The binary approach is common in litigation. It rarely assists the tribunal, and it did not assist us in this case. In our experience, the binary approach simply does not reflect the reality of most workplaces, and of most events about which a tribunal is called upon to make a decision.

The legal framework

41. This was primarily a claim under the protected disclosure provisions of the Employment Rights Act and we were concerned with s.43B, which states as follows:

> "In this part a "qualifying disclosure" means any disclosure of information which in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following:
>
> (a) That a criminal offence has been committed…
> (b) That a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject…
> (d) That the health or safety of any individual has been, is being, or is likely to be endangered."

42. S.43C covers disclosure to the employer, and s.43F disclosure to prescribed persons, namely those prescribed under SI 2014/2418 for the purposes set out in the Order.

43. S.47B provides that,

> "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."

In this judgment, we deal with particular application of aspects of those definitions where they arise in context. We add one general comment. While it is not a matter of statute, it seems to us a matter of the logic of evidence that an employer cannot treat an employee "on the ground" of having made a protected disclosure unless the employer knows about the protected disclosure. We appreciate that knowledge may be nuanced, but no issue of knowledge was in dispute in this case.

44. In considering whether an event was a detriment, we follow the well known guidance in Shamoon v RUC 2003 UKHL 11, and ask whether the reasonable person in the claimant's position would consider herself placed at disadvantage in the same setting.

45. We were referred to one major authority, Blackbay Ventures Ltd v Gahir (EAT 0449/2012). Mr Legard referred us in particular to the paragraph in the head note and at paragraph 98, cautioning employment tribunals against adopting a "rolled up approach" to protected disclosures, and to the necessity for individual analysis. As Mr Legard acknowledged in closing, the task of this tribunal was made no easier by the fact that the claimant presented her case as a rolled up case. That comment was well made.

46. S.48(2) provides that,

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

We noted the guidance in Fecitt v NHS Manchester 2012 ICR 372, and are helped by considering whether a protected disclosure played no part whatsoever in the treatment alleged, or was a material (ie more than trivial) factor.

47. The claim of sex discrimination was brought as a claim of direct discrimination only. It was therefore brought in part under the provisions of s.13 Equality Act 2010, which provides,

> 'A person (A) discriminates against another (B) if, because of a protected characteristic A treats B less favourably'.

48. That is however a definition section only. A claim about discrimination in relation to terms and conditions must be brought under the provisions of s.39(2), which provides,

> 'An employer (A) must not discriminate against an employee of A's (B) (a) as to B's terms of employment … (d) by subjecting B to any other detriment.'

49. S.39(2) is expressly disapplied by operation of ss 66, 70 and 71 in circumstances where the claim is factually within s.66(2)(b), which provides that a sex equality clause is to be incorporated into A's terms and conditions, such that,

> 'If A does not have a term which corresponds to a term of B's that benefits B, A's terms are modified so as to include such a term.'

50. We understand and approach these provisions as providing, in short, that a claim for discrimination in pay should be framed under the equal work provisions of s.65, and not as a claim of direct discrimination under s.13. The claimant did not at any time advance a claim that her work was in any sense equal to that of any male priest or male chef.

51. When we come to the claim of 'ordinary' constructive dismissal, we must ask ourselves whether it has been shown to the tribunal that objectively the respondent conducted itself towards the claimant without proper cause in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence; and if so, whether the claimant resigned promptly as a result. In a case such as this, where we find that there were multiple reasons for the resignation, and that some but not all of the reasons were actions which we find fell within the above definition, our task is to ask whether the actions which amounted to breaches of the duty of trust and confidence were an effective cause of the claimant's resignation: we need not ask if they were the sole or even principal cause.

52. We must note that the alternative claim, brought under s.103A ERA, requires us to consider whether it has been shown that the respondent's actions, which we have found to have been repudiatory, and which led to the resignation of the claimant, had, as their sole or principal reason, that the claimant has made protected disclosure(s).

Setting the Scene

53. We now turn to scene setting for the case which we heard.

54. Mr Malhi and Mr Gill summarised the history of the respondent. It is an unincorporated association and a registered charity. It was established in the 1960's (by Mr Gill among other founders) and has grown to be the largest Sikh Gurdwara in Europe, with many thousands of members. Its property portfolio includes premises used for worship and communal activities, residential property, and a faith school. Mr Malhi stated that it has an annual income between £2.4 and £2.8 million.

55. The governing instrument for English law purposes is a constitution (C74) to which we were briefly referred. When in closing Mr Singh commented that the respondent enjoys "no exemptions" he was stating that which was not in dispute: put simply, the respondent is, in all respects, subject to the law of the land.

56. The respondent's governing body is its general meeting of members. Its managing body is the Executive Committee. The constitution deals with membership of the Committee (C83) and with the conduct of elections. The Committee has 21 members, 14 of whom are named office bearers, including the President and General Secretary (respectively at all material times Mr Malhi and R2, Mr M Buttar). The Committee is subject to election every three years

(C102). The respondent's freehold and leasehold property is held by Trustees, who must deal with the property (and any sale proceeds) in accordance with the directions of the Committee and or a general meeting of the Sabha (C 91).

57. Mr Malhi's witness statement contained the following: "Sadly the [respondent] has a history of conflict and in-fighting for control by two competing groups, namely, the Sher Group and the Baaj Group". That bald summary was common ground, but did not capture the depth or extent of a history which all sides agreed was bitter. If there were any definable policy distinction between Sher Group and Baaj Group, the tribunal was not told of it. At all material times since October 2014, the Sher Group was the controlling faction on the committee. It had taken over from the Baaj Group in elections in October 2014. We noted a number of occasions in which witnesses for the respondent, when asked about shortcomings in the respondent's procedures or policies, answered that the shortcomings had been inherited from the committee's predecessor in 2014.

58. We noted a number of items which illustrated the depth of ill-feeling between the groups, including an election posting by Mr Malhi (C509) and the witness statement of Mr Sangha **[---]**.

59. We were cautioned that although the Sher and Baaj are the main groups, there had recently emerged a third group, and that many individuals within the respondent identified themselves as neutral, not being associated with one group or the other. We accept also as a matter of general common sense that a change in political leadership between major political rivals placed demands upon employees of the respondent.

60. It appeared to us that the affairs of the respondent were conducted with a general awareness of the potential for political conflict and extreme language; and for what might appear to be issues of policy to become highly personalised. These factors were heightened by extensive use of social media within the community, and by a general absence of confidentiality within the management and leadership of the respondent.

61. The claimant, who was born in 1985, is a law graduate, without further formal qualifications. At the relevant time she was a single parent. Her employment with the respondent began on 7 April 2014. She had a reporting line to the general secretary (one of the office bearers on the committee). She was appointed at a time when the Baaj Group was in ascendancy, but in October 2014 the Sher Group took over. There was therefore a change of General Secretary. In April 2015, Mr M Buttar became General Secretary and the claimant's line manager, a responsibility which he retained for the rest of the claimant's employment.

62. The claimant was issued with a contract of employment on 31 October 2014 (120). The document is plainly cut and pasted from another workplace, and at time of issue referred to legal procedures which had been repealed. It failed to contain all the information required by statute to appear in a contract of employment. In particular, it did not contain or refer to a grievance procedure. The stated job title was "HR Manager (also known as Admin & Account Officer)". We find that the claimant had primary responsibility for HR issues, and a general

responsibility for administration and accounts. The claimant worked 27 hours per week, Wednesdays to Saturdays, and was paid £12,000 per annum. In October 2015 her hours were extended to 38 per week (125) and she was paid £9.00 per hour. At that modest rate, she was the respondent's best paid employee.

63. It was obvious that the claimant took pride in a position of relative seniority within the respondent. We do not criticise her for that in the slightest: it is an indication of her commitment to her work. However, it may in her mind have created an expectation which was bound to be disappointed. We find that however senior she was, she was regarded as subordinate to each of the 21 members of the committee, and she was always bound to encounter individual committee members intermeddling with any issue. Her desire for professional recognition cannot have been assisted by the blurring of professional and personal boundaries (from which she at times benefited, accepting personal loans from committee members to assist her personal finances). We do not criticise the parties for addressing each other at work in either English or Punjabi as "Uncle" and "Daughter" but we doubt that that language was conducive to mutual respect in the workplace.

64. As we understood it, no member of the Committee was paid for responsibilities which were time consuming and onerous. We understood committee members to regard service on the Committee as a form of voluntary service (or "Sewa"). We were not given details of the entire committee elected in 2014, but understood its membership to be exclusively or predominantly male. It was common ground that membership of the committee reflected the community's respect for age and the older generation.

65. While it is no part of our responsibility to consider any religious issue, we would be doing all involved in this case an injustice if we did not respectfully acknowledge the depth of shared commitment to Sikh faith and custom. We have no doubt that underlying this dispute was a bedrock of common values and common purpose.

66. We turn briefly to the issue of the management setting. At paragraph 9 of his witness statement, Mr M Buttar wrote the following, which we read in conjunction with Mr Mand's recommendations (para 188 below) as a pained recognition of structural failings, and of the need for reform.

> "Upon my appointment, I was aware that the [respondent] did not have any HR policies; procedures including any set management rules or operating procedures. There was a lack of professionalism in their dealings. It must be noted, majority of the senior Executive Committee were longstanding members of the community, mostly self-employed or retired, were not well educated, and were volunteers doing their "sewa". It hurts me to say this, but it is a fact, everyone considered themselves to be the person in charge and did things and made decisions as they saw fit, and without consultation."

In oral evidence, Mr Buttar gave a pithy summary of the problem:

"Committee members were not in charge of staff. Office holders were not line managers."

67. Mr Buttar's working background was that he had retired in 2011 after 31 years working for London Underground, retiring as Senior Manager, having throughout his career received many forms of formal recognition from his employer, and outside his workplace having gained qualifications including qualifications in management and from CIPD. We accept that Mr Buttar as an individual identified that the respondent's style of management created risk and was unsustainable. We also accept, as is implicit in the quoted extract from his statement, that modernisation required the active support and self-discipline of committee members. We take the quoted portion to mean that those qualities were lacking in individual Committee members, and in the Committee as a whole.

68. We find that the management system within which the claimant had worked, and which Mr Buttar took over, operated on the basis of long-established informal tradition, irrespective of whether the leadership of the respondent was in the hands of the Baaj or the Sher Group. We found in this case a number of aspects of what we call informal tradition: the respondent did not have in place the written procedures which might be expected or required, and did not maintain the written records which are usual in an employment setting. It did not have established lines of authority and management. It did not respect the individual privacy and confidentiality of employees. It accepted the intervention of individual Committee members on matters about which they wished to intervene. We find that in that setting the claimant did not consistently seek to modernise the respondent's practices, as her evidence suggested.

69. We have found that the claimant's written contract was not up to date or fully compliant. We find that there was no grievance procedure. If the respondent had any system for setting employee objectives, or for individual appraisal, we were not told of them. The respondent did not have a recruitment process, an absence shown most strikingly in the appointment of Ms Wilkhu, dealt with below. Although the claimant's line manager was the General Secretary, other office holders took the lead in major functional areas of her work, including immigration sponsorship, volunteer management, and finance. We were not told of any clear structure separating line management from functional management. We were not told of any code of conduct applicable either to employees of the respondent, or to members generally, governing the use of IT, the internet and social media.

70. These informal structures appear generally to have operated more or less acceptably over the years. We find that the claimant operated the informal procedures and was content to do so. Informal procedures however, as R2 acknowledged, carried a major risk, which was that they were fit for dealing with harmony, but inadequate to manage dispute or conflict. One consequence was that they helped create an environment in which issues were unnecessarily debated on email and social media, and in which the claimant came to share the view of many committee members, namely that everyone was entitled to debate every issue on equal footing. The lack of self-discipline, and the uninhibited use of language, which were both a feature of this case, have, we find, some foundations in those factors.

Findings of fact

71. We now turn to our findings of fact, and we deal first with the two lesser claims, which were for sex discrimination and holiday pay.

Sex discrimination

72. This claim can be shortly stated. The respondent had need of the services of priests and chefs. At all times, only men held those posts. We were told of recruitment difficulties.

73. The bundle contained at 788-789 minutes of a committee meeting which was agreed to have taken place in the summer of 2015. Mr M Buttar reported on a review of the pay of priests and chefs, and the meeting agreed the payment of an allowance, "For individuals living in their own accommodation it was agreed they would receive a housing allowance of £300 per month." It was common ground that that was paid to a group of about six priests and chefs, every month from the summer of 2015 until about February 2017.

74. On 8 February 2017 the claimant reported about the operation of the housing allowance to the three committee members who formed the pay review group. She suggested that it should be scrapped or extended to all staff living outside the respondent's accommodation. She also indicated that the payment should be reported to HMRC (704). It was common ground that the payment stopped after that, although whether it stopped as a result of the claimant's advice was not clear.

75. The claimant's case was straightforward. For a period of about 20 months a group of male employees had received a housing allowance of £300 per month. They all lived outside the respondent's accommodation. The claimant lived outside the respondent's accommodation and did not receive such an allowance; therefore she had been discriminated against directly on grounds of sex.

76. The present judge's case management order wrote, "Mr Singh [the claimant's counsel at the preliminary hearing, and not the same representative who appeared before us] confirmed that the claim does not relate to equal work, and is not advanced as an equal pay claim. It is primarily a claim of direct discrimination, which may be formulated as a claim of indirect discrimination." (112)

77. Mr Legard in opening stated that the factual premise on which this claim was based was not in dispute, but that the reason for payment was because the recipients were priests (or chefs), and not a difference related to a protected characteristic.

78. The judge drew to the parties' attention in the course of the hearing the provisions of s.70 of the Equality Act 2010. In closing Mr Legard adopted the tribunal's observations. To summarise the point, it was that the claimant complains of a contractual payment made to men which is not made to her. She therefore seeks operation of an equality clause in her terms and conditions which would have the effect of giving such payments to her. By virtue of s.70

that claim may only be advanced as a claim of equal pay, and not as a claim of discrimination, s.39(2) expressly being disapplied.

79. In closing, Mr Singh replied by submitting that the payments to the priests and chefs were discretionary not contractual and therefore as an exercise of discretion fell outside the s.70 disapplication. Mr Singh said that it appeared that there had been a discretionary decision to make the payment and the consequences of 704 indicated a discretionary decision to withdraw it. That did not address the question of the basis upon which the payments had been made in between those two dates. There had for obvious reasons been no evidence or submission on the point, and certainly no evidence to suggest that each month each priest or chef had been the subject of a separate discretionary decision. Mr Singh's submission was made opportunistically, to answer the s.70 problem.

80. We find that the respondent varied the relevant men's terms of engagement by paying a housing allowance and then varied the terms again by withdrawing it. While the payment was made it was contractual and fell within the exemption. The tribunal has no jurisdiction to hear this claim, which fails.

81. We add that we heard no evidence from either side about the employment status, if any, of priests or chefs, or on what difference their status might make as comparators.

<u>The holiday pay claim</u>

82. The claimant's contract stated that she had a right to 28 days' holiday per year (121); that the holiday year was the year starting 3 January; and, "Unused holiday entitlement cannot be carried forward to the next holiday year."

83. There were before us no agreed holiday records or written procedures for application, approval, rejection, and recording of holiday. The bundle contained a modest number of holiday request forms in the name of the claimant dated 2016 (746ff). They were poor quality copies and the claimant did not before us accept their authenticity.

84. The claimant's evidence on holiday was sketchy. Immediately after her employment terminated she claimed a right to the entire year's untaken holiday for 2017, although she had resigned almost exactly half way through the year. The claim was relatively straightforward. She asserted that the holiday system was not methodical, but was discretionary, flexible, and "free flowing custom and practice". That was language aimed to get round the absence of records, used by a claimant who had for three years been the senior employee with HR responsibilities.

85. Mr Singh asserted that the claimant had taken a total of nine days' leave in 2017 of which seven had been carried over from 2016. She claimed an entitlement to 28 days' holiday in 2017, plus the seven carried forward, less nine which she had taken, leaving 26 days.

86. We find that it has not been proven on evidence that the claimant had a right or agreement to carry forward holiday, contrary to what was in her terms of employment. We find that she has also failed to discharge the burden of proving on evidence that there was an established custom, creating legal obligation, whereby staff who left during a holiday year were entitled to all holiday accrued for that calendar year, irrespective of when they left. We accept the respondent's submission that after the claimant had finished employment, she was paid for holiday which had accrued pro rata in the year 2017. The claimant did not challenge Mr Legard's assertion that considered on that basis, she was paid more than was due to her, although no issue of recovery or repayment arose. The claim for holiday pay fails.

The protected disclosures

87. We below adopt for reference the table set out in the ET1 in which the claimant helpfully sets out in short form the protected disclosures relied on in the first ET1. We follow her numbering referring to them as PID 1-12. In the same ET1, she identified 15 detriments (51-53) likewise in helpful tabular form, which we refer to here as detriments 1-15. In paragraph 10(a) of her second ET1 (85) she set out 7 further detriments as 10(a) to (g), and we follow that designation.

88. We have approached our task by setting out a broad chronology addressing the public interest disclosures relied upon, and then returning to deal with the separate detriments.

89. Applying that approach, and with reference to the numbering in the ET1, we find that PID 1, 3, 5 and 11 were not protected disclosures within the meaning of the legislation, and that PID 2, 4, 6, 7-10 inclusive and 12 were. Of the eight disclosures which we have found, we find that the respondent had knowledge of the disclosure by the claimant at a material time in relation only to four, which were PID 4, 6, 7 and 9 (all of which took place between 7 and 28 March 2017). We find that the respondent did not at any material time before the end of the claimant's employment have knowledge of PID 2, 8, 10, 11 or 12. We record that the claimant did not dispute the respondent's assertions of lack of knowledge.

90. It follows that when we consider detriments, we must as a matter of logic and chronology reject any allegation of a detriment alleged to have occurred before 7 March 2017. It follows further for avoidance of doubt that we can only consider detriments which were the consequences of PID 4, 6, 7 and 9.

PID1

91. On 2 November 2016 the respondent's premises were the subject of an unannounced inspection by Ms Dunning, a regulatory services officer employed by the London Borough of Ealing. She was a health and safety inspector, and when she arrived unexpectedly, the claimant was present and escorted her during her inspection. It was clear from subsequent comments made by both that there were disagreements and tensions between the claimant and Ms

Dunning. It was not known within the respondent if the inspection had been triggered by anything specific, of if it was truly a random event.

92. On 11 November Ms Dunning wrote at length to Mr M Buttar to set out fourteen separate concerns about the premises which had been inspected and to make her recommendations. She said that there would be a further inspection (237). We note that a number of Ms Dunning's recommendations relate, broadly, to record-keeping. In particular her items 2-10 inclusive, and 12 relate not only to functional improvement but to prolonged, comprehensive disregard of long-standing requirements to create and maintain compliant records relevant to safety issues.

93. During her visit, Ms Dunning spoke to a security guard, Mr Jeevan Singh. It appears (793) that in conversation Mr Jeevan Singh told Ms Dunning that there had been an accident on site earlier in 2016.

94. We heard a great deal of evidence about the accident, all of it at second or third hand. It was common ground that a visitor from India known as "Lucky" was performing Sewa at the respondent's premises, when he fell from a height. He was badly injured. It was common ground that no written record or report was made. The disagreements about whether he was cleaning a fascia or was painting; and whether he fell from a scaffold or a tower did not assist us. The accident was no secret: in about April 2016 the respondent informed a general meeting that a payment of £5,000.00 had been made to Lucky's parents in India, to alleviate any hardship which they might suffer as a result of his injury.

95. We add, although strictly we may stray beyond our remit in doing so, that although the respondent witnesses were concerned to tell us about the care and support which had been given to Lucky and his family, as a tribunal we were concerned that the accident appeared not to have been notified to the respondent's insurers, and that there was no evidence that Lucky had received independent professional advice about any right to damages which he might have as a result of the accident.

96. PID 1 was curiously framed. The claimant asserted repeatedly in her ET1 and witness statement that she had <u>not</u> informed Ms Dunning about Lucky's accident but was believed by the respondent to have done so, and suffered detriment on the grounds that she was perceived to be the whistle blower. She advanced this as an assertion, and gave no evidence to support it. In closing submission, and in response to the judge's observations about the wording of s.47B, Mr Singh submitted,

"The concept of discrimination based on perception of a disability… etc can be utilised in the near similar subject of whistle blowing detriment."

97. S.47B(1) states so far as material (emphases added):
"<u>A worker</u> has the right not to be subjected to any detriment.. on the ground that <u>the worker</u> has made a protected disclosure."
That language stands in contrast with s.13 of the Equality Act which states:
"A discriminates against B if <u>because of a protected characteristic</u> A treats B less favourably.."

98. The former wording in our judgment requires the protected disclosure to have been made by the same person who has suffered the detriment. The latter wording does not require the protected characteristic to be that of either discriminator A or victim B, or indeed (in context) the actual characteristic of any person. There is no parallel in the language in s 47B. We reject Mr Singh's submission. We do not agree that a person who has not made a protected disclosure, but who is thought to have done so, enjoys the protection of s.47B. We find that any claim based on PID 1 fails because it is a claim which the tribunal has no jurisdiction to hear. PID1 was the earliest protected disclosure relied on. The practical consequence of our finding is that the claimant was not covered by the protected disclosure provisions until a later date (see below). We add that if the tribunal is wrong in its understanding of the law, we would find that the claimant has failed on evidence to prove that she was in fact perceived to be the whistleblower of PID1.

PID2

99. As stated, the claimant's responsibilities included day to day HR management of individual employees, including scrutinising their right to work. The respondent community has close links with Sikh communities worldwide, especially in India. We accept that it has a high level of awareness and understanding of immigration issues and of issues relating to the right to work. At the relevant time Mr **G S Athwal (R3)** held the respondent's licence as an immigration sponsor.

100. On 7 February 2017 the claimant wrote to the Charity Commission (257) to its email address at "whistleblowing@charitycommission". She raised a number of issues, including right to work issues, and what she called, "illegal immigrants". Although at PID 2 the claimant mistakenly pleaded this as a report to the Home Office, it was common ground that the pleading referred to the email just noted. Although not made to the claimant's employer, we accept that the claimant disclosed information tending to show breach of legal obligations to a prescribed organisation within the meaning of SI 2014/2418. It was common ground that the respondent did not know that there had been any disclosure to the Charity Commission by anyone until 19 May (802) when the Charity Commission wrote to it, and that in its dealings with the respondent, the Charity Commission preserved the confidentiality of its source. We find that the claimant was not at any material time known by the respondent to be the source of PID2.

PID 3

101. PID3 was an allegation that by refusing an instruction to source a skip from Quick Skips, the claimant informed the respondent of a breach of its Constitution. We accept the common ground which was that on or about 6 March 2017 the respondent in an operational moment needed a skip. Some prices were obtained. Mr M Buttar suggested a source of a skip to the claimant, which the claimant challenged. She knew, but Mr M Buttar did not know until the claimant told him, that the suggested source was a business owned by Mr Malhi's cousin. The claimant asserted that ordering the skip from Mr Malhi's

cousin would constitute a breach of a legal obligation found in s.20.9 of the respondent's Constitution, which provides (C88): "No member of the Committee shall engage himself directly or indirectly in any business dealing with the [respondent]." The claimant asserted that placing this modest business with Mr Malhi's cousin would constitute what she understood as a conflict of interest and a breach of the quoted paragraph of the Constitution, which in turn imposed a legal obligation.

102. **We find that the claimant conveyed the information that Quick Skips was a business owned by a relative of R1. We find that the claimant had a reasonable belief that the Constitution created legal relationships between members and the Gurdwara; and that if Mr Buttar placed business with Quick Skips, his action might run counter to the 'no conflict' provisions of the Constitution. We find that subject only to the matter being not minimal or trivial, the value of the business was not relevant. We find that PID3 was a protected disclosure.**

PID 5

103. Departing from chronology, PID5 was to be found in an email (325) sent by the claimant to Mr Malhi and Mr M Buttar on 8 March 2017. It should be borne in mind therefore that it was sent after the emotive events of the previous day, dealt with below. It was pleaded to be a report about 'misuse of .. residential property' owned by the respondent. The email said,

> 'I've been informed .. that .. around 8.30 there was a lot of commotion made by two separate ladies .. asking to let them in as they pay. ..
>
> It's not shocking for my [sic] as I have already expressed my concerns to both of you many times about [the address].'

104. The email suggested an investigation, perhaps by means of a search around midnight, and concluded, 'I trust this matter will be conducted without any favouritism and partiality.'

105. We were invited to find that the email reported the information that the property was visited for the purposes of prostitution, and / or was occupied by persons not authorised to do so. The claimant asserted that she had previously raised the latter concern, but we could find no evidence that she had done so.

106. We give the words of the email their ordinary meaning. At their highest, we read a report of a commotion made by two women about entry to the premises and about payment. That could relate to sex work, but need not necessarily do so; even if it did, that would not necessarily amount to a protected disclosure. We can find nothing in the email which conveys information about unauthorised occupancy.

107. Our conclusion on PID5 is that it is not a protected disclosure within the meaning of the statutory definition, because the information which it conveys was no more than that two women had shouted in the street about access and

payment. We do not consider that that tended to show any of the matters required to make good the definition of protected disclosure.

PID 4, 6, 7

108. It was common ground that the claimant's working relationships with the respondents, and with other individual members of the committee, were cordial until, on the claimant's evidence, about February 2017 and on that of the respondent, until about March 2017. That indicates to us that whatever shortcomings each perceived in the other, nothing interfered with day-to-day working relationships for a period of some 28 months after the return to power of the Sher Group. It was not disputed that the claimant had day-to-day autonomy in how she managed her time and prioritised her work, a matter of particular importance to her, given her domestic circumstances (which were known to the respondent). We were called upon to find why relationships cooled so seriously so quickly.

109. On 7 March 2017 occurred a pivotal event, which was also the basis of PIDs 4, 6 and 7. The time spent in evidence on this incident did not blind us to its factual simplicity. We find that although there had been everyday disagreements, working relationships between the claimant and respondents were generally good before this incident.

110. The respondent conducted cash collections (called 'Golak') at its temple premises. We were told of donations in the region of £20,000 per week (possibly £1,000,000 a year) passing in cash through the temple. The Constitution (paragraph 43.4, C.94) laid on named officers the duty to manage the donations by opening the collection boxes, and counting and accounting for the contents. The Constitution required five members of the respondent to be present when this was done. Mr Avtar Buttar gave evidence, with obvious embarrassment, that these formal requirements were rarely complied with in practice, and that the count was often conducted in the presence of volunteer visitors.

111. The respondent's practice contained obvious security risks. We understood that there had been a history of allegations, including theft and negligence in ensuring the security of the collections. We accept that at some point in late 2016 suspicion fell on a temple volunteer, Mr Paramjit Singh. We accept that the claimant was one of those who shared that suspicion, which she discussed with others, including the respondents. The respondents' view, which cannot be faulted in principle, was that suspicion did not amount to evidence, but that there should be vigilance where Mr P Singh was concerned. The claimant alerted a security guard, Mr Jeevan Singh, to her suspicions about Mr P Singh.

112. On 7 March, Mr Jeevan Singh reported to the claimant that while watching CCTV, he thought he had seen Mr P Singh put donated cash in his pockets. The claimant reported this to Mr Malhi. The claimant watched the CCTV footage, and agreed with Mr Jeevan Singh's analysis.

113. Mr Malhi asked Mr P Singh to go to the office. A number of people were present. Mr P Singh was found to have large sums of cash in his pockets (later found to be at least £8,000, and possibly up to £11,000). He admitted having taken donation money.

114. Mr Malhi telephoned Mr M Buttar. Mr M Buttar was not in Southall, but in Slough. Mr M Buttar telephoned Chief Inspector Kandhola, and reported the event to him. Mr Kandhola ordered a police car to be sent to the temple. He told Mr M Buttar that he should obtain the relevant Crime Reference number by dialling 101, which would take him to the local police. Mr M Buttar understood that if he did that from Slough, he would not be able to access the correct CR number. He understood that the call to 101 had to be made from the locality of the event, Southall. He telephoned the claimant, and instructed her to dial 101, and obtain the CR number which had been allocated or created by Mr Kandhola. The claimant instead dialled 999, and reported the theft. Her report of the theft to the police formed PID4, which Mr Legard agreed was a protected disclosure.

115. There remained dispute and acrimony at this hearing about the detail of the events in the previous paragraph. The claimant denied that Mr M Buttar had spoken to Mr Kandhola. She was in no position to advance that denial, as she could not know what taken place, or been said between them. We accept Mr M Buttar's account given in the previous paragraph. The respondent agreed that the claimant had telephoned the police; we do not think it important that in the heat of the moment she dialled 999 instead of 101. The claimant insisted that her 999 call was 'the first and only' call to the police about the incident. We disagree, and we find that it was the second call.

116. Police officers arrived at the temple. There was confusion and excitement. Mr P Singh admitted his theft, and was searched, then arrested. The officers asked the respondent to provide a witness statement for the purposes of prosecution. The claimant was tasked with this, and went to the police station to do so. (Her statement given under the provisions of s.9 Criminal Justice Act 1967 was in the bundle, 319). In the confusion, Mr Jeevan Singh took photographs on his i-phone of the incident. He told the claimant that he had done so. She asked him to forward them to her. There was evidence that Mr Jeevan Singh later said that he asked the claimant to forward them for him, that he gave her his phone, and that she forwarded the pictures to her phone. It was not clear if Mr Jeevan Singh said that he was technically incapable of doing so, or just did not know the claimant's phone details. The claimant exhibited the photographs to her s.9 statement. She wrote,

> "I have taken five photos to the station when I have gone to make this statement. Four of them show Mr Singh pockets bulging before we asked him to empty them."

117. Mr P Singh appeared in the Magistrates Court the next day (8 March), pleaded guilty, and was remanded in custody to be sentenced in the Crown Court.

118. The arrest led to immediate uproar on social media. In his unchallenged witness statement on behalf of the claimant, Mr Dhillon wrote,

> '[Reports of the theft] .. were circulated widely on what's app and social media. This created a shock wave across the UK Sikh community .. The name of the accused .. was widely mentioned in these prolific social media communications through mobile phones .. [The incident] .. emerged in a flash … there was an immediate upsurge of anger and questioning … There was a lot of attention …by the wider community, with lots of communication going on through social media sources.'

119. In the course of this uproar, Mr Jeevan Singh's photographs of Mr P Singh were posted online. They accompanied uninhibited comment about the thefts and the arrest. Some of the comments focused on the culpability of the Committee members who were responsible for security arrangements. Those comments were made in the knowledge that Committee elections were due to take place within a few months. Mr M Buttar was one of a number of respondents who were Justices of the Peace. He was concerned about the implications of debate on social media about pending criminal proceedings. He asked Mr Jeevan Singh about the photographs. Mr Jeevan Singh told Mr Buttar that he had not posted them online, and that he had given his phone to the claimant so that she could transfer them to her own phone (so as, presumably, to exhibit them to her s.9 statement).

120. The claimant was off sick on 9 March, which she attributed to the stress of the events of the last two days. She returned to work as normal on 10 March. During the day, Mr M Buttar asked her to attend a return to work meeting, which he noted on a template 'Return to work interview form,' (767-769) using a template from another organisation. In the box for issues raised by the employee, the claimant recorded her concern to be associated with the photograph posting. She was offered and declined counselling.

121. We find that at the return to work meeting on 10 March, Mr M Buttar spoke to the claimant about the photos, reminding her that social media comment about a pending criminal trial could in principle jeopardise a trial proceeding. We accept that Mr Buttar pursued a legitimate line of discussion in asking both Mr Jeevan Singh and the claimant whether they had released the photos and in reminding them about the legal risks of doing so. We find that the claimant was hurt even to come under a shadow of suspicion, particularly, as she saw it, she had done nothing but right in being one of those instrumental in the arrest of Mr P Singh.

122. We also accept that Mr M Buttar covered other areas at the same meeting. They included reminding the claimant of the need to observe political neutrality between the Sher and Baaj groups and their adherents, and that the formal line of communication with the police about the criminal case ran through him as general secretary. While these were both legitimate areas for discussion, we find that they touched the same raw nerve with the claimant: she perceived the former as a denial of her professionalism, and the latter as part of an attempt to exclude her from recognition for the arrest.

123. On 11 and 12 March the claimant sent two emails in response to the meeting the previous day (331 and 336). Taken together, they form PID 6. They cover a wide range of points, from the trivial to the serious, without thoughtful analysis

of the distinction between the two. Many of the points can be seen generically as an outburst of stress, and a request for professional recognition from the respondent in a number of respects, including participation in the apprehension of Mr P Singh.

124. Although the document is not clearly expressed, we accept that it contains strands of information tending to show breach of legal obligations: that thefts had taken place of the respondent's funds; that Lucky's accident had not been formally and properly reported; and that the respondent's pay system was discriminatory on grounds of sex. It makes no difference that these may have been protected disclosures by accident rather than by design, and it makes no difference that none of these points might, on a fair reading, be taken as the main point or purpose of the email. We find that taken together the emails constituted a protected disclosure.

125. After Mr P Singh had been convicted on a guilty plea (8 March), discussion within the community was unrestrained by any pending criminal proceedings, and a number of those involved in the incident claimed some part of the credit for the detection and arrest. They included Mr Malhi, Mr M Buttar and Mr A Buttar, as well as the security guard. We accept that the claimant was legitimately entitled to regard herself as a member of a team which had together uncovered the thief, and that her sense of grievance at not being given credit with others in the team was legitimate. That sense of grievance escalated when in April Mr Dhillon offered a personal reward of £1,000 to be paid to the person responsible, and that that money was paid in full to Mr Jeevan Singh. The claimant could legitimately take the view that the thief had been caught at least in part because she had told Mr Jeevan Singh to keep a particular eye on Mr P Singh on CCTV.

126. Shortly afterwards, on 15 March, the claimant wrote a troubling email to five of the above-named respondents (the exception being Mr Mand), which she copied to the police (338). We call it troubling because of what the language suggested about the claimant's mindset. She was signed off for two weeks on the same day with a diagnosis of 'stress at work' (765).The email was headed "Protected Disclosure in the event anything happens to me" and stated that she was writing "for my safety and protection". The main thrust of the email was that there had been recrimination against the claimant for her involvement in reporting the theft to the police. In the first paragraph she referred to an allegation of a history of thefts. We find that however emotively expressed, the claimant has in at least the first paragraph of the letter made protected disclosures relating to a history of thefts preceding the event of 7 March. We struggle to fit her pleaded complaint of 'Misrepresentation of the 7th March theft incident' (17) into the framework of the statute, but nothing turns on the point.

PID 8

127. On a date between 8 March and 5 April the claimant contacted Ms Dunning at LBE (236), starting her letter unequivocally: "I write to you to whistle blow in accordance with the Public Interest Disclosure Act 1998." She made allegations about Lucky's accident, possible misappropriation of the

compensation money given for Lucky's family, failure to report the accident, and that the presence of "illegal immigrants" caused "a danger to health and safety;" The logic of that last remark was not clear, although the claimant referred to two incidents of theft.

128. Although not logically presented, the claimant disclosed information about Lucky, the accident, and possible thefts, such tending to show breaches of legal obligation at least, or possibly criminal offences, and we find that PID8 was a protected disclosure. The claimant did not challenge the respondent's assertion that the first it knew of this document was in the disclosure process in these proceedings. On the logic of that concession, PID8 cannot have caused any of the detriments in this case. We therefore attach no weight to it.

PID 9

129. The claimant wrote a lengthy formal grievance which she sent to Mr M Buttar and Mr Malhi on 28 March (346-362) with attachments. The claimant had by then been in post for over two years, and was the senior employee with HR responsibilities. She must have known that the respondent did not have a grievance procedure or a grievance appeal procedure. The claimant cut and pasted from previous writing, and set out at 45 paragraphs' length with annexes a range of complaints. It was accepted by the respondent that the grievance contained a number of protected disclosures, although it also contained a large number of grievances about day-to-day events which were not protected disclosures. In the pleading, the claimant summarised this disclosure as "setting out various acts of bullying and harassment and specific protected disclosures" and did not clarify whether she sought to rely on any specific disclosure, or any specific allegation that there was a particular disclosure which led to a particular detriment. The respondent agreed that this was both a grievance and a protected disclosure, and in due course appointed Mr Mand to investigate the grievance and to report back.

PID 10-12

130. We deal briefly with the three remaining disclosures relied upon. Although pleaded and pursued, the logic of the claimant's evidence was that they could not be material to any of the detriments which were before us for consideration.

131. On 10 April 10 the claimant wrote at length to the Home Office about immigration monitoring and employment practices at the respondent. That was PID 10. It led to an inspection on 3 June 2017, and on 25 July 2017 the respondent's immigration licence was suspended (542). It was reinstated the following September (552A). The claimant agreed that the respondent had no knowledge at any material time that she was in contact with the Home Office.

132. On 20 April the claimant reported to London Fire Brigade apparent concerns about fire safety (343, PID 11); she agreed that the respondent had no knowledge of this disclosure at any material time. Also on 20 April she wrote to LBE about fire safety (PID 12). She agreed likewise that the respondent had no knowledge of this at any material time.

133. Mr Legard made the point that while local authorities are prescribed under SI 2014/2418 for the purposes of public interest disclosure, the prescription does not extend to fire safety and that therefore PID 12 was not a protected disclosure. We agree, although it is not necessary to decide the point in light of the claimant's concession about lack of knowledge.

<u>The pleaded detriments</u>

134. We now turn to the detriments identified in tabular form by the claimant in the first ET1 (51-53). We follow the claimant's numbering.

Detriments 1 & 2

135. The claims under detriments 1 and 2 must fail on the logic of our findings. They are based on the unproven factual assertion that the claimant was perceived to be a whistle blower; and on what we find to be an error of law about the application of s.47D. They pre-date the first protected disclosure which we have found to have taken place. We nevertheless set out our findings.

136. The complaint under Detriment 1 related to how Mr M Buttar spoke to the claimant after Ms Dunning's first inspection. We find that there was discussion between Mr M Buttar and the claimant following Ms Dunning's unannounced inspection at the beginning of November. We do not accept that at that stage of their relationship Mr Buttar was, as pleaded, stern with the claimant or angry. We do not accept that the tribunal has power to hear this claim, which the claimant has brought as a perceived whistleblower. The claim fails.

137. Detriment 2 related to a matter about which there was a great deal of strong feeling in this tribunal, and evidence which in the event could barely assist us. Although Ms Dunning's first inspection report (237) was firm in its criticism of the respondent, and made clear that there would be a further inspection or inspections, we read it as also making clear that the solution to any difficulties encountered at the inspection lay in the first instance with the respondent, which had the option of, broadly, introducing policies, record keeping, and a culture of compliance with legal requirements which LBE had found to be lacking.

138. After the first inspection, Mr M Buttar engaged the services of an external health and safety consultant, Mr Gilpin. Mr M Buttar remained in email contact with Ms Dunning, and they arranged at Ms Dunning's request to meet in late January. Mr Gilpin was also present. The claimant was not invited to the meeting. She pleaded her exclusion from the meeting as Detriment 2. The claim fails because it is a claim based on alleged perception that she was a whistleblower. The claim would also fail if we had considered it on its merits. We accept Mr M Buttar's evidence about his broad reasons for not inviting the claimant to the meeting. The reasons were that Ms Dunning asked to meet Mr Buttar, and that she expressed reservations about the claimant's suitability for a health and safety role (251). There were plainly tensions between Ms Dunning and the claimant. We accept that as Mr Buttar was accompanied by Mr Gilpin, who was regarded as a qualified health and safety expert, Mr Buttar reasonably saw no need for the claimant's attendance.

Detriments 3-9

139. We now turn to the sequence of events which embraced Detriments 3-9 inclusive, which the claimant relied upon as detriments on grounds of her protected disclosure to the police on 7 March. They were spread across the period from 7 March to 5 April inclusive, and in the sequence with which we were concerned, it was notable that there was no complaint of detriment after that until the claimant's reaction to the outcome of her formal grievance (29 May) and then the sequence of events in June which led to her resignation. In other words, detriments 3-9 inclusive were followed by a lull of almost two months.

140. We preface this discussion with a general observation about the logic of the claim. There is no statutory requirement that a respondent should have an interest in suppressing a protected disclosure, or otherwise reacting with hostility towards it. It is however a matter of the logic of the evidence that claimants in such cases are often asked to explain why they say that a respondent reacted with hostility to the disclosure, or had an interest in covering it up. Sometimes this leads to questioning as to whether or not the disclosure was capable of being covered up.

141. Those questions are material in this case, where the claimant's reliance on her protected disclosure of 7 March to the police ran on potentially inconsistent lines. The first was the proposition that the respondent, and the individual respondents, wanted to cover up the thefts, or at the very least prevent the involvement of an external agency. The second was that once a visible public arrest had taken place, the respondents wanted the credit for it, and wanted to deny the claimant any share of the credit.

142. We find that the respondents, and notably Mr Malhi, regarded it as generally preferable not to involve external agencies in the affairs of the respondent. We find that the respondent viewed with distaste the claimant's involvement with outside agencies (see below, and in particular Mr Malhi's email of 21 June 2017). We accept, in neutral terms, that it was part of the informal traditional governance of the respondent that office holders preferred to resolve differences privately. That seems to us distant from the related proposition suggested by the claimant, which was that the individual respondents were prepared to countenance and cover up significant theft.

143. There is clearly risk in allowing cash of one million pounds or more to pass through the temple every year. The glossary which was agreed for this hearing gave "Golak" the meaning "donation/money box". The respondent's Constitution, more elegantly, referred to "the boxes containing the offerings of the congregation" (C94). Mr Gill made a striking and heartfelt observation in his evidence, that the money collected by the respondent did not belong to the members, but to God. We accept that the money collected as Golak had a significance beyond the word "donation". With that in mind, we do not accept that the office holders wanted to protect Mr P Singh from the consequences of his theft, or to cover up the disappearance of significant sums. We do not

agree that their approach was in any way related to their understanding of Mr P Singh's immigration status or other personal circumstances.

144. We remind ourselves of Mr Dhillon's unchallenged evidence about the social media frenzy which followed Mr P Singh's arrest.

145. We have found that events at the Gurdwara were excited and muddled on 7 March, with a number of the respondents present, police officers present, Mr P Singh being arrested, the claimant and Mr Jeevan Singh dealing with photographs, and the claimant going to a police station to give a statement.

Detriment 3

146. In that context, the claimant's Detriment 3 was an allegation that Mr Malhi "derisively said to the claimant that the last person who reported a theft… was beaten up". In his witness statement, Mr Malhi denied having made any such remark, and pointed out, as we have found, that he was the most senior office holder present at the time when Mr P Singh's theft was uncovered, and that he triggered the sequence of events by telephoning Mr Buttar. We prefer Mr Malhi's evidence, and find that no such remark was made. We accept that there may have been conversation about previous allegations and incidents of theft. Our finding is that the claimant's allegation is that Mr Malhi used words by which she was put in fear of retaliation for having called the police. We reject that allegation and Detriment 3 fails.

Detriment 4

147. Detriment 4 arose out of conversation between the claimant and Mr M Buttar on 10 March. The claimant as stated above took 9 March as a day off sick, and returned to work on 10 March. She was called to a return to work meeting with Mr M Buttar. Mr Buttar's note of the conversation (767) is one which we accept as accurate so far as it goes, by which we mean that it completes the headings required by the template form, but does not record any other discussion.

148. The claimant's allegations were set out in a letter which she sent to Mr Buttar on 11 March (331) which she amplified on 12 March (336). Both letters repeated grievances, some of them old and lengthy, and failed to identify the major or trigger event which had led to the letter being written, or the resolution sought by the claimant. She adopted in part the rhetorical style which has been an unhelpful feature of much written material in this case.

149. We find that at the return to work meeting there was a discussion about the arrest. By the time of the discussion, Mr P Singh had pleaded guilty. We accept Mr Buttar's evidence that the purpose of his questions was to establish whether the claimant had made contact with the external media about the arrest, and whether she was responsible for the posting on social media of photographs of the incident. Mr Buttar's evidence (WS34) was that before meeting the claimant he had spoken to Mr Jeevan Singh, who said that while he had taken the photographs, he was not responsible for distributing them. He had told Mr Buttar that he had had to lend his phone to the claimant because she knew how to forward the photographs to her phone, and he did not.

150. We accept that it was a legitimate cause for concern to Mr Buttar that photographs of the arrest had been widely distributed. Although the risk of jeopardising a fair trial no longer existed, that had been a theoretical risk. He had asked the primary source of the photographs, Mr Jeevan Singh, who had denied responsibility. He therefore asked the only other source of which he knew. That was the claimant. This line of enquiry was not a detriment on grounds of protected disclosure but a legitimate exercise of his responsibilities. This tribunal, like Mr Buttar, can make no finding as to the source of the photographs on social media.

151. We accept that there was some discussion between Mr M Buttar and the claimant about the incident, including the involvement of the police. It appears that Mr Buttar, entirely correctly, told the claimant that as there had been a guilty plea there would be no further police enquiry, and her involvement in the matter was at an end. It was not clear to us why the claimant was resistant to being told this.

152. We accept that there was a discussion about factionalism within the respondent, and we accept that Mr Buttar reminded the claimant of her need to remain neutral between the Baaj and Sher factions. (We are confident that both were aware that the next Committee elections were due to take place within a few months). We accept that that was legitimate guidance, properly given, at a time of turmoil. We can see no evidence whatsoever of any causative link between any protected disclosure and the matters complained of as this detriment. We reject Detriment 4.

Detriment 5

153. Detriment 5 was pleaded as follows: that on 11 March 2017 Mr Buttar appointed Ms Wilkhu "to obstruct and undermine the working role and authority of the claimant". (52)

154. Mr Buttar's evidence was that in response to an advertisement for security staff, Ms Wilkhu submitted a CV (not in our bundle) which indicated that she had health and safety experience and qualifications, including a qualification from IOSH. Mr Buttar had in mind that Ms Dunning had written that the claimant was not suitable or qualified for responsibility as health and safety administrator (17 February, 251). He therefore telephoned Ms Wilkhu, having consulted at least Mr Malhi, and appointed her to a post as health and safety co-ordinator. The claimant was off sick, so he did not discuss the matter with her.

155. Mr Legard conceded that the recruitment process was poor. That was a massive understatement. Ms Wilkhu was appointed to a post for which no vacancy had been identified, which had therefore not been advertised, and for which there existed no job description or person specification. There had been no competitive process, and while Ms Wilkhu may well have been suitable, she could never be shown to be the best available candidate. It was not clear that Mr Buttar checked her qualifications (despite the caution sounded by Ms Dunning that the respondent should verify claimed qualifications). He and Mr Malhi appear to have given no consideration to the impact of Ms Wilkhu's

appointment on other staff, including the claimant. There was no evidence that the claimant was spoken to about Ms Wilkhu's arrival, or that Ms Wilkhu received any form of induction or introduction. It follows that an obvious question – what was the line of demarcation and/or hierarchy between the claimant and the new appointee – was not addressed in advance. It is not surprising that the claimant had a legitimate sense of grievance. We find that this event is a clear illustration of the risks and weaknesses of informal management, and subjective, individual decision-making.

156. That said, the question is whether Ms Wilkhu was appointed because the claimant had made a protected disclosure to the police on 7 March, and we agree with Mr Legard that no connection whatsoever between the two events has been shown. Mr Buttar made an opportunistic appointment in response to a need which he thought had been identified to him by Ms Dunning.

Detriment 6

157. On about 23 March the claimant received through social media a message which was variously described as a text (on the claimant's side) or a Facebook posting sent by WhatsApp (on that of the respondent). We agree that the respondent's designation is more accurate, and that the confusion in Mr Avtar Buttar's witness statement is thereby explained. (Mr Buttar was the source of the message, but in his evidence had passionately denied having sent, as had been pleaded, a text).

158. The supplemental bundle contained a number of copies (C390A-C391M). The document was in Punjabi with a photograph. Mr A Buttar explained that the message was viral in India. The image seemed to show the corpse of a soldier. The sense of the message was that the soldier had complained about conditions for serving members of the Indian forces, and as a result had been murdered. It was common ground that the sense of the accompanying words was to make the individual's story known. Mr A Buttar gave evidence that he regarded the death of the soldier as a scandal crying for justice, which should be well-known. He said that he had distributed the message in support of a call for justice in memory of the soldier. He stated that he had forwarded it to a dozen or more recipients, including his own close relatives, as well as to the claimant. Mr Legard pointed out that Mr Buttar had added no words to the text of the message received from India, and that the sense of the message was "spread the word". The claimant pleaded that it had been sent to her as a threat about the consequences of whistleblowing.

159. We accept Mr Avtar Buttar's evidence that he forwarded the message as part of a call for justice for the dead soldier. We accept that he forwarded it to at least a dozen people as well as to the claimant, including close relatives. We accept that his actions had nothing whatsoever to do with the claimant's report to the police, and that the claimant has wholly misinterpreted this minor event. The claim fails.

Detriment 7

160. Detriment 7 was, in our judgment, at the emotive heart of this sequence of events. It was summarised (52) as follows: “Trustees deflect information away from the fact that the claimant reported above theft incident”. The claimant’s point was a simple one: once the theft had been uncovered, and entered into the public domain, credit for the apprehension of the thief was given to a number of the respondents and to the security guard, but no credit was given to her for her role in a piece of teamwork.

161. We agree that the claimant’s role was not insignificant: first, we accept that she was one of those who formed an early suspicion against Mr P Singh, and that she alerted Mr Jeevan Singh to the need to keep an eye on him. Secondly, we accept that on the day in question, she liaised with Mr Jeevan Singh to view CCTV and was involved in the actions taken by those respondents who were on site. Thirdly, she was asked by Mr M Buttar to obtain a crime reference number (we have dealt above with the confusion which led her instead to dial 999). Next, when the police arrived, she was the point of communication with the police, and she was the representative called upon to give a formal statement. She gathered the evidence from Mr Jeevan Singh’s phone, and exhibited it to her statement. She participated in these events with a number of other people.

162. The claimant relied on reporting in the Punjabi language press about the incident, which reported events from the perspective of the respondents, without identifying her role. We were taken in that context to evidence about Mr Dhillon’s generous gift of a reward, in which the claimant was not identified as one of those who might share in the reward. Neither of those events was pleaded as a free standing detriment. We find that each was evidence of the claimant’s marginalisation from credit for the arrest.

163. We accept that the claimant made a significant contribution to the apprehension of Mr P Singh. We could see no evidence that she was given credit for her participation.

164. The claim pleaded at Detriment 7 fails because we can see no logical proven causal link between the claimant’s participation by telephoning the police, and the consequent detriment of being denied recognition by any respondent. We bear well in mind that the respondent’s responsibility is limited to its own actions and decision, and does not extend to how third parties depict events. We accept that it has shown that it attempted to manage a situation which was out of its control, and that if the claimant was not properly recognised, that was a matter of oversight. We find nevertheless that the claimant had a reasonable and legitimate sense of grievance, properly founded in fact, that she had been denied a fair share of recognition of which she had a reasonable expectation.

Detriment 8

165. We accept that the claimant’s grievance was a protected disclosure as set out above (PID 9). The grievance was presented by email at 10.25 am on 28 March (346). The same evening, at 17.47, Mr M Buttar sent an email to the claimant and a number of others, announcing “I have made some changes for

all staff reporting lines" (713). The changes made no difference to the claimant's own reporting line, which remained to the General Secretary.

166. The claimant was the highest paid employee. She was the senior employee with HR responsibilities. There had been an informal system that those subordinate to the claimant (which she understood to be all other employed staff) reported to her or through her. In the same email Mr M Buttar wrote that all other employees were from then on to liaise with him, not the claimant. The claimant relied on this instruction as detriment 8.

167. Mr Buttar's witness statement did not deal with his reasons for this change. Mr Legard submitted that the claimant's complaint, that she had suffered the detriment of Mr Buttar instructing staff to stop liaising with the claimant and instead liaise with him and another trustee, was an instance of the claimant attributing reasonable every day management decisions to the negative arising out of her disaffection with the respondent.

168. We noted that the issue of line management had been raised shortly before, and that on 16 March Mr Buttar had written to Manjit Panesar, another employee, to state "with immediate effect from *[blank in original]* I would be the direct report for all the Admin at Park Avenue and Havelock rd." (709) The date of implementation had been omitted from that email, and the claimant had not been informed of its contents.

169. We have considered why it was that having expressed an intention to change the line management structure on 16 March, Mr Buttar implemented the change twelve days later, and within hours of receipt of the claimant's grievance. The respondent put forward no other positive case for the change or its timing. The point was not dealt with in those terms before us, and we approach with caution the possible trap of mistaking chronology for causation.

170. We accept the email of 16 March as evidence that a change in line management structure was in contemplation during about the first half of March. There was no suggestion or evidence which linked that change in principle with any protected disclosure. When we consider the timing of the change, we find that the respondent has not proved on balance of probabilities that Mr Buttar's email of 17.47 on 28 March was not sent when it was sent as a response to the claimant's grievance sent the same morning. We find further that the contents constituted the detriment of public loss of status, responsibility and line management authority. We find that the decision was implemented when it was implemented by Mr Buttar on ground of the claimant having made protected disclosures by her grievance that day, and therefore the claimant's claim in relation to Detriment 8 is upheld.

Detriment 9

171. It will be recalled that Mr P Singh had been remanded in custody for sentencing. The claimant was informed by the police that he was to appear in the Crown Court on 7 April. (He was sentenced to ten months imprisonment). She was in contact with Mr M Buttar. She wanted to attend the Crown Court on

behalf of the respondent. Mr Buttar had his own line of communication with the police and his own understanding, as a Magistrate, of the criminal justice system. He knew that at a sentencing hearing no witnesses were required, and he had arranged that the police would report back to him after the hearing in any event. He knew that the hearing would take place during the working day. He instructed the claimant in an exchange of texts not to attend the Crown Court sentencing hearing.

172. The claimant relied on this as Detriment 9: "Mr Buttar sent two text messages to the claimant discouraging her from attending the court hearing". We find that Mr Buttar gave a reasonable and legitimate management instruction, instructing the claimant how she was to spend a working day. This may have touched the raw nerve felt by the claimant about being given insufficient status and recognition. Our finding is that as a free-standing claim of detriment, Detriment 9 fails. It has not been shown that Mr Buttar's decision was in any way whatsoever related to any protected disclosure.

Detriment 10

173. Mr Mand was meanwhile appointed to carry out an investigation into the claimant's grievance. Mr Buttar had retained the services of Mentor (who briefed counsel at this hearing) which was a source of legal advice. The respondent had also from time to time instructed Mrs Bhamm, a public sector HR professional, fluent in Punjabi but not a Sikh, who had advised it on the conduct of previous grievance matters. The claimant formed the view that Mrs Bhamm was not impartial, and was concerned that she was not an appropriate person to advise on such matters. We had no evidence to that effect, and we do not agree that that has been proven to be so. We add that the claimant may have misunderstood the role of HR . It is not the role of HR to act impartially, but to provide professional advice to management. In doing so, HR acts as an arm of management, with the professional duty and liberty to disagree with operational management. Operational management has the duty to hear HR advice, and then to make its own decisions. It is a structure which is commonplace throughout workplaces, and which the tribunal sees on a near daily basis.

174. Mr Mand is a working school teacher, and a qualified engineer. His evidence was impressive in a number of respects. He conveyed to us the seriousness of his commitment to his faith, and of his understanding of his roles as grievance investigator, and as witness in these proceedings. He had prepared meticulously to give evidence by reminding himself of his witness statement, and of the relevant documents.

175. Mr Mand regarded his task of grievance investigation as a form of sewa. It was unenviable. He knew from an early stage that the claimant was at best sceptical of the process, and that the Committee, to which he would report, was free to disregard his conclusions. He was obliged to conduct a grievance hearing without any written grievance procedure to follow. He was obliged to work from documentation provided by the claimant which was lacking in focus or clarity.

176. Mr Mand interviewed the claimant on 17 April (377). The meeting was attended by Mrs Bhamm, and by Manjit Panesar as the claimant's companion. The respondent provided the services of a note taker, Ms Rahim. Mr Mand made his own notes.

177. A troubling issue arose in relation to notes. Mr Mand told this tribunal that he made his own notes of all meetings, and relied upon them in drafting his conclusions. Mr Mand is a personal respondent and the notes were subject to disclosure. They were not in the bundle and Mr Singh took no point. Ms Rahim took notes on behalf of the respondent which were also subject to disclosure. Some of them were available, but it appeared that some were not. That was less than satisfactory. Those that were available and were in the bundle, were of the interviews with Mr M Buttar (7 May, 805) and Ms Wilkhu (7 May, 813). We accept the notes of the claimant's interview (377-387) as a broad general summary of what was said. The meeting proceeded on the basis of Mr Mand's summary, which he had thoughtfully prepared in order to bring structure to the claimant's grievance. It was a poor omen that in reply to an opening question, asking the claimant what outcome she would like, she replied "I do not have confidence in the outcome with this committee. If I do not hear anything I will go to ACAS" (377). We interpret those words as meaning that the claimant implied an intention to trigger early conciliation.

178. Very shortly after her interview, the claimant, despite her professed lack of confidence, emailed Mr Mand a complaint about Ms Wilkhu (or, as she described her, "new employee whose job title is unknown") (214).

179. The claimant emailed Mr Mand on 1 May to say that she had 'lodged the conciliation form with ACAS' (389); in fact Day A was 29 April.

180. Mr Mand proceeded to interview Mr M Buttar, Mr A Buttar, Mr Malhi, Mr Athwal and two others. He interviewed all individual respondents to these proceedings other than Mr Gill.

181. Mr Mand then drafted a response to the grievance, and asked Mrs Bhamm to comment on the draft before completing it. That was good and usual practice. We reject the claimant's submission that Mrs Bhamm was the real decision maker, and that Mr Mand simply allowed his name to be put to a decision which was not his. There was no evidence of this.

182. It was not a quick procedure. Mr Mand had a number of interviews to conduct, and a number of documents to review, and it was clear to us that he addressed the matter slowly and thoughtfully. It was also a form of voluntary service, to be done around the demands of full-time employment and other commitments. The claimant chased him for a prompt outcome.

183. At 9.15am on 29 May the claimant sent an email to Mr Malhi, Mr Gill and Mr Mand, complaining of delay in the conclusion. We thought it significant that the subject heading for her email was "Lodging claim with Employment Tribunal". It stated: "I have now received my certificate from ACAS and will now proceed to the Employment Tribunal… Please note there will be group claim for direct

discrimination from three of us." (423). Day B was in fact 28 May. The named respondent on the certificate was "Sri Guru Singh Sabha Southall" but the certificate does not name the individual point of contact.

184. In view of the importance later attached by the claimant to chronology on 28 and 29 June, we repeat the following: on 17 April the claimant said, in the presence of an HR professional (Mrs Bhamm) that she might contact ACAS. She confirmed on 1st May that she had done so. On a date after 29 April ACAS contacted the respondent to inform it that early conciliation had begun. On 29 May the claimant told the respondent that she 'will' issue a tribunal claim.

185. Later that day (29 May) Mr Mand met the claimant and handed her the grievance outcome letter (427-444). The short covering letter concluded, "You have a right to appeal. If you wish to do so you can write directly to the President of the Sabha who will take appropriate actions as necessary, as Sabha does not have an appeals procedure in place."

186. The attached document of 18 pages should be read with care and in full. Mr Mand's short summary was as follows (WS 24): "In summary, I did not uphold her grievances, however I did make recommendations to implement written procedures and to take measures to improve communications."

187. The issues in the grievance overlapped in part with the issues before us. The outcome on the issues is in each case supported by Mr Mand's objective analysis of the evidence presented to him, and at many points rejects the claimant's contentions in the vocabulary of "I found no evidence to support your claim…" Mr Mand plainly adopted an evidence based analysis, which at times led him to state obvious truths: "I have found no evidence to suggest that you had circulated these photographs. There is no evidence to point out as to who circulated these photographs from Sabha." (431)

188. Although Mr Mand did not uphold the grievance, he recognised the claimant's wish for recognition of her role in apprehension of the thief. He explained that the pay disparity discussed separately related to "a recruitment premium" (437) and he made recommendations which, given the scale and complexity of the respondent, were a courteous attempt to introduce some rudiments of good employment practice, such as a written sickness absence policy, review of payment systems, review of security procedures, and introduction of a recruitment procedure. He went on to recommend formal mediation between the claimant and Mr M Buttar and concluded with a recommendation for, "General communication between committee members and admin staff is improved and clear boundaries of behaviour are agreed" (444). That recommendation followed from the following, which we record and adopt as a striking piece of wisdom and insight (all emphases added, 444):

> "General environment
>
> There is sufficient evidence that general communication between various members of staff and the committee members is not cordial. Committee members are not aware of best practices of running an office. There are no set policies and procedures that can be applied and followed. Committee members are not held accountable for some of their actions which

results in disrespect from the paid workers who have more experience and knowledge of legislation and best practice. There is a general culture of distrust and blame. Communication between some staff have totally broken down and bad behaviour has been allowed to continue."

189. We find that Mr Mand conducted a conscientious enquiry on the material before him, and reached objective evidence-based conclusions. He expressed himself with care and moderation. He displayed insight into the problems caused by the established style of management and made recommendations about long overdue improvements. He recognised the distinction between the mandatory and good practice. He expressed himself in the generalised diplomatic language which we have underlined. It was striking that the language of his recommendations indicated that the issues which he sought to address were not new, or recent, or individual to the claimant.

190. The claimant's prediction that she would be unhappy with the outcome was borne out. She did not see that Mr Mand's recommendations implied a massive vindication of many of her complaints, and a rebuke of many of his Committee colleagues. Detriment 10 was that the grievance outcome was unreasonable, unfair and biased; or as Mr Legard suggested, that what she was really saying was that her grievances had been rejected because she was a whistleblower. As Mr Legard commented, Mr Mand was reasonably entitled to come to the conclusions he came to, even if the claimant did not like them. We agree and add that that is of the essence of adjudication. We reject the language which the claimant applied to the grievance outcome. We accept, with misgivings, that rejection of a grievance generally constitutes a detriment, but express a reservation that if that finding implies that a grievance is a win or lose binary choice, we do not accept that that would be well said. We do not find that the outcome of the grievance was causally related to the claimant's disclosures. It has been shown by Mr Mand that the outcome was his genuine and honest adjudication of the material before him. The claim based on this detriment fails. We deal separately with the issue of the grievance appeal.

191. Detriment 10(c) in the second ET1 (85) repeated a complaint about Mr Mand's procedures. It was not clearly formulated: "Failure to supply any details of the supposed investigation interviews and information checking and gathering carried out in respect of the respondent's outcome of 27 May." We agree that the claimant was not supplied with the raw investigation material considered by Mr Mand, including notes of interviews with others. We make no finding as to whether in the fraught and personalised circumstances of this case such a course would have been good practice, bearing in mind that when Mr Mand investigated and reported, it was on the footing that the claimant remained an employee of the respondent. We do not find that the matter summarised here, if true, was a detriment on grounds of a public interest disclosure. It represented the approach to a grievance of an inexperienced grievance hearer and respondent in the absence of a written procedure. We are not in a position to reach a conclusion as to whether any such matter was a deliberate omission, or a mere oversight. We do find that no relationship with a protected disclosure has been shown.

Detriments 11 & 14

192. We turn now to the final sequence of events. It would have been helpful if we had been given a schedule showing the claimant's dates and times of attending work from late May onwards. It was common ground that she had a lot of time off sick. She was allowed to work from home. She remained in contact by email and text. She complained under Detriments 11 and 14 that at times when she was absent, the respondent caused a filing cabinet in her office to be broken into and locks were changed.

193. We find that at a time when the claimant was away from work a lot, and relations with the claimant had deteriorated, the respondent for operational and professional audit purposes needed access to information and documents which were locked in her office. We accept that Mr Malhi and Mr M Buttar authorised the claimant's work filing cabinet to be forced open and where necessary locks to be changed. We accept Mr Buttar's evidence that there was a particular audit need for financial information. We also accept that a locked cabinet or drawer in the claimant's office, which was known to contain her personal items, was not forced open. We do not find that either of these events, no matter how upsetting for the claimant, was a detriment on grounds of public interest disclosure. While we are not convinced that they were detriments in any event, we find that the reasons for the material decisions were operational only.

Detriment 12

194. The claimant alleged at Detriment 12 that at a point in early June the claimant was offered a settlement by Mr Malhi not to proceed with her claim. She pleaded that it was, "Effectively a bribe". Mr Malhi replied that while he had offered the claimant money some months earlier as a personal loan because of her personal circumstances, no settlement offer had been made to the claimant in early June. We prefer Mr Malhi's evidence. In so saying, we note that at that time there was no claim to settle, just an email from the claimant asserting that she and two colleagues 'will' bring a claim, and an unsuccessful attempt at early conciliation. We find that no offer was made. We do not consider the word "bribe" well-used in the circumstances. The claim fails.

Detriment 13

195. As stated, the claimant, even when not at work, continued to be active on email. On 20 June she wrote to a number of addressees, including Mr Malhi and Chief Inspector Kandohla. The subject was "Incident of attempted break into filing cabinet". The bundle did not contain the text of what she wrote (568). Mr Kandohla replied "I do not wish to make comment as clearly you have indicated the charity commission and others are investigating matters. Again I will not make comment on how to run the Gurdwara." Perhaps the significant word in that sentence is "again". Two hours later, Mr Malhi, who had been copied into this correspondence, replied (569-570). His email was relied upon as Detriment 13, pleaded as "Accusational, confrontational and taunting content."

196. It is plainly written in exasperation. Mr Malhi first sets out the respondent's position in relation to the filing cabinets and access to them, reminding the claimant correctly that the contents were the property of the respondent and that they were operationally required. He continued:

> "You have also made a complaint to the local police with regards to this matter without any consultation with the Sabha committee which is inappropriate action on your behalf.
>
> You continue to believe that all matters in relation to the Sabha business… are your responsibility and should be run in accordance with your rules. You believe that everyone is accountable to you and is required to explain their actions to you.
>
> As a result of this belief you have made several serious allegations against most of the Sabha members. Even when you have no reasonable experience in financial matter or accountancy, you have made inappropriate remarks about the work of our staff…
>
> You have taken out grievance…
>
> You have contacted ACAS… You have continued to write unprofessional and malicious emails to many people…
>
> You continue to threaten Sabha of an ET claim. You have repeatedly made false allegations against the General Secretary…
>
> You have reported the Sabha activities to various auditing authorities such as Charity Commission and Home Office…
>
> I am disappointed that you do not consider yourself as a member of the Sabha. You have taken a stance to report all Sabha activities to various outside authorities, some of them inappropriately." (570)

197. We find that while Mr Malhi's exasperation was in context understandable, and while some of his comments were in substance well made, the email expressed hostility to the claimant's actions in exercising her right of making disclosures to external regulatory authorities. The letter was sent from the most senior individual within the respondent, and was copied to at least three of the outsiders to whom the claimant had been copying correspondence (Mr Kandohla, accountants practice, and the Home Office). In oral evidence, Mr Malhi's distaste for the involvement of external regulators was clear. On a number of occasions he said words to the effect that contacting agencies outside the respondent 'is not giving the right indication, we are capable of resolving and managing issues.' That general assertion is difficult to reconcile with Mr Mand's measured recommendations, and with the above (paragraph 66) quoted portion of Mr M Buttar's evidence.

198. Mr Malhi volunteered twice in evidence that all external agencies have cleared the respondent, and that none of the claimant's allegations has been approved by any external agency. That assertion does not relate to whether there was in law a protected disclosure (which need not be correct), but seemed to us material evidence of how Mr Malhi viewed the events in this case, and the claimant as an individual. We do not read the regulatory letters which we saw

from the London Borough of Ealing (237 and 257) and from the Home Office (543, 552A) as 'clearing' the respondent. They each set out a list of long term, serious, systemic shortcomings, and each makes clear that, in the first instance at least, it is in the hands of the respondent to achieve the required improvements. They imply that if the respondent fails to do so, enforcement action may follow. In closing, Mr Legard submitted that we should regard Mr Malhi's email of 21 June as a statement of facts, no matter how reluctant the claimant was to accept them. He hinted that the claimant was reluctant to be managed or criticised.

199. We find that the email of 21 June was written to a material degree on grounds of the claimant's making the protected disclosures which we have found above. We find that its tone was unusually formal in the informal management setting which we have described. It is expressed in part in aggressive and confrontational language. It expresses hostility to the claimant's exercise of legitimate employment law rights. It was written from the most senior office holder, and was copied to others. It was a public rebuke, copied to those outside the employment relationship. We find that it was a detriment on ground of protected disclosure and Detriment claim 13 succeeds.

200. It is perhaps worth standing back (with the benefit of hindsight) to look at where matters stood in the last few days of June 2017. A working relationship which had been warm and cordial had been deteriorating for several months. There were confrontational views and attitudes on both sides. We find that by late June at the latest the claimant had lost respect for the legitimacy of the line of management to which she was subject. We find that the respondent, which had always relied on informal systems, was unable to manage the claimant operationally, or to satisfy her sense of grievance. We find the claimant's sense of grievance to be legitimate only to the extent indicated in these reasons. We accept that the claimant did herself no favours by reiteration, to multiple recipients, of proliferating complaints. She was not an effective narrator or advocate in her own cause, and she showed little strategic insight.

201. She had received an early conciliation certificate on 28 May, and understood that if she were to act upon it she had to do so by 28 June. The respondent had experience of the employment tribunal system, and we heard a number of references to a financially significant settlement which it had reached with Mr Sangha the previous year. When therefore the claimant in April and May notified the respondent that she had entered into early conciliation, and then received an early conciliation certificate, we accept that the implications of that information were understood within the respondent. We had no evidence about the steps taken by ACAS during the early conciliation period. Contact from ACAS put the respondent on notice that the procedures had been triggered.

Detriment 15

202. In that context, we turn to the events of 28 June. That evening, Mr Gill telephoned the claimant. Mr Gill, giving evidence in his 90th year, is a trustee of the respondent. He gave compelling evidence about the origins of the respondent and his involvement since its early years. Its growth, prestige and

success must be taken to owe a significant debt to the commitment shown by him and others over many decades.

203. Mr Gill said that there had been a short call when he had telephoned the claimant and she had refused to speak to him. He denied that there had been a 39 minute call subsequently. We accept the evidence of screenshots which shoe that Mr Gill telephoned the claimant briefly just after 6pm (C615); and that 40 minutes later the claimant returned the call, and there was a conversation of 39 minutes (C616). We accept the claimant's evidence, which was that the first call from Mr Gill came at an inconvenient time, and that she called back as soon as she was able to.

204. Mr Gill's evidence was that he said that he was calling 'on behalf of the Sabha.' We find that Mr Gill said words to the effect that his call was made on behalf of the respondent, and was not purely individual or personal.

205. The claimant claimed that during the conversation which then followed, Mr Gill urged her to resolve her issues and not proceed with a tribunal claim. We find that he did not use the language of compromise or settlement. We find that he made no proposal or offer to the claimant, whether as a financial settlement or a suggestion about how to move forward. He asked her to abandon any claims which she might have. It was not an attempt to achieve a negotiated settlement, but an attempt at dissuasion. He did not ask the claimant to compromise rights, but to renounce them. In a long conversation, he made reference to the common values of the community. In evidence, the claimant said that she was hurt by Mr Gill's references to religion, which she considered a form of emotional blackmail and improper pressure on her as an employee.

206. The claimant appears to have first referenced the conversation in an email sent the following day (589), in which she wrote to Mr M Buttar (and possibly others),

> "I note that you had instructed Balwant Gill a holding trustee to call me yesterday evening, to discourage me to lodge my ET1 claim. I have included that act of harassment in my claim."

207. The claimant pleaded the case that Mr Gill was 'instructed by current trustees' (53) to contact her. We took 'current trustees' to be a mistaken reference to the Committee. Mr J Singh put to Mr Gill that he had been "put up to" making the call by the committee, language which Mr Gill angrily denied, stating with conviction that he made his own decisions and was his own man.

208. The claimant agreed that Mr Gill is a respected senior statesman within the Southall community. We must consider whether, in making the call and speaking to the claimant, Mr Gill acted wholly independently, taking an initiative as an elder statesman of the community; or whether he did so on behalf of the respondent, such that his actions were those of the claimant's employer. Neither of the claimant's phrases in the previous paragraph was quite on point.

209. In rejecting the suggestion that Mr Gill contacted the claimant as an act of independent statesmanship, wholly of his own initiative, we note that before making contact with the claimant, Mr Gill needed to have background information which must have come from a source which we find was the respondent. He needed to know that the claimant was serious about bringing a tribunal claim, and that she had completed all the preliminaries. We find that the timing of his call, which was the evening of the last day of the 'stop the clock' limitation period, was not coincidental.

210. We find that Mr Gill contacted the claimant on behalf of the respondent, and that when his actions touched on the contractual employment relationship, he stood in the shoes of the respondent. Neither side addressed us on the question of whether in making this call Mr Gill stood to the claimant in a relationship covered by the relevant portions of the ERA. He was not a member of the respondent's Committee, and therefore not a member of its managing body. As a trustee, his role was that of holding property in accordance with the Constitution, and no more. We find that he was not personally the claimant's employer. He was not an employee of the respondent; and we had no evidence that he was 'a worker' for it within the meaning of s.43K. If it is necessary to do so, we find that he was 'an agent of the .. employer with the employer's authority' (s.47B(1A)(b)), such that the respondent is liable for any detriment to which he subjected the claimant on ground of protected disclosure.

211. We find that Mr Gill was asked by a member or members of the Committee to undertake an approach to the claimant because of his stature. The claimant was at that time still an employee of the respondent, which did not know that she was about to resign. Mr Gill represented a range of pressures on the claimant which went beyond the mere economic relationship of employee and employer. We find that the call constituted a detriment, because it was an attempt to apply to the claimant non economic pressures, including community-based religious authority, to persuade her to surrender legitimate employment rights. While we accept that the call was made for a number of reasons, we find that it was, to a material degree, made because of the claimant's protected disclosures, and also because of other indications which she had given of the exercise of her rights.

Detriment 10(b) (Second ET1)

212. We go slightly out of order to the fall-out from the claimant's grievance. It will be recalled that she received the outcome on 29 May. She set out her response the following day. On 30 May she wrote to Mr Malhi (445), "Mr Mand informs me that I need to write directly to you in order to appeal. I do not know how you are going to address my complaints as there are complaints against you as well." She then entered into correspondence about the merits of the grievance, the outcome, and other matters which were of concern to her. She followed up this correspondence with more in the like vein.

213. Mr Malhi replied on 3 June (450),

> "As part of the investigation, you were given an opportunity to appeal against the outcome of the investigation. Please note that Sabha does not have an Appeal policy or procedure. In his report, Mr Mand has made a number of recommendations as a way forward. Therefore your appeal, in the context of this complaint, is really to ensure that you have been given an opportunity to resolve this matter amicably with other staff and volunteers. But I would be happy for you to write a short summary of grounds upon which you wish to appeal… "

214. He explained the need to find among the 'trustees' (which we understood to mean Committee members) a volunteer or volunteers to deal with the appeal, and said that he would aim, "to conclude this matter as soon as it is practically possible".

215. Mr Malhi's task was unenviable. He had to find an *ad hoc* appeal panel, which would have stature and authority within the community; which was made up of volunteers; who agreed to accept responsibility in an angry and bitter dispute; who had not themselves participated in the dispute; and whom the claimant would accept as legitimate appeal hearers. He had no written procedure to follow. On 23 June Mr Malhi wrote to the claimant to seek to arrange an appeal, and nominating Mr Logani, a committee member, to be assisted by Mrs Bhamm as the appeal hearer. The claimant objected to their appointment, and on 26 June Mr Malhi wrote that he would try to find somebody else. He demonstrated a willingness to respect the claimant's objections.

216. On 6 July, Mr Malhi wrote again to set a date for an appeal, suggesting an appeal panel of Mr Gill, Mrs Bhamm and Councillor Sharma, who was not a member of the respondent. The claimant did not accept this membership of the appeal, which in the event was never heard.

217. The claimant's Detriment 10(b), was "refusal to proceed with appeal in a reasonable manner by appointing an impartial appeal panel nor… an insistence on imposing an entirely one-sided appeal panel."

218. We do not agree with the factual basis of the claim and it fails. We do not agree that Mr Malhi refused to proceed fairly or properly with appeal arrangements; we find that he was doing his best in a difficult situation which he was ill-equipped to manage. The claimant's objections to the proposed members of appeal panels were based upon her subjective assessment of suitability. The claimant knew the nature of the respondent's informal systems and structures. She had operated them herself for many years. She knew that there was no appeal structure, and that it was necessary to establish one *ad hoc*. She did not have a right to an appeal panel which she felt to be wholly independent of the respondent, or any veto over its composition.

219. We note a point which we cannot find having been raised, namely that good and usual practice where possible would be that an appeal hearer has advice from a different HR professional from a first stage decision maker, so that at appeal there can be no embarrassment about criticising the HR contribution made at first stage. That would at least have been the basis for a legitimate proposal to replace Mrs Bhamm with another person. However, the critical question for us is whether there is a causal link between Mr Malhi's failure to constitute an appeal panel acceptable to the claimant, and any protected

disclosure which we have found. The claim fails because we accept that it has been shown that the reason for management of the appeal process was that stated by Mr Malhi: uncertainty, inexperience, and the problems of assembling an acceptable panel.

Second ET1: other detriments

220. The claimant's pleaded Detriments 10(d), 10(e), were respectively co-terminous with her claims of constructive dismissal and unpaid wages. We deal with the former in our findings on constructive dismissal. She put no evidence or submission to us which linked either her claim for unpaid arrears of holiday, or for the £300 monthly allowance, with any protected disclosure, and if pursued as additional claims of detriment, they fail. Our findings on both are set out separately.

221. Pleaded Detriments 10(f) and 10(g) (respectively failure to itemise her final payment, and delay in providing her P45) were not pursued before us, and we find no evidence of them. We add in relation to those two matters that given the evidence about the respondent's informal governance, and from what we saw of the employment records in this case, it seems to us likely that employment paperwork was unsatisfactory in relation to many employees, and that any shortcomings were unrelated to any protected disclosure.

Detriment 10(a) (Second ET1)

222. We now turn to the second pivotal moment in this case, and to what was called throughout the hearing the 'malicious text' (592). We follow the usage of the parties in calling it a text, although it was not a text but a WhatsApp message. It was first mentioned on 29 June. The tribunal saw only the words of the text, and nothing by way of header or sender or showing date or time of its origin. Read in full, it is a personalised attack on Mr Sangha and a number of named members and supporters of the Baaj group. It used the word 'dirty' twice, once about Mr Sangha, and once about the claimant. We read the material parts as alleging, in short, that the claimant was having, or had had, a sexual relationship with Mr Sangha, and that Mr Sangha was *'teaching her how to steal officially'* from the respondent. The claimant interpreted the latter phrase as a reference to obtaining compensation from the respondent through tribunal proceedings. We accept that these allegations upset the claimant deeply.

223. However upsetting to the claimant, the text could only be material to our task if it constituted a detriment by her employer, or a breach by the employer of the duty of trust and confidence. The claimant's employer was an unincorporated organisation, with a committee of 21 members, serving a community of thousands, with active, indiscriminate use of social media. The burden rested on the claimant to show on balance of probabilities that it was sent from a source which was her employer, or was sent on its behalf and with its support. The claimant approached this task of proof through a number of avenues, which we must now consider. We ask first how she pleaded and presented this part of her case. We then consider the elements of proof which she put

forward. They were (in our words) (1) knowledge and chronology; (2) technical; (3) circumstantial.

How the claimant put her case

224. In her second ET1, the claimant unequivocally named Mr Malhi as responsible for the text:

> "Suspicions go directly to Mr Malhi … The claimant strongly and understandable suspects that this text message was instigated by G Malhi … The Claimant has spoken with various individuals who have indicated to her that, the text message issued originates from G Malhi" (87-88).

225. Early in her witness statement the claimant wrote,

> "I wish to adopt the detail information already given about the factual points about my claims in my two sets of Particulars of Claim."

We could find no other reference in her statement to the authorship of the text. Mr Sangha's evidence was that the text was sent by Mr Malhi.

226. Mr Singh put closing submissions in writing. Addressing the tribunal in oral submission, he used a formulation which avoided both the burden of proof and analysis of the evidence. The judge's note is,

> "The tribunal should ask, how did the text come about, is Mr Malhi responsible? Why should it emerge the day after the ET1, and why the link of the claimant and Mr Sangha? The Claimant's ET claim was not public knowledge."

227. Mr Singh put in cross examination to Mr Malhi, "You wrote the malicious text?" In a long and at times repetitive denial, Mr Malhi said that the text had been condemned before the congregation, and added, in a phrase which touched on the extent to which social media has been mis-used within the community,

> "We have many times condemned this sort of message."

228. Mr Avtar Buttar was asked if he had seen the text. That was the only question about the text put by Mr Singh to any witness other than the above exchange with Mr Malhi.

229. We find that the case put to the tribunal is that the text was sent by Mr Malhi personally, or possibly by an unidentified person acting on his direct instruction. The claimant has not identified to the tribunal any other named sender.

230. We add, addressing an alternative which was not put, that if it were the claimant's case that the sender were an unnamed member of a large group (eg 'a Sher supporter') that allegation would, on the evidence before us, be incapable of fair trial, and inherently impossible to prove (or defend). It would therefore fail.

Knowledge and chronology

231. The claimant laid heavy weight on two short points: it was not general knowledge that on 28/29 June the claimant told Mr Malhi and others that she had issued her claim, and sent them a copy of the claim; and the text appeared very shortly afterwards.

232. Day A was 28 April and B was 28 May. The claimant had placed on formal record the possibility of a tribunal claim as early as 17 April, when she told Mr Mand that she might contact ACAS. The earliest independent indication to the respondent that the claimant had begun the process of a tribunal claim was from ACAS during the early conciliation period, probably early in May.

233. We have noted that by email to Mr Malhi, Mr Gill and Mr Mand on 29 May the claimant notified the respondent that she was in receipt of her early conciliation certificate (423). As stated above, the email was headed, 'Lodging claim with Employment Tribunal'. After dealing with delays in the grievance procedure, the claimant wrote,

> ' …I will now proceed to the Employment Tribunal … I will naturally bring this delay to the attention of the Employment Tribunal. Please note there will be group claim for direct discrimination from three of us.'

234. Although the issue was not expressly addressed before us, our understanding has been that information given to the respondent's committee members was shared among committee members, and was not confidential. The speed and proliferation of social media and other media comment about the affairs of the respondent was powerful evidence to the same effect. We have noted in these proceedings a wealth of references to legal disputes. We take it that the facts that Mr Sangha had brought employment tribunal proceedings (twice) against the respondent, and that his claim in 2016 had not been heard because it had been settled, were also within wider knowledge. The claimant's email of 29 May was an announcement that there would be three claims of discrimination. There was no evidence to show, or reason to believe, that that information was confined to the three named addressees of the email.

235. We have rejected the claimant's case that in June Mr Malhi offered her a 'bribe' not to proceed to a tribunal. The logic of that claim was that by mid to late June the respondent was alert to a pending claim. We have accepted the claimant's case about the call from Mr Gill in the early evening of 28 June. The logic of that claim was the same: that the respondent was alert to a pending claim.

236. The claimant presented her first claim on 28 June. She stated in the pleading that she did so at 11.40pm. There was no confirmation of the precise timing on the tribunal file, or in the bundle. In her second ET1 she said that she had forwarded a copy to Mr Malhi 'rapidly, subsequently, that same evening' (86). Her covering email was not in the bundle.

237. On 29 June at 9.07pm (587) the claimant wrote to Mr M Buttar to set out a number of complaints. She attached a copy of the ET1 and Particulars 'for your record;' she did not say that they had already been sent to Mr Malhi. In the

email she quoted from the malicious text, which she had then already received (589), saying that it was sent from, 'your circle of persons.' (We take no point about that formulation, save to say that it illustrates our concern about expressing an allegation which could be capable of fair trial). A few minutes later she sent a copy of the ET1 and particulars to five of the respondents (not apparently Mr Mand) and a number of external bodies, including the police, the Home Office, HMRC, LBE, and the Charity Commission (590). On the claimant's account, she was re-sending to Mr Malhi the same attachments sent to him about 24 hours earlier.

238. We find that the elements of this part of the claim do not stand up to scrutiny. The respondent was placed on notice of the claimant's intentions to bring a tribunal claim on a date between 17 April and early May. That was not done confidentially. It has not been proved to us on balance of probabilities that the text was sent chronologically after the claimant first sent any respondent the text of her ET1. It has not been proved that there is a causal relationship between the two events.

Technical

239. In evidence the claimant stated that she had the original message on her phone, which we saw was in front of her on the witness table. The original screenshot, which might have shown a source and /or time of original transmission, had not been disclosed or made available to the tribunal.

240. Mr Sangha gave evidence that he saw the text on the claimant's phone. He said that it had come in a chain from a Ms Kaur and a Mr Cheema, both of whom had deleted it. He also said that the message had come to his wife by WhatsApp, quoting a source number which he had passed to the police. That left the claimant's position to be that at a time of heated conflict, five individuals had had evidence which they said indicated that Mr Malhi was the source of the text; yet none had either preserved it, or disclosed it in these proceedings. That was, at its lowest, unsatisfactory.

241. Mr Sangha claimed to have been told by a police officer that the alleged source number could be traced to Mr Malhi's home area, and that the police had spoken to Mr Malhi about the text; Mr Malhi denied that he had had any such conversation with the police. It was common ground that reports to the police about behaviour within the community were a frequent occurrence. (We refer to paragraph 195 above).

242. Late in the case the claimant attempted to introduce in evidence an email from a police officer which referred to a conversation between another officer (not the writer of the email) and Mr Malhi about a text. That email was not from a person who could say that s/he had spoken to Mr Malhi; or what the subject of the conversation was; or whether, if a text was discussed, it was the one at issue in this case. Mr Singh offered no explanation for the extreme lateness of disclosure of the email. We do not accept that the email was reliable evidence to any effect.

243. We find that it has not been proved to us on balance of probabilities that what we here call 'technical' evidence identifies Mr Malhi as the sender of the text.

Circumstantial

244. The claimant invited us to attach weight to the text's linkage of her case with the tribunal claims brought in the past by Mr Sangha. That obvious linkage does not help us resolve the individual authorship of the text. It is an indication of the polarisation of the community, and of the text writer's hostility towards Mr Sangha. She also relied on the reference to 'official stealing,' which she asserted was a phrase which Mr Malhi had used about Mr Sangha's tribunal claims. That point did not assist us: we could not see evidence to convince us that use of that phrase proved its authorship.

245. The claimant and Mr Sangha produced to the tribunal a document issued by Mr Malhi (C509) in which he bluntly accused members of the Baaj Group, including Mr Sangha, of dishonesty and corruption. Mr Singh invited us to rely on C509 as going to the credibility of Mr Malhi, showing that he was the sort of person who would use social media to engage in personal attacks on others. We do not accept the premise of the submission. The document at C509 was agreed to be written in the context of electioneering, and it would not be fair to take it out of the context of what others had said or written during the election process. This point was of no assistance to us.

246. The claimant said that she had spoken to Mr Avtar Buttar about the text and that Mr Buttar said in Punjabi "Mr Malhi can't help". In evidence the claimant appeared to state that this phrase should be interpreted as "Mr Malhi can't help himself" from such behaviour. But the English words could mean, "Mr Malhi can't help solve a problem about social media". We are not assisted by this piece of evidence. The claimant also stated that another committee member, whom she did not name, had commented that "we" should not draw women into these disputes. That phrase, unattributed and out of context, was not answerable as an allegation and could not assist.

247. We do not find that what we have here called the circumstantial matters help the claimant to prove on balance of probabilities that Mr Malhi was the sender or instigator of the message.

The respondent's case

248. Mr Legard in reply stated shortly: "There is no evidence whatsoever to suggest that this text emanated from Mr Malhi or any other committee member and the claimant's assertions to the contrary are defamatory." In closing, he submitted that if any part of the claim based on the text were to succeed, the tribunal would need to find that it originated from the respondent. He added later in submission that there was no evidence that Mr Malhi sent the text and that it was a matter for the tribunal to find on balance that he did.

Our findings and conclusions

249. We find that the claimant's case before us is that the text was sent by Mr Malhi or on his direct instruction. We accept that the claimant has on occasion said that the text was sent by another individual, or by a member of the Committee, or by a supporter of Mr Malhi. We find that she has not put any answerable case to that effect to the tribunal. We add that an allegation advanced against any unidentified member or members of a group of 21 individuals (the Committee) or a fluctuating group which might be numbered in hundreds or thousands (Sher supporters) would in those terms not be capable of fair trial. We have proceeded on the footing that the case before us is that Mr Malhi sent the text, or procured its sending by an unidentified person acting on his direct instruction.

250. On our second point, we take care not to fall into the trap of taking chronology to prove causation. It does not, though it is an essential element of it. We find that the claimant's intention to proceed to tribunal was known to the respondent by early May, and emphasised by the claimant on 29 May. The evidence does not bear out the contention that the malicious text was sent after the respondent had first seen the first ET1 and particulars, or been told that the claim had been presented. It follows that we find that the text has not been proved to have been sent in response to the claimant's ET1.

251. The other points can be shortly answered: the claimant has produced no reliable technical evidence which points to Mr Malhi as the author of the malicious text. Likewise, we find that the circumstantial matters identified above do not assist us to make a finding about authorship.

252. We find that it has not been shown that the malicious text was sent by the claimant's employer (or on its procurement). We confirm that we make no finding about who did send it. The claim based on Detriment 10(a) fails.

Summary of detriment claims

253. It follows that we find that in relation to detriments 8, 13 and 15 only, the claimant has proved that she was subjected to detriment on grounds of having made a protected disclosure. Her claims to that effect succeed.

<u>Events after 29 June and constructive dismissal</u>

254. There was further correspondence. It was increasingly emotive, and appears at times to have been widely copied. As stated, the claimant notified a number of respondents of the existence and terms of the text late on 29 June. The bundle contained condemnatory responses from Mr Avtar Buttar of 1 July (595); from Mr Malhi of 3 July (596) and Mr M Buttar of 3 July (597).

255. On 4 July, the claimant replied in a widely distributed email to state in short that the replies from Mr Malhi and Mr M Buttar were too little too late, stating: "Already, key persons have indicated to me that the text message originates from Mr Malhi." She also wrote that the text, "represents the anger and embittered outburst from Mr Malhi and his circle of persons". (599). She also

touched on two other matters with which this tribunal was concerned, which were the call from Mr Gill, and Mr Malhi's email of 21 June.

256. Mr Malhi replied late on 4 July (601). His reply began:

> "I have already responded to your email regarding these malicious text messages and have asked to meet with you so we can devise an action plan to bring the perpetrators to light. I am very disappointed that you feel that I have somehow sent these messages, when this is clearly not true; I am also going through the same trauma of receiving such messages and have reported it to the police."

257. A side issue arose as to whether the office bearers should have announced a repudiation of the text message to a general meeting. We make no finding on that point, save that Mr Malhi's reservation, which was that this would run counter to a response of not giving the message more widespread circulation, was one which was reasonably open to him.

258. The claimant's reply of 5 July, which concluded with her resignation, opened (602),

> "Your email provides no credible assurance or evidence to me that you are not linked to the text message in question. Indeed, current circumstantial evidence and the associated chain of events, clearly points to you as a prime suspect."

259. The claimant then referred to an analysis of the wording of the text, and to Mr Malhi's email of 21 June (calling its language 'extreme and shocking') on which we have made separate findings. She referred briefly to Mr Gill's call, went on to deal with the composition of the grievance appeal panel, and then reiterated a range of grievances about events on 7 and 10 March, introducing at the end of her letter matters going back as far as the Lucky accident in 2016.

260. The letter concluded (604),

> "In view of the entirety of your damaging and destructive actions as explained .. and now your choice to superimpose a wholly sham appeal panel and a dead-end appeal process; I have now been pushed to a point of complete and total breakdown of any last vestiges of trust and confidence in you as my employer. The chain of actions by you as my employer, particularly in the last 10-20 days, have totally broken the working relationship. In particular, the break-in into the filing cabinet in my office, the 21st June 2017 hostile and aggressive email to me, the malicious text message and now the insulting and ridiculous choice of appeal panel. It is clear from the choice of appeal panel that you want to ensure that my appeal fails, and that the existing outcome cover up is repeated. In all these snowballing circumstances, you have rendered my working relationship with you, impossible and untenable.
>
> Under this repudiatory breach of my contract of employment, I hereby submit this as my resignation .. to take effect immediately."

<u>Limitation</u>

261. The respondent had pleaded limitation, and in closing Mr Legard conceded that it did not do so with vigour, and that it was not really a time case.

262. The time limit is set out at s.48(3) and is a period of three months beginning with the date of the matter complained of,

> "or within such further period as the tribunal considers reasonable in the case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months."

263. In this case, Day A was 28 April 2017. Working backwards, we would state that any event occurring before 28 January 2017 was out of time unless an extension provision applied. However, our findings as to protected disclosure and knowledge are such that we find that the first that the respondent knew that the claimant had made a protected disclosure was on 7 March 2017. The first two detriments complained of took place before that date. We have rejected them on other grounds, but having heard the evidence we consider it in the interests of justice to adjudicate upon them. For avoidance of doubt, we have not extended time, as we did not find an evidential basis to do so.

Constructive dismissal

264. In her second claim form, the claimant wrote that her constructive dismissal was based on the behaviour identified in her first ET1, and in the subsequent 'malicious text' and appeal arrangements. At paragraph 84 of closing submissions, Mr Singh repeated that before the text message, the claimant relied on 'a sequence of incidents as identified in her list of detriments.'

265. We have set out above our conclusions to the effect that the claimant's pleaded detriments 8, 13 and 15 (respectively: change in reporting lines, Mr Malhi's email of 21 June, and Mr Gill's phone call on 28 June) were detriments for the purposes of ERA s.47D.

266. We find that in addition, each was an action of the employer calculated or likely to seriously damage the employment relationship, done without proper cause. While that seems to us to follow from the proposition that each was done because the claimant had made a protected disclosure, we add a separate finding on proper cause in relation to each.

267. We find, for reasons set out at paragraph 170 above, that the change in management line was repudiatory conduct. We had no cogent evidence about the reasons for the change in management lines which formed detriment 8, and in particular as to its timing. For reasons set out at paragraphs 197-199 above, we consider that Mr Mahli's email of 21 June constituted repudiatory conduct. While the email of 21 June referred in part to management considerations, we find that it was sent , as described, as an expression of his exasperation. In so finding, we attach weight to Mr Malhi's assertions (paragraph 198 above) that the respondent could resolve its own difficulties, and that it had been cleared by all outside agencies. Those assertions were, at least, wishful thinking, and cannot have led Mr Malhi to a reasonable, legitimate managerial decision to write to the claimant in the terms in which he did.

268. For reasons set out at paragraphs 205-210 above we find that the call from Mr Gill constituted repudiatory conduct. While we accept that Mr Gill sincerely saw himself as contacting the claimant on 28 June as an act of leadership of the respondent as a community, we do not find that the respondent had proper cause for the contact. We had no evidence of the respondent's reasons beyond a general desire to avoid external agencies and save resource. In finding that proper cause has not been shown, we attach weight to the fact that the call made no offer of any form of bilateral dispute resolution. In so saying, we advance no criticism whatsoever of Mr Gill as an individual, who plainly thought that he was acting in the best interests of everyone.

269. We now consider each remaining detriment separately, and decide whether, irrespective of our finding that each was not a detriment, each was objectively an event which without proper cause itself was likely or calculated to seriously damage or destroy the relationship of trust and confidence. In doing so, we stress the need for an objective approach, and we stress the importance of proper cause. As Mr Legard said, the respondent was entitled to manage the claimant, even in respects which she did not like or approve. We proceed on the basis of the findings of fact set out above.

270. We have found above that the following matters which the claimant identified as detriments did not take place as alleged by her. It follows that we have nothing to add, in the constructive dismissal context, to what has been said about detriments 1 (manner of conversation after the first inspection), 3 (allegation that a previous whistleblower was beaten up), 10b (grievance appeal process) and 12 (alleged bribe).

271. We find that detriment 2 (claimant not invited to a meeting) was a workplace matter. We accept Mr M Buttar's evidence that there was proper cause for the claimant's exclusion from the meeting with Ms Dunning. He was to be accompanied by Mr Gilpin, who had been appointed as health and safety consultant; Ms Dunning had in writing expressed reservations about whether the claimant was qualified to contribute to a health and safety discussion; and there were plainly tensions between Ms Dunning and the claimant.

272. We find above that Mr M Buttar's questions to the claimant on 10 March about the photographs of Mr P Singh (detriment 4) constituted a legitimate exercise of his responsibilities, particularly in circumstances in which Mr Jeevan Singh had said that he had given his phone to the claimant to forward them. The questions were put for proper cause.

273. We have found that detriment 5 (appointment of Ms Wilkhu) was not related to a protected disclosure. We find that it was an act calculated or likely to seriously damage the employment relationship, done without proper cause. We attach particular weight to the matters set out at paragraph 155 above.

274. We have accepted Mr Avtar Buttar's evidence about detriment 6 (the Punjabi WhatsApp message depicting a dead soldier). All that can be said is that Mr A Buttar may have under-estimated the claimant's sensitivity. We find that this event was not in the slightest related to work events or the workplace, and

viewed objectively was not calculated or likely to impact on the work relationship.

275. We have found that detriment 7 (exclusion of the claimant from those credited with the apprehension of the thief) was not related to a protected disclosure. For reasons already stated at paras 161-164, we find that it was an act calculated or likely to seriously damage the employment relationship, done without proper cause.

276. Detriment 9 is based on a reasonable workplace instruction. It was Mr Buttar's responsibility to exercise judgment as to whether the claimant should attend the sentencing hearing in the Crown Court. The claimant disagreed with his decision. We find that his instruction to the claimant not to attend was for proper cause (ie the exercise of his discretion about how she should spend a working day), and was not calculated or likely objectively to impact the working relationship.

277. Detriments 10 and 10c relate to the outcome of the grievance and the process which Mr Mand followed. We do not add to what is stated at paragraphs 187-191 above. We find that viewed objectively in all the circumstances, neither of these was calculated or likely to impact on working relationships. We accept, in so saying, that the standard of the process followed could have been improved: but that is not the same standard as repudiatory conduct. In so saying, we must attach weight to the unhappy fact that despite a history of employment and other disputes, the respondent did not have a grievance procedure. Mr Mand did the best with the material which he had to work with. Mr Mand followed the process which he did, and reached his conclusions on the material before him. We find that he made choices and reached conclusions which were reasonably open to him, and which were a reasonable exercise of his judgment in all the circumstances.

278. We have nothing to add to our above findings on detriments 11 and 14 (the filing cabinet and the locks). They were reasonable, legitimate workplace decisions, which we find were objectively not calculated or likely to impact on working relationships, and were taken for the proper cause of access to workplace information.

279. We have at paragraphs 197-201 above set out our reasons for finding that Mr Malhi's email of 21 June constituted detriment 13. For the same reasons, we find that it was sent without proper cause, and that in the same respects it was calculated or likely to seriously damage the relationship of trust and confidence.

280. Our conclusions are that we have found that the actions of the respondent which objectively were calculated or likely to damage or destroy the employment relationship were each of those set out in the claimant's detriments 5, 7, 8, 13 and 15 and no other; we have found that three of those five matters were detriments on grounds of public interest disclosure.

281. We must then go on to find what was the operative reason for the claimant's resignation. In her discursive resignation letter, the claimant highlighted the two

most recent major events, as she saw them, which were the malicious text, and the unresolved arrangement for her grievance appeal. She then referred back to a wide range of events, complaints, issues and grievances, some of them not necessarily concerning her as an individual, and some going back a substantial period of time. The letters of 4 and 5 July are blazingly angry. It would not be right to read them over-literally. They contain an entangled factual matrix which formed a composite reason for resignation. They do not expressly refer to what we have called detriments 5, 7 or 8 (Ms Wilku, credit for arrest and the reporting line). We note that the claimant's pleaded case was that she relied on her entire history of grievance.

282. We find that the immediate reason for the claimant's resignation was her reaction to the malicious text; and her immediate conviction that it originated with Mr Malhi, the most senior office bearer within the community. We note that that came immediately after correspondence about the appeal panel, which was also in Mr Malhi's hands, and the day after Mr Gill had called her. Taken together, and from the claimant's perspective, those events showed that the respondent had embarked on a confrontation in which it would not compromise, and in which it stooped to ugly language. Our findings are that we find no fault with the respondent in the appeal panel arrangements, and we have made our findings about the malicious text, which we do not repeat. It follows that we find that the immediate reason for her resignation was matters on which we make no finding against the respondent.

283. In that setting, and in that mind set, the claimant also looked back on a long history of grievances and issues, and came to the conclusion that she could no longer continue in employment with the respondent. We accept that that history included the range of issues which were before us, even if they were not all individually identified in the resignation letter.

284. Those findings bring us to the final discussion point, which is how they meet the framework of constructive dismissal. When we come to the claim of 'ordinary' constructive dismissal, we ask, were the five acts of repudiatory conduct which we have found, taken together, an effective cause of the claimant's resignation, even if not the sole or principal cause, or the immediate cause at the time of her resignation. Our answer is that they were: we accept that they formed a material, effective part of her reason for resignation. Her claim of ordinary constructive dismissal succeeds on that basis.

285. S.103A provides,

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

286. We have found it helpful to think of the respondent's treatment of the claimant as three concentric circles. The outer, largest circle consists of all the treatment raised by the claimant in this case. That includes events which the tribunal has found did not happen as alleged (or at all); events which did happen but for which the respondent was not responsible or liable; and events

which the tribunal finds did happen, and which we find were neither detriments under s.47D, nor individually repudiatory acts calculated or likely to destroy or seriously damage the employment relationship.

287. In the second, inner circle, are the five matters set out at paragraph 280 above, which we have found were each (and cumulatively) acts without proper cause calculated or likely to destroy or seriously damage the employment relationship. We have found that taken together they formed a material or effective cause of her resignation.

288. In the third and smallest circle are the three matters of the above five which the tribunal has found were each both a detriment on grounds of public interest disclosure and calculated or likely to destroy or seriously damage the employment relationship. They formed some small part of the claimant's reasons for resignation, and in so saying, we we note that none is even mentioned in her resignation letter.

289. Our difficulty is not mathematical, and we are not concerned with the numerical relationship between two, three or five matters. In a factual matrix which we have found to be complex and entangled, we take care to avoid an over simplistic approach, or of asking if the claimant's dismissal were just one thing or another. We endeavour to take a broad common sense overview. We have found that the claimant's protected disclosures materially influenced the respondent in its repudiatory conduct in some respects. We have also found the presence of many other factors and influences, and many matters unrelated to protected disclosures. In <u>all</u> the circumstances, we ask, has it been shown that the protected disclosures which we have found were the sole or principal reason for the respondent's repudiatory conduct. We answer that it has not, and the s.103A claim fails.

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Employment Judge R Lewis

Date: …18 March 2019……………..

Sent to the parties on: ....

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For the Tribunal Office