EMPLOYMENT TRIBUNALS

Claimant: Mr P Watson

Respondents: 1. Hilary Meredith Solicitors Limited
2. Ms Hilary Meredith

HELD AT: Manchester **ON:** 4 – 5, 7 – 8, 11 – 14 February 2019

BEFORE: Employment Judge Slater
Mrs C Linney
Mr A J Gill

REPRESENTATION:

Claimant: Mr N Roberts, Counsel
Respondent: Mr S Lewinski, Counsel

JUDGMENT having been sent to the parties on 21 February 2019 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Claims and Issues

1. The claimant claimed unfair dismissal relying on Section 103A of the Employment Rights Act 1996 and that he suffered detrimental treatment on the ground of making protected disclosures, relying on Section 47B of the Employment Rights Act. On the third day of the hearing, the claimant withdrew the complaints of detrimental treatment, other than the complaint against the second respondent relating to dismissal, so those complaints have been dismissed on withdrawal by the claimant.

2. The parties agreed a List of Issues in relation to the remaining complaints as follows:

Whistleblowing detriment [R2]

1. It is agreed that the claimant made the following disclosures (on 5 September 2017 and thereafter before his dismissal) and that they were protected:

   a. Disbursements recovered had been transferred and retained in the office account and not paid out to disbursement providers.

   b. This was a breach of the Solicitors Accounts Rules which appeared to go back three or four years.

   c. The amounts would have to be paid back and a report made to the Solicitors Regulation Authority.

   d. That Counsel's fees amounted to disbursements.

2. It is agreed the claimant made the following disclosures of information:

   a. That amounts paid by Novitas were being recorded as profit costs, whereas they should be recorded as commercial loans.

   b. In taking an advance from Novitas, the first respondent had breached the terms of an overdraft facility with Yorkshire bank.

3. Was the claimant's belief reasonable that the disclosures of information at paragraph 2 tended to show that a person had failed, was failing or was likely to fail to comply with a legal obligation to which they were subject?

4. If so, it is agreed that the claimant's disclosures at paragraph 2 were protected.

5. It is agreed that the second respondent summarily dismissed C.

6. Was the dismissal capable of being a detriment?

7. If so, was the dismissal done on the ground of the claimant's protected disclosure(s)?

Unfair dismissal [R1]

8. Issues 1 and 2 are repeated.

9. Was the principal reason for the first respondent's dismissal of the claimant his protected disclosure(s)?

There is no complaint of wrongful dismissal or breach of contract before the Employment Tribunal and the Employment Tribunal will make no findings as to whether the claimant by his actions was in fundamental breach of contract entitling the respondent to dismiss without notice. We are aware that this may be the subject of separate proceedings in another court.

Applications for disclosure

3. During the course of the hearing, there were applications for specific disclosure. Oral reasons were given for our orders at the time. Written reasons for these orders have been requested, so our orders and reasons, as they were given during the hearing, are set out in this section.

Orders made 5 February 2019

4. The respondent shall disclose and produce for inspection the redacted part of an email from James Pike to Hilary Meredith sent on 16 October 2017 at 12:35 and the email chains into which that email and a further email of 16 October 2017 from James Pike to Hilary Meredith sent at 8:50.

5. The respondent shall disclose and produce for inspection all documents setting out or recording the instructions given to the respondents' solicitors and the advice given relating to the reason for the claimant's dismissal and when the decision to dismiss was taken up to the sending of the termination letter on 17 October 2017 at 14:35.

Reasons for orders

6. We have been referred to a number of cases and also an extract from Harvey. We take from the authorities the underlying principle of fairness and that, if a party waives privilege that would otherwise apply to legal communications, they must not do so in a way that would risk unfairness. In the case of *Great Atlantic -v- Home Insurance in the Court of Appeal 1981 WLR 529* the question that court was considering was whether the plaintiffs could waive privilege with regard to the first two paragraphs of a memorandum which was a privileged communication between legal advisor and client, but assert privilege over the additional matter. The Court said (paragraph D on page 536): "Once it is decided that the memorandum deals with any one subject matter it seems to me that it might be or appear dangerous or misleading to allow the plaintiffs to disclose part of the memorandum and to assert privilege over the remainder". They went on to say at paragraph F:

> "In my judgment the simplest safest and most straightforward rule is that if a document is privileged then privilege must be asserted if at all to the whole document unless the document deals with separate subject matters so that the document can in effect be divided into two separate and distinct documents, each of which is complete".

7. That was dealing with the situation of waiver in relation to the specific document.

8. The question also arises in our case as to whether, by waiving privilege in relation to particular documents, there has been waiver of a wider category of documents relating to a particular transaction or issue. We found particular assistance in relation to this in the case of *Brennan and Others -v- Sunderland City Council and Others 2009 ICR 479 EAT* in which Mr Justice Elias set out at paragraph 16 of that judgment the basic principles which are to apply. These in summary were:-

(i) That, as a matter of public policy, communications between the legal advisor and/or his or her client are privileged from the date of production so long as they are confidential, written by or to the legal advisor in his or her professional capacity and for the purpose of giving or getting legal advice;

(ii) A party may however waive that privilege; and

(iii) Whether or not privilege has been waived is determined by the application of principle of fairness.

9. Mr Justice Elias quoted from *Great Atlantic Insurance Company v Home Insurance,* in which Templemann J said "In my judgment, however, the rule that privilege relating to a document which deals with one subject matter cannot be waived as to part and assert it as to the remainder is based on the possibility that any use of part of a document may be unfair or misleading…".

10. Mr Justice Elias referred to a more recent formulation in the judgment of Mustill J, as he then was, in *Nea Karteria Maritime Co Ltd v Atlantic & Great Lakes Steamship Corpn (No.2) [1981] 1 WLR 529* as follows:

> "where a party is deploying in court material which would otherwise be privileged, the opposite party and the court must have an opportunity of satisfying themselves that what the party has chosen to release from privilege represents the whole of the material relevant to the issue in question. To allow an individual item to be plucked out of context would be to risk injustice through its real weight or meaning being misunderstood".

Mr Justice Elias commented that this was frequently referred to as the cherry-picking principle and said that a party cannot seek to gain an advantage in litigation by placing part of the document before the court and withholding the remainder.

11. At paragraph 16(4) of *Brennan,* he said that the fact the waiver is accidental makes no difference; once waived, the whole document must be produced or at least all parts of the document relating to that subject matter and, at paragraph 16(5), he said the document may be redacted to remove immaterial material or material of no relevance to the case, whether privileged or otherwise.

12. At paragraph 63 of *Brennan,* Mr Justice Elias said

> "In our view the fundamental question is whether, in the light of what has been disclosed and the context in which disclosure has occurred, it would be unfair to allow the party making disclosure not to reveal the whole of the relevant

information because it would risk the court and the other party only having a partial and potentially misleading understanding of the material. The court must not allow cherry picking but the question is: when has the cherry been relevantly placed before the court?"

13. Other authorities assist in the question of identification of the transaction or issue. Mann J in *Fulham Leisure Holdings Limited -v- Nicholson Graham and Jones 2006 2 All ER 599,* at paragraph 18 set out various principles from which we take the following points. The court determines objectively what the transaction is. The court is entitled to look to see the purpose for which the material is disclosed or the point in the action to which it is said to go to help decide this and, once the transaction has been identified, the whole of the material relevant to that transaction must be disclosed. If only part of the material involved in that transaction has been disclosed then further disclosure will be ordered and it can no longer be resisted on the basis of privilege. At paragraph 19, Mann J went on to deal with the case where, if the transaction is part of some bigger picture, fairness and the need not to mislead may require further disclosure.

14. We have before us an application in relation to a redacted part of the email of 16 October 2017 sent at 12:35 and an application in relation to other documents relevant to the transaction or issue in relation to which partial disclosure has been made. The respondent does not resist the application that the chain of emails, in which the two emails which have been disclosed appear, should be disclosed.

15. We deal first with the application in relation to the redacted part of the email. Applying the principles in the *Great Atlantic* case, it does not appear to us that this is something which is a separate matter. It appears to us clear from the paragraph which follows the redacted part in particular, that the redacted part must relate to the same subject matter as the rest of the document. We, therefore, consider there is a risk of unfairness by not seeing that part of the document and we order that the respondents shall disclose and produce for inspection the redacted part of that email and also, by consent, that the email chains into which the two emails fall should be disclosed to the claimant.

16. We then go on to deal with the wider question which requires us to look at the scope of the waiver which has been made. To consider this, we must identify the relevant issue or transaction. We consider the emails, the contents of the emails themselves, and also the purpose for which the claimant adduced the emails in evidence. The purpose is shown by the contents of the supplemental witness statement and, in particular, paragraph 1 of that, which says that it is response to a statement that the letter of dismissal to the claimant was in response to his solicitor's email to Squire Pattern Boggs of 16 October 2017. We find that the contents of the emails and the purpose for which the respondent adduced the email in evidence assists us to identify the transactions as follows. We consider that the relevant issues or transactions are:

(i) Why the respondents acting through the second respondent decided to dismiss the claimant; and

(ii) When the respondent acting through the second respondent decided to dismiss the claimant;

17. We were not persuaded by Mr Roberts' arguments that there was a wider issue or transaction about all matters to do with the claimant's employment and the handling of the grievance. We, therefore, consider that privilege has been waived in relation to legal communications relating to those two issues or transactions and we order that the respondents disclose and allow inspection of all documents setting out or recording the instructions given to the respondent's solicitors and advice given relating to the reason for the claimant's dismissal and when the decision to dismiss was taken up to the sending of the termination letter on 17 October 2017 at 14:35.

Decision on 7 February 2019 about scope of the order made on 5 February

18. Matters relating to the interpretation of the orders made on 5 February were raised on 7 February 2019. After discussion, and counsel taking instructions, the only live issue requiring a decision was as to whether the order required disclosure of material prior to 4 October 2017; the claimant argued that the orders made were wide enough to include disclosure of the second respondent's reactions to the events of September; how the second respondent characterised the claimant's conduct at the time.

19. Our decision was that we did not consider the type of material the claimant was seeking, relating to the second respondent's reaction to events in September 2017, to fall within the scope of the issues/transactions in respect of which we found privilege was waived and, therefore, within the scope of the order made. We had the respondents' assurance that there was no material not disclosed which fell within the category of advice requested or given about dismissal. The claimant's representative could cross examine and make submissions on the basis of the absence and significance of the absence of any such material before that which had been disclosed.

Facts

20. The first respondent is a company formed by the second respondent in 2003 which specialises in personal injury work for people in the British armed forces and their families.

21. The second respondent, Ms Meredith, is a solicitor with over 34 years' experience in the industry. She is the chair and statutory director of the first respondent.

22. The claimant, Mr Watson, is a solicitor who qualified in in England in Wales in 1992, having previously qualified in Australia.

23. Ms Meredith and Mr Watson agreed that Mr Watson should join the first respondent as Chief Executive Officer as part of a plan to grow the business. The intention was that Mr Watson would manage the business, leaving Ms Meredith free to concentrate on bringing work in. Mr Watson was also to invest in the business, with an initial investment of £100,000.

24. Mr Watson entered into a Shareholder Agreement with Ms Meredith, the other shareholder, Claire Stevens, and the first respondent and made the investment of £100,000 in return for shares in the first respondent.

25. On 1 June 2017, Mr Watson entered into a service agreement with the first respondent, in accordance with which he was appointed as Chief Executive Officer of the company from that date. His basic annual salary was stated to be £180,000. Mr Watson was required to give 12 months' notice of termination.

26. Mr Watson worked with Ms Meredith for just over 3 months before the disclosures were made. They had a very positive relationship in that time. Ms Meredith thought highly of Mr Watson.

27. Mr Watson persuaded Ms Meredith that the first respondent should hire Tim Ritchie, an accountant who was a specialist in Mergers and Acquisitions, as Finance Director. Mr Ritchie replaced PM as Finance Director. PM left the business around the end of August. Mr Ritchie had a brief handover from PM over a couple of days at the end of August 2017 before starting officially on 4 September 2017.

28. Mr Watson was on annual leave from 28 August 2017 to 1st of September 2017 and returned to the office on 4 September 2017.

29. In the afternoon of 4 September 2017, Mr Ritchie informed Mr Watson that he was concerned about cost advances to the first respondent under the scheme with "Novitas" and "Just Costs". Mr Ritchie considered that the sums received from Novitas had been wrongly recorded as profit costs and that this had had the effect of bringing forward around £300,000 of profit costs into the 2016/2017 financial year. Mr Ritchie was concerned that this could increase the first respondent's net debt by around £300,000. Mr Ritchie and Mr Watson were concerned as this could result in the statutory and management accounts being materially misleading and could result in the directors and/or the first respondent being in breach of legal obligations in this regard. They agreed to discuss the cost issue with Ms Meredith as soon as they were all in the office. Ms Meredith was in London at the time.

30. On 5 September 2017, Mr Ritchie informed Mr Watson of a further serious problem he had discovered. This was that payments received in respect of disbursements had been transferred to the first respondent's office account without the relevant disbursements being paid. Mr Ritchie informed Mr Watson that this had come to light following conversations with KH, the first respondent's cashier. She told him that she had compiled a list where the first respondent had been chased for payment of disbursements and that the total was in the region of £1 million. Mr Watson and Mr Ritchie agreed that Mr Ritchie should undertake some further investigations. They met again later that day and Mr Ritchie showed Mr Watson a summary breakdown of what he thought the unpaid disbursements amounted to, with the figure being around £1 million. They agreed that the position was so serious they needed to discuss this with Ms Meredith at once.

31. Mr Watson called Ms Meredith on her mobile phone and left a message for her. They subsequently spoke at around 6:15 pm. Mr Watson outlined to Ms Meredith what had been discovered about the disbursements issue. It appears that neither of them made a note about what Mr Watson told Ms Meredith. It appears

from the emails which followed that it may only have been the disbursements issue, and not the Novitas matter, which was mentioned to Ms Meredith on 5 September. Ms Meredith was extremely shocked and upset and could not understand how this had happened. Ms Meredith decided to return immediately to Wilmslow to find out what was happening.

32. Ms Meredith and Mr Watson had a number of further telephone calls that evening and Ms Meredith sent emails to Mr Watson and Mr Ritchie with various questions.

33. In providing information to Ms Meredith on 5 September and subsequent occasions, Mr Watson was relying on what he had been told by Mr Ritchie. In so far as Mr Watson gave Ms Meredith information about the Novitas matter, this was based on Mr Ritchie's understanding of the arrangements and how money from Novitas should be recorded in the accounts.

34. We find that Mr Ritchie sent Ms Meredith and Mr Watson an email on 5 September with an attachment of the summary of unpaid disbursements but this was in a format which Ms Meredith was unable to open on her iPad. We find that Ms Meredith did not see the summary until she was shown it in a meeting on 6 September. Ms Meredith said in her witness statement that she did not see it until 7 September, but, in the appendix to her supplementary statement, she said she saw it on 6 September and we consider this more likely. We find that Ms Meredith did not see the spreadsheets which were included in an attachment to Mr Ritchie's email until she saw them in the trial bundle. They were disclosed by the respondent since Ms Meredith forwarded to her solicitors the email with the attachment which she had been unable to open.

35. It was suggested on behalf of the claimant that Ms Meredith must have read the attachments because of the detailed questions she asked in an email on 5 September. However, we find, on a balance of probabilities, that these questions were asked on the basis of what she had been told by Mr Watson.

36. Mr Meredith did not ask Mr Ritchie to provide her with the material on which the summary was based.

37. Although Ms Meredith was unable to open the attachment to the email, in the body of the email of 5 September, Mr Ritchie informed Ms Meredith that they had received funds into client account from defendants in respect of the disbursements shown on the summary, transferred the funds to office account and then not paid the disbursement provider. He wrote that this was a breach of the solicitors account rules. He wrote that these were instances they had discovered by virtue of a disbursement provider chasing payment. He wrote that it was likely that there were further balances, currently undiscovered, where the disbursement provider had not chased and alerted them to the problem. He wrote that he would like "Helen D" to help write a report to query Proclaim (the computerised case management system used by the first respondent) to help identify the further instances that he was convinced must exist. He suggested they spend time with KH the following day so she could demonstrate what had been happening and how this might have gone undetected.

38. Solicitors Account Rules (rule 17) require that disbursements are paid out within 2 days of funds received in respect of costs and disbursements being transferred from client account to office account.

39. On 5 September 2017, Mr Ritchie wrote "we are where we are and the focus has to be on sizing the issue and taking remedial action."

40. It is agreed that, in telephone conversations on 5 September 2017 and subsequently before the claimant's dismissal, the following disclosures were made which were protected:

- Disbursements recovered had been transferred and retained in the office account and not paid out to disbursements providers.

- This was a breach of the solicitors' accounts rules (SAR) which appeared to go back three or four years.

- The amounts would have to be paid back and a report made to the solicitors' regulation authority (SRA).

- That counsel's fees amounted to disbursements.

41. It is also agreed that the claimant made the following disclosures (although it is contested that they amounted to protected disclosures):

a. That amounts paid by Novitas were being recorded as profit costs, whereas they should be recorded as commercial loans.

b. In taking an advance from Novitas, the first respondent had breached the terms of an overdraft facility with Yorkshire bank.

42. Had this not been agreed, we would have had some doubt whether these particular disclosures relating to the Novitas issue had been made by Mr Watson, rather than just being made by Mr Ritchie, based on the claimant's records of meetings. However, we adopt as agreed facts that Mr Watson did make these disclosures.

43. There has been no suggestion that Ms Meredith was aware of these problems prior to being alerted by Mr Watson and Mr Ritchie or that she was involved in the failure to pay disbursements or to incorrectly retain money in the office account.

44. At 20.23 on 5 September 2017, Mr Watson, in reply to further questions by email from Ms Meredith wrote suggesting that they work through all the questions in the morning when they met at around 9:30 am.

45. Mr Ritchie suggested in one email that disbursements may not have been paid as the overdraft was close to its limit. Ms Meredith replied: "But if we got close I always paid in chunks of money?"

46. Early on 6 September 2017, before they met, the claimant sent an email to Mr Ritchie asking him for chapter and verse of the SRA regulations that, in his opinion, had been breached and why. She wrote that she had been making business decisions based on inaccurate information provided to her. She asked various other questions and wrote that she would like to drill down on the figures and find out what the amounts are and who is owed money.

47. It is apparent from the email exchanges that Ms Meredith was keen to get to the bottom of the problem.

48. We find that Ms Meredith considered that Mr Watson and Mr Ritchie had acted correctly in informing her quickly about the problems Mr Ritchie had discovered. She was in shock and very upset at hearing about the problems but there is no indication or suggestion from Mr Watson that she was upset or angry with Mr Watson and/or Mr Ritchie when the disclosures were made or during the meetings in September. Indeed, as we come to later, Ms Meredith asked Mr Watson, over some period after his resignation, to reconsider his decision to resign and to return to work on a permanent basis.

49. Ms Meredith, Mr Watson and Mr Ritchie met together at approximately 9:30 a.m. on 6 September 2017.

50. The claimant and Mr Ritchie made notes of the meeting on 6 September and subsequent meetings. The notes of meetings in the period 6-11 September were created 10 September and added to on 11 September.

51. At the meeting on 6 September, they discussed the Novitas issue and the disbursement issue. The disbursement issue was the most serious matter. Although we have accepted Ms Meredith was unable to open the attachments sent to her by email, we find it is more likely than not that she was shown the summary document in the meeting on 6 September when Mr Watson and Mr Ritchie explained about the unpaid disbursements. It appears from the later emails asking Mr Ritchie to send the attachments in a different format, that Ms Meredith did not take away a copy of the document from that meeting.

52. At the meeting, Ms Meredith said that she would understand if they both wanted to leave.

53. They discussed figures which came from the list given to Mr Ritchie by KH. It was understood these were not final figures. It was agreed that someone would run a report from the Proclaim system to investigate the extent of the problem. Mr Ritchie was to do some further auditing of KH's list. Mr Ritchie said that there had to be notification to the SRA. Ms Meredith said this notification should come from her. Ms Meredith had no criticism of the claimant's conduct at this point.

54. There were further meetings in the day between the claimant, Ms Meredith and Mr Ritchie. In a meeting later that day, the possibility of the claimant leaving was raised, although there is a dispute between the claimant and Ms Meredith as to who raised this. There is agreement that the claimant raised a concern about his investment. Ms Meredith expressed the view that counsel's fees were not a

disbursement for the purposes of the SRA. They agreed to meet again on 7th September.

55. Based on the claimant's notes, at around 3:30 pm on 6 September, the claimant and Mr Ritchie decided to resign with immediate effect and to write resignation letters that evening and give them to Ms Meredith the next morning.

56. On 6 September at 18:21, Ms Meredith wrote to Mr Ritchie asking him to send through the statistics he sent through the previous day because she could not pick it up upon her iPad. He replied, sending an attachment as an Excel spreadsheet.
Mr Watson and Ms Meredith had a conversation by telephone. Ms Meredith said she had spoken to counsel about the matter of counsel's fees where there was a conditional fee agreement and she was more confident that she was accurate in her view that counsel's fees did not count as a disbursement.

57. In the evening of 6 September 2017, Mr Ritchie emailed to Ms Meredith and Mr Watson a copy of a notification to the SRA made by IH, COFA of the first respondent at that time, on 26 November 2013. Mr Ritchie commented that he had just found it in PM's files and it was worth a read. The notification was of a breach of SRA rules 17.1 (B). The letter informed the SRA that they had a practice of paying receipts comprising a combination of payments of their costs together with monies in respect of unpaid professional disbursements into their office account. IH wrote that they had been informed by their reporting accountants that they had neglected to observe the requirement to either pay the corresponding disbursements, or to transfer the equivalent sum to client account, within 48 hours. IH wrote that this was due to a misunderstanding as to the scope of the exception, their staff had now been made fully aware of the requirements of the SRA rules and their procedures had been amended to ensure that all receipts monies in respect of unpaid professional disbursements were transferred into client account within 48 hours of receipt. He wrote that they estimated that the total monthly value of money overdue for transfer to the client account from the office account in respect of unpaid professional disbursements amounted to approximately £357,000; that they were in the process of making such transfers and would expect transfers to be complete by the close of business on 27th November.

58. Mr Watson, Ms Meredith and Mr Ritchie met again on 7 September 2017. Prior to that meeting, there were a number of emails between them. Ms Meredith again asked Mr Ritchie to send the statistics in a different format because she could not open it. He then replied, sending it in a PDF format. This was only the summary of disbursements and not the supporting Excel spreadsheets. Mr Ritchie wrote that he would be doing further audit work that day. He wrote that they needed to wait for Helen D to finish the Proclaim report to identify additional unpaid professional disbursements that had not been captured on this analysis. Ms Meredith asked Mr Ritchie if they had any fees in or cash they could move into client account. Mr Ritchie replied that they were over their current overdraft limit by £40,000 so there were no funds available to transfer to client account. Mr Ritchie expressed the view that an equity injection was required to resolve the current position. He expressed the opinion that the first respondent could not take on any more external debt without risking one of the SRA principles. Ms Meredith replied that she was aware of that but expressed the view that the business could still be sound. She referred to the amount of work in progress on the books and the quality of PI work and future

revenue. She wrote that the accountant/COFA had let her and the practice down badly and she had thought the time had long gone where she was personally propping up the firm "but we are where we are". She wrote that she was looking to remortgage her house but this would take a month and she was not sure how much she could add. She asked Mr Ritchie and Mr Watson whether either of them wanted to inject capital. She expressed the view that if they could raise half between them she was sure the bank would raise half. She wrote about steps she was intending to take relating to counsel's fees, Premex (the provider of medical reports) and other matters to try to reduce the estimated debt.

59. Before the meeting on 7 September, Mr Watson created the document which was to become the board minutes of a board meeting convened that day. Mr Watson and Mr Ritchie had also prepared resignation letters prior to the meeting.

60. Mr Watson, Mr Ritchie and Ms Meredith met on 7 September 2017, shortly before 2 pm. The time of 10 am given in the claimant's notes is incorrect. Mr Ritchie said that the report was now complete and showed a balance of £1.3 million. He said he had done some further auditing against KH's original list and the balance had fallen to just under £1 million. Ms Meredith gave an update about her discussions about counsel's fees and steps she was taking to raise funds. There was also a discussion about a possible reduction of around £50,000 in respect of Premex/Accident Assist balances. Ms Meredith asked if the claimant and Mr Ritchie would be interested in paying more in and giving personal guarantees to the bank. The claimant and Mr Ritchie then told Ms Meredith that they were resigning. They handed Ms Meredith their resignation letters. The claimant said that they needed to convene a board meeting.

61. Mr Watson's letter of resignation gave notice of resignation from his position as chief executive officer with the company. He wrote:

> *"The additional debt that has come to light over the last couple of days will seriously impact the firm's ability to execute the growth and exit strategy that we discussed before I joined and as a consequence limit the effectiveness and value of my role within the company.*
>
> *"It is genuinely disappointing that I will not be able to build on the initial work that has been done in the short time since I arrived and the strong and complimentary working relationship we have developed but I think it is in the best interests of both myself and the company that I resign with immediate effect.*
>
> *"My contractual notice period is 12 months which means it will expire on 6 September 2018 although I will obviously try to secure a new position sooner than that and hopefully we will reach agreement as to both this and the disposal of my shares."*

62. Ms Meredith said she was so sorry that they had joined only for this to come out so quickly. Mr Ritchie said he wanted to go at the end of the week. The claimant said he was not sure how long he could stay. Ms Meredith expressed the view that it would be very difficult for the claimant to find anything comparable.

63. Ms Meredith alleged in evidence that paragraph 3 (on page 292 of the bundle) of the claimant's notes was a complete fabrication but, under cross examination, she agreed that much of this was an accurate record. There was a dispute as to whether the shareholders' agreement was mentioned in this conversation.

64. A board meeting was then convened with Zoe Holland on the telephone to reach a quorum. The minutes record that the meeting began at 2 pm and record the following:

> *"HM advised the meeting that over the course of the week TR had discovered that over a long period of time monies received into office account on settled cases had not been used to clear outstanding disbursements on those settled cases and that there was an amount in excess of £1 million which was now outstanding.*
>
> *"TR said that in addition further debt to another task had been discovered in the region of £300,000 which had been treated as profit costs instead of a commercial loan.*
>
> *"HM advised that the impact of this additional debt is that the business will no longer be able to support the growth plans that PW and TR were brought in to execute not [sic] can it continue to carry their salary overhead in the long term.*
>
> *"HM advised that the purpose of the meeting was to advise the board that PW and Tim Ritchie had tendered their resignations as employees of HMS Ltd and that PW was resigning as a statutory director of HMS Ltd with immediate effect."*
>
> *The board also noted that [PM] having left the business on Friday, 1 September 2017, should also be removed as a statutory director from that date.*
>
> *The board noted and accepted the resignations and there being no further business the meeting closed at 2:15 pm."*

65. There is a dispute between the parties as to whether garden leave was mentioned at the meeting on 7 September. The note made by the claimant and Mr Ritchie does not make it clear who raised the matter of garden leave, although the note suggests that garden leave was discussed. Ms Meredith agreed that they should arrange a meeting with the first respondent's solicitors the next day and then with the first respondent's accountants. She made calls to arrange the meetings. Ms Meredith said in evidence that she had no idea what the meeting with the solicitors was to be about. We would find it very surprising if Ms Meredith made arrangements for a meeting, having no idea about what was to be discussed. It is not necessary for us to decide whether or not Ms Meredith did know what the meeting was to be about so we do not make a finding of fact in relation to this.

66. Later that afternoon, a draft announcement of the resignations of Mr Watson and Mr Ritchie was circulated and agreed between Ms Meredith, Mr Watson and Mr Ritchie. However, Ms Meredith did not send out the announcement but told staff that

Mr Watson was working from home. This was because she still hoped that he would reconsider and return to his position.

67. Late afternoon on 7 September, Ms Meredith sent an email to Mr Watson as follows: "I thought about this do you really want to leave? If the debt is reduced to around £680k I think this is manageable and in the scheme of things not a massive amount which could be cleared fairly quickly especially if moving forward we have dibs funding? Please have a think about it?"

68. Ms Meredith gave evidence that the figure of £680,000 was plucked out of the air as a figure she thought manageable. This was the figure that she gave in the first notification to the SRA.

69. Mr Watson replied that evening by email as follows:

> *"I really feel, albeit very reluctantly, that the best thing for you, the firm and me is for me to resign. The firm cannot sustain your drawings and my income in the long term without growth and it is not going to be able to deliver the return on investment that was envisaged when I made the decision to join. You need to cut the non-fee earning overhead as much as possible in the short term to enable you to maintain marketing activity to keep the existing fee earners fed with cases because they are good fee earners who we know will deliver good costs if they maintain a full caseload."*

70. Ms Meredith replied shortly afterwards: *"I know I just wanted you to be absolutely sure".*

71. Mr Watson did not attend the first respondent's offices to work after 7 September 2017 but dealt with some matters from home for a period after this, as evidenced by emails. This included dealing with queries about insurance on 11 September.

72. On Friday, 8 September 2017, the claimant, Ms Meredith and Mr Ritchie met with James Pike, employment lawyer at Squire Patton Boggs (SPB), the first respondent's solicitors. They had a discussion about possible settlement. The claimant's note of the meeting is included in the bundle. It appears that both parties have waived privilege in relation to the record of a without prejudice meeting. During the discussion, Ms Meredith said that she would like the claimant to consider staying as she felt there were steps that could be taken to mitigate the size of the debt and with the support of the bank they could trade through the problem and maybe in a couple of years start looking at the growth plans again. The claimant said he would consider anything she had to say over the weekend.

73. After meeting with the solicitors, Mr Watson, Ms Meredith and Mr Ritchie met with Colin Abrahams of Coopers, the first respondent's accountants. Mr Abrahams gave evidence to this tribunal and agreed that the claimant's note of the meeting was generally accurate. Mr Abrahams had tried to get the meeting moved to Monday so that a colleague with more relevant expertise could attend but the claimant and Mr Ritchie were insistent on the meeting going ahead on the Friday. Mr Abrahams understood that the claimant and Mr Ritchie wanted to leave the business. He understood there were serious regulatory issues to address. Ms Meredith was

treating the regulatory breach very seriously. Mr Ritchie was saying that payments from Novitas should be recorded as a commercial loan rather than as profit costs. Ms Meredith disagreed. Mr Ritchie expressed the view that, in taking the advance from Novitas, the firm had breached the terms of the overdraft facility with the bank, which required them to get consent to any arrangement that might affect their charge over the entire work in progress of the firm. Mr Abrahams understood that disbursements were the major concern. Ms Meredith spoke about the advice she had received about counsel's fees not being a disbursement. Mr Abrahams understood the claimant Mr Ritchie to have concerns that there may be serious financial, accounting and regulatory problems at the firm.

74. Mr Abrahams questioned Mr Ritchie as to whether there was a hole in the balance sheet. Mr Abrahams suggested that, with a couple of years of tight cost control, the problem could be cleared and that the claimant and Ms Meredith could resume with the growth plans Mr Watson had been brought in to deliver. Mr Watson said that this was not what he had signed up to and that the timescale for seeing a return on his investment would be substantially extended.

75. Mr Abrahams accepted that Mr Ritchie said the purpose of the meeting had been to advise Mr Abrahams in good faith what needed to be done to help him scope out a retainer with Ms Meredith for that work. Mr Ritchie set out the work which Coopers should do.

76. Around this time, Zoe Holland told Ms Meredith that she intended to resign as a non-executive director. Claire Stevens removed herself as a statutory director with companies' house without telling Ms Meredith but remained working in the practice.

77. Mr Watson's access to the first respondent's computer system was blocked after his resignation, as was standard practice with people who resigned. Ms Meredith sent an email to Mr Watson on 9 September using the office email system and then realised that Mr Watson would be unable to read this. She sent a further email saying she had just realised that she had not turned his computer access back on and would authorise this on Monday. She then re-sent, on 10 September, using what's app, the message she had sent by email on 9 September.

78. Ms Meredith wrote that she had been working "practically 24/7 on this". She wrote that she had instructed lawyers to assist with dealings with the SRA. She gave details of steps she was taking which she anticipated would bring down the outstanding debt.

79. On 11 September, Ms Meredith updated Mr Watson by email to let him know that a meeting with the bank went very well and they had agreed to increase the overdraft to cover the majority of outstanding "dibs". She wrote that the true "dibs" figure had decreased substantially and she hoped by Friday this would be resolved. Her optimism that the matter would be resolved that quickly did not prove well founded. In practice, it took Ms Meredith many months, with some assistance from professional advisers, to resolve matters.

80. On 12 September 2017, Ms Meredith sent Mr Watson a letter dated 11 September confirming that he was on garden leave. In the covering email she wrote that she had been advised to send that letter. The letter informed Mr Watson that the

company was placing him on garden leave with immediate effect so he was not required to attend work unless specifically requested to do so. He was to receive his normal salary and contractual benefits up to the final day of employment. The letter recorded that the company reserved the right to terminate the garden leave arrangements at any time and to request that he return to work to fulfil his contractual duties.

81. The relationship between the claimant and Ms Meredith remained friendly at this time. In an email dated 12 September 2017, Ms Meredith offered to let the claimant keep an iPad.

82. Ms Meredith kept the claimant updated on developments. She sent an email to him on 12 September updating him about receiving advice on SRA matters from Weightman's solicitors.

83. On 15 September 2017, Ms Meredith wrote to the SRA notifying them of a material failure to comply with the SRA accounts rules 17.1 (B). She wrote that they had found significant amounts of unpaid disbursements which led them to a full audit of the nominal ledgers. She wrote that they believed the amounts to be in the region of £680,000. She wrote about steps that they were taking to investigate further and correct the situation.

84. Ms Meredith sent a lengthy updating email to Mr Watson on 18 September. At the time, she wrote that Coopers were still undertaking a reconciliation but estimated the figure would be around £700,000. She wrote about contact she had had with providers and that they had written to the SRA on Friday. She wrote that they had discovered a fault with the Proclaim account system which meant this was not picked up on yearly audits and that they might have a claim against Proclaim. She wrote that she had found external finance to lend against disbursements she had paid upfront. She wrote that she had informed staff that PM had left them with a problem and she was resolving it as it means the money for growth appeared not to be there. She wrote she had not told them that Mr Watson had resigned but said he was working from home on this so she had left the door open if he wanted to reconsider and stay. She wrote that she had spoken to Claire and they would both like the claimant to stay.

85. The claimant replied with a without prejudice letter dated 20 September 2017.

86. Ms Meredith gave further updates to the SRA on 21 September, 25 September, 28 September and 3 October. Updates were to the effect that sums due as disbursements were reducing.

87. On 21 September 2017, the claimant telephoned the SRA disclosure line giving them information regarding the handling of disbursements at the first respondent. Mr Watson gave evidence that he did so as he had received no further information from Ms Meredith as to notification to the SRA. He accepted, under cross examination, that this was incorrect in that Ms Meredith had told him in a letter of 18 September that she had made notification to the SRA. Settlement negotiations had been ongoing between solicitors but had not resulted in settlement.

88. On 27 September 2017, Ms Meredith wrote to the claimant informing him that his period of garden leave would cease as of Friday, 29 September 2017 and he would be expected to attend work on Monday, 2 October 2017 as usual. He was asked to attend at the company's offices for 9 am so that, before he returned to his duties, he could meet with Ms Meredith and Mr Ritchie in order for Ms Meredith to be able to update him on matters since he had been out of the business.

89. The claimant's solicitors replied to this letter on the claimant's behalf. The solicitors were acting for Mr Ritchie as well as the claimant at this time. They asserted that it was wholly unreasonable for Ms Meredith to request that their clients return to work without evidence that the issues relating to breaches of the SAR had been addressed and that their clients would not face any further personal or professional risk by returning to work. They set out a list of things which they said that the respondents must do before their clients could possibly consider a return to work. These included providing a copy of all correspondence with the SRA and ensuring that adequate insurance cover was in place in respect of any liability which their clients might face in connection with the disbursement issue and the SRA investigation. They also required up-to-date and accurate details of the firm's financial position. They wrote that, once all these things had been provided, their clients were willing to meet with the respondents to discuss how the current position could be resolved.

90. We understand from the parties' agreed chronology that Mr Ritchie's employment came to an end on 30 September 2017. We assume that terms were agreed for the early termination of his employment.

91. The claimant did not return to work on 2 October 2017.

92. At 15:41 on 2 October James Pike, the respondents' solicitor wrote to Ms Meredith as follows: -

> "I have also drafted a revised letter to go regarding Peter only which addresses the fact he did not attend work today and that we consider him to be in breach of his service agreement, I have said we expect him to come tomorrow but have not added any detail about a meeting etc as he clearly isn't going to attend. We were promised a response regarding Peter but this hasn't been forthcoming as of yet, I suspect this letter will force him to say something as we will be very shortly be in a position whereby we terminate his contract of employment with immediate effect."

93. He asked Ms Meredith whether she was happy for the letter to go to the claimant.

94. It has been suggested, on the claimant's behalf, that there must have been prior correspondence between Ms Meredith and Mr Pike which has not been disclosed. However, it appears to us that the information that the claimant had not attended work on 2 October could have come either from the telephone conversation between Ms Meredith and Mr Pike or from information provided between solicitors since it is clear from the letter that there had been contact between solicitors. We do

not, therefore, infer from the terms of this letter that there has been a failure of disclosure by the respondents.

95. At 16:57, Ms Meredith wrote to James Pike: "just to confirm Peter was a no-show today, where do we go from here?".

96. Mr Pike replied at 17:02, asking if she was happy for the letter to go to the claimant's solicitors. He wrote:

> *"this sets out our stall that we consider him in breach of his service agreement and reserve the right to terminate his contract. I would hope this would kick them into gear regarding settlement and being sensible; however, if it does not and he continues to refuse to attend then we will ultimately terminate his contract with immediate effect. I would see where we get to by end of the week and then look to terminate as of Monday if we've made no progress on settlement. Given he isn't attending we would not be paying him this week anyway."*

97. He asked *"how does that sound?"*

98. The respondents' solicitors then wrote to the claimant's solicitors at 17.24 with the letter which Mr Pike had drafted. This referred to the claimant's failure to attend work that day. They wrote:

> *"We note the various demands made by your client before he states he can consider returning to work. With respect, your client is an employee of our client and is in no position whatsoever to place such conditions upon his return. Accordingly, we have no intention of addressing the points raised in your letter other than to say any particular queries or concerns which your client may have can be discussed with our client once he is back in work.*
>
> *"For the avoidance of any doubt, our client considers the instruction to return to work to be a reasonable request which your client was contractually obliged to comply with and we see no legal basis for your client contending otherwise. As such, your client's failure to attend work today, as directed by our client in its letter of 27 September 2017, is considered to be a direct breach of the terms of his service agreement. Our client reserves all of its rights in relation to such a breach including, without limitation, to withhold payment of your client's salary and to terminate his employment without notice in accordance with clause 21.3 (b) of his service agreement."*

99. He wrote that the claimant was expected to attend work the next day and to comply with all reasonable instructions and directions of their client as his employer and asked the claimant's solicitors to confirm by return that he would be attending work.

100. The claimant solicitor replied at 21:42 on 2 October. She wrote: *"Even if the content of your letter was reasonable (which it is not), the timing of it is wholly unreasonable."* She wrote that they had not been able to discuss the contents of the letter with their client and would respond further once they had been able to do so

and that it would be unreasonable for the respondents to take any step with regard to the claimant in the meantime.

101. The claimant's solicitor wrote again at 11:44 on 3 October 2017. She wrote:

> *"In the context of my client's role as CEO, his requests for information and assurances from your client are entirely reasonable and your client's apparent unwillingness to respond to the requests only causes greater concern.*
>
> *"In the circumstances, my client is willing to attend work tomorrow to discuss his concerns with Ms Meredith. Please confirm when she will be available for such a meeting."*

102. On 4 October 2017, the claimant attended a meeting at the respondents' premises with Ms Meredith and Jeff Holder, a Consultant who was assisting Ms Meredith. Our sources of information for what happened at this meeting are notes made by the claimant, which were written after 9 October, and an email sent by Ms Meredith a few hours after the meeting to her solicitor. We accept that both these records were honest accounts by the parties of their recollections of the meetings and the points important to them and their perception of events.

103. At the meeting, they went through the points in the claimant's solicitors' letter, Ms Meredith gave the claimant a copy of the notification to the SRA made on 15 September and showed him the updates she had sent. Ms Meredith updated Mr Watson on her progress in investigating the true extent of the debt and other matters including a fault with the Proclaim system which had been discovered. She was suggesting to him that the situation was not as bad as it had first appeared. Ms Meredith accepted in cross examination that she had alleged that the claimant and Mr Ritchie had damaged the business by their resignations. Ms Meredith alleged that the claimant and Mr Ritchie had overreacted by resigning and suggested that the claimant should have stayed to work through the problem rather than running for the hills. This was the first time she had made this suggestion to the claimant. She also alleged, in effect, that they had "spooked" Zoe Holland into resigning, although she disputed use of that particular word. Jeff Holder also expressed the view that the claimant should have stayed to help put things right rather than resigning.

104. Both sets of notes agree that Ms Meredith was asking the claimant to come back permanently. She understood that the claimant was going to go away for the weekend and think about it. We find that Ms Meredith still wanted the claimant to return in his full role at this point. The claimant was saying that he would only come back for his notice period, although he said that if, in a few months, everything was going well and they both wanted him to stay longer, that could be considered. Ms Meredith was hopeful that, at least, Mr Watson would return for his notice period and she would have his hours in the practice. They agreed to meet again on 9 October.

105. We accept that the claimant found this meeting to be unpleasant; this was unsurprising since he was being blamed in this meeting for his resignation and for over-reacting.

106. On 4 October 2017 at 13:30, Ms Meredith wrote to Mr Pike. She wrote:

"Just to update you spent an hour and a half with Peter he has gone away to Spain for the weekend to consider if he wants to come back we will meet on Monday after he has had the weekend to think about things.

"I have pointed out to him that he ran for the hills based on inaccurate information provided by Tim and that Tim was actually looking at £1.2 million of ongoing cases where we had simply received a payment on account globally. It's taken me a while to understand the right question to ask the proclaim account system which should have been "remove ongoing cases" not which cases are closed which the system can't identify. It throws up any payment on account as a closed case with dibs owing and not paid.

"The dawning on Peter and the realisation of what they have both done was clear to see, I think he has left embarrassed and shattered that the ran [sic] so early without investigation.

"Jeff also reiterated the duties of a director to properly investigate, not to panic, but take a deep breath and undergo a forensic analysis of the system, which I have been left to conduct on my own.

"He asked about payment of his legal fees I've said not a chance I have spent over £65,000 in professional fees getting a temp MD nave [sic] FD into help me as he wasn't around. In addition he has caused panic and Zoe Holland to resign which is a huge blow for the firm.

"He asked about his £100k again I have said not my priority right now and his panic has devalued the practice and caused 3 directors to resign, with massive costs to me.

"My view now is that he will ask to come back or ask to serve his notice so he can find another job whilst in a job. His options are very limited. He asked how I would feel about him coming back and I have said there are lots of things that need doing my only issue is he may run again at the first sign of a problem.

"He doesn't want to travel from Leeds every day but if he does come back there is so much to do we would insist on 5 days a week 9-to-5 as an employee. (He doesn't get the employee bit?)."

107. A further meeting took place between the claimant and Ms Meredith on 9 October. We have notes made by the claimant which were written on the day and we have an email from Ms Meredith to Mr Pike sent on that same day about the meeting. We accept the accounts in both these sets of notes as honest recollections of points which those parties considered significant and their own reactions to the meeting.

108. Ms Meredith did not take issue with the claimant's notes other than one point where she said she did not ask whether he was returning as a director or as an employee but said she asked him in what capacity he was willing to return. The substance of the question was the same, although the form of it was different.

109. The claimant said that he was prepared to work his notice period. The claimant said to Ms Meredith that, for the first couple of weeks after he had gone on garden leave, she had been giving him updates and things had seemed amicable but, at some point, that had stopped and the tone of communications had become a lot more hostile and aggressive. Ms Meredith said that was because everyone was advising her that Mr Ritchie and the claimant had behaved badly by resigning and should have stayed to sort out the problem rather than running for the hills and leaving her to sort it out on her own.

110. Ms Meredith said that they had "spooked" the staff, the bank and Zoe Holland and that Zoe's resignation was a big blow to the business.

111. Ms Meredith was suggesting that the issues which had been discovered were nearly resolved; the claimant was expressing scepticism about this.

112. Mr Watson said he would be returning as an employee. He said that whether this was to be for the notice period or something shorter was something they should try and agree. Ms Meredith said there were lots of things she needed help with.

113. From both sets of contemporaneous notes, it appears that they both came away from the meeting with a different understanding of who was to produce a list of work the claimant could do first. On the basis of the claimant's notes, he understood that Ms Meredith would be doing this. On the basis of Ms Meredith's email to Mr Pike, the claimant was to produce a list of issues which he was involved with which needed completing first and she would then send him a list with a plan. Neither sent anything to the other after the meeting about the work Mr Watson would be doing if he returned to work.

114. In the meeting, Ms Meredith was telling Mr Watson that, if he returned to work, he had to work five days per week in Wilmslow. Mr Watson wanted to work at least part of the time at home and Ms Meredith refused this.

115. Mr Watson asked about his shares, Mr Watson recorded that his feeling at the end of the meeting was that Ms Meredith was trying to make things unpleasant so he would not want to return to work, and that the request for him to return to work his notice was a sham.

116. At 10:26 on 9 October, Ms Meredith wrote to Mr Pike as follows:

> *"Hi met with Peter this morning he is still asking about his capital investment and is now making noises that I should pay this personally?? I have repeated he has devalued the practice by resigning in haste and causing other resignations.*
>
> *"He is suggesting he comes back to work his notice period but in the next breath suggests he comes back maybe for 3 months or 6 months not sure what he means by this. I have reiterated that if he comes back he does so as an employee not a director and suggested that he needs to work 5 days in Wilmslow 9-to-5, he has asked if he can work at home on the business plan but I have said no he needs to be here full-time as an employee. We have left*

it that he will send me a list of issues he was involved with that need completing and I will send him a list with a plan?

"In reality he doesn't want to come back and I don't want him back, anything I can do?"

117. Mr Pike replied at 11:59 as follows:

"As I see it, the main options for getting him out are:

- we reach an agreement on financial term. Issue here being whether or not Peter would accept a sum that you would be prepared to pay, particularly with the ongoing uncertainty around his investment; or
- continue pursuing the strategy we have so far and pushing him to return to work, in the office, on your terms knowing he doesn't want to do this. If he refuses, then we have grounds for summary termination under his service agreement.

"In terms of reaching a financial resolution, the only thing which what [sic] he has said today might open up a possibility here is him saying he comes back for 3 or 6 months. If he would agree to working for 3 months and then waive the remainder of his notice period, that might be a solution, providing you think you could give him enough to do to get some value out of that period and it not just be dead money in terms of payment of his salary "

118. Mr Pike wrote that they would speak later.

119. At 13:19, Ms Meredith sent to Mr Pike a first draft of a letter addressed to the claimant. No letter in this form was ever sent to the claimant but it sheds light on Ms Meredith's thoughts at this time. The draft letter was as follows:

"Thank you for coming in today and we have left it that we will each come up with details of work that needs to be done and a plan for you to come into Wilmslow 5 days a week 9-5.00.

"You asked me why my attitude may have changed somewhat and I have confided in you that at the time this happened I was in complete shock and disbelief.

"You and Tim dictated the events that followed and you both insisted that a quorum of 4 directors was formed immediately with Zoe Holland on the phone so you two could resign. This subsequently forced Zoe Holland to also resign.

"The panic that ensued and your leaving me on my own to deal with this has most definitely changed my views on the way both you and Tim reacted at the first sign of a problem, (you ran for the hills.) I thought you were made of more than this.

"You have destabilised the company and forced a further Director to resign in the wake of your panic.

"I mentioned that in my previous practice an issue arose whilst I was serving my notice to set up my own company. Rather than leave the practice in difficulty I stayed on for a further 6 months to turn the practice around so I left it in good shape, it would never have been on my agenda to run.

"On reflection Peter I'm afraid my feelings are, that you left me at the first sign of a situation. You relied on figures produced to you by Tim Ritchie who, had only been in the company 4 days and an FD from a failed plc who you insisted on bringing in. Without checking those figures you relied on the information he provided and ran.

"It is now my view that you are in breach of all sorts of duties as a director and in breach of all sorts of duties to the company-

- *Gross negligence under clause 20 (3) (a)?*
- *Significant breach of contractual obligations*
- *not acting in a way commensurate with his office*
- *failed to use his best endeavours (to put it mildly) to promote the best interests of the company*
- *didn't conduct yourself in the manner to be expected of him*
- *breached his duty of goodwill/trust/confidence/good faith*
- *your contract says, "you must conduct yourself in a suitable manner and to exhibit standards of behaviour commensurate to your position-if you do not, that is a serious breach of this agreement."*

"A key breach is also of that clause which requires you to comply as a solicitor with all your professional duties-relying on information that there was a hole that you thought was £1.5m required you as a solicitor to make proper investigation, as I now have, and take action.

"You failed to do any of these things.

"My view now is that you should be dismissed for gross misconduct and appalling behaviour. I will take this under advice from my lawyers."

120. Mr McCann, who had been brought in by Ms Meredith to assist her, and had been copied on this letter, wrote to Ms Meredith and Mr Pike on 9 October at 15.09:

"If he calls your bluff and doesn't accept the deal, the chances are that you won't summarily dismiss him, from what I saw/heard. Then what, you having made a threat and not followed it through? I suppose it's worth a try and you just then make his life hell and get him into the office every day - that'll drive him to get a new job and leave before his notice is out."

121. At 15:54, Ms Meredith wrote again to Mr Pike. She wrote that she needed to send something out to the claimant either that night or the next morning. She asked whether they should send a letter along the terms suggested and dismissal.

122. Mr Pike replied with a revised draft. He wrote that the draft included some revisions from Jonathan following his review of the share position. He wrote that the

revised draft *"follows the approach we discussed on the phone and so does not immediately terminate his contract of employment, but sets the stall out to do so should an agreement not be reached."*

123. He wrote further:

> *"My feeling remains that we would struggle to identify any actual breach of his director's or contractual duties which would justify summary termination, as ultimately his primary act was to resign from his employment without making proper enquiry about the state of the company. Whilst we can say an awful lot about how wise that course of action was, it was a step he is permitted to take under the contract. We do still have his failure to attend work and I have added this to the list of breaches. However, what this means is that you have to be prepared that if we do terminate his contract summarily that we would not have a strong defence to a claim for the balance of his notice period. That being said, this step would at least get him out of the business and he would have a duty to mitigate his loss which are certainly benefits."*

124. On 11 October 2017, at 19:58, Ms Meredith wrote to Jonathan Pains, a solicitor at SPB who was advising on the shareholding aspects of a potential settlement:

> "*This is really difficult for me Peter Watson is still employed and I am now still paying him to sit at home. The longer this goes on the less likely I am able to allege gross misconduct. If I don't allege this and he needs to be back in the practice working please let me know what I should do?"*

125. Mr Pains replied, suggesting a call the next afternoon to try and progress the matter.

126. Mr Pike, who had been copied in the correspondence, wrote to Ms Meredith on 12 October at 8:50. He wrote:

> *"I take it you have heard nothing further from Peter since Monday's meeting?*
>
> *"We should certainly send something out today, but you need to be clear on how you want to proceed. We can go down the gross misconduct/summary dismissal route; however, as I have said previously, I don't see we presently have grounds to do this irrespective of any delay and so this would very much be a strategy to get him out of the door, mean he has a duty to mitigate his loss and then look to reach a deal to resolve his claim for the balance of his notice period. If he does get another job then his losses would be greatly reduced and so settlement should be easier. To some extent it is a gamble on how quickly he finds alternative work and at what salary.*
>
> *"The alternatives are what we have discussed previously. We can reiterate that he must come back to work, in Wilmslow and he is expected to be in the office every day 9-5 and if he refuses we have a stronger case for summary dismissal. The risk here is he does come back and you have to deal with him,*

albeit the delay we have seen with him responding since Monday doesn't suggest any great enthusiasm. Do remember if he does return he can insist that he be reappointed as a director.

"Either way, we should be getting something to him today making the increased offer and giving him a short period to accept it. It is just a question of whether you want to be threatening summary dismissal or saying he returns to work under X conditions."

127. On Thursday 12 October at 15:06, Ms Meredith sent the claimant a letter without prejudice and subject to contract. We have not seen the contents of this letter as it is privileged and the parties have not waived privilege. The letter asked for a reply by 12 pm on Monday 16 October.

128. On 16 October 2017 at 8:43, Mr Pike wrote to Ms Meredith in response to a question about payment of the claimant's practising certificate renewal. Mr Pike wrote that, if she had not already paid this *"then you could hold off if we are going to terminate his employment today/tomorrow. I presume you had no response to your email of Thursday?"*

129. At 8:50 on the same day, Mr Pike wrote again to Ms Meredith:

"Have you heard anything at all from Peter since your email of Thursday?

"If we don't get a response by midday do you still want to dismiss? I have draft [sic] the letter if you do."

130. At 9.07, Ms Meredith wrote to Mr Pike:

"I've not heard from him since a week ago last Monday when he was going to provide a list of work he thought he could do our letter went out Thursday I think which only gives him working days fir [sic] day and today to consider. What do you think I'm happy to dismiss today if you think we can?"

131. Mr Pike replied at 10:02,

"It is odd that there has been nothing since he met on Monday. In terms of whether you can dismiss or not, at this point that is really a matter for you. As I have said before, I don't believe we would be able to point to an express breach of the service agreement which would entitle you to dismiss summarily at this time; however, tactically it gets him off the books and he has to start looking to mitigate his loss by getting another job.

"I would give him today to get in touch and if he doesn't then terminate his employment tomorrow if that is still what you want to do."

132. On 16 October 2017 at 11:57, a solicitor from Simpson Millar wrote to the respondents' solicitors, informing them that they had been appointed to act for the claimant. They wrote that the claimant wished to lodge a formal grievance concerning his treatment by Ms Meredith since 6 September 2017. They asked that

the email be treated as a notification of his formal grievance and that details of this would be sent in due course. They asked for a copy of the disciplinary and grievance rules and procedure and for the respondent's whistleblowing procedure which they wrote was "another pertinent policy document in this matter".

133. Mr Pike acknowledged this email and forwarded it to Ms Meredith. At 12:35 on 16 October 2017, he wrote:

> *"They are looking to raise a grievance and have also thrown whistleblowing into the mix by asking for a copy of that policy. They may well be pushing to be able to say that any dismissal is only due to him having blown the whistle regarding the accounting issues."*

134. He further wrote*:*

> *"It seems to me that this is all an attempt to stop you from terminating his employment; however, other than the whistleblowing point I don't see that this really adds much more to what we have been looking at. The grievance is something I would simply say we don't intend to address once his employment has been terminated as he is no longer an employee. They haven't particularised this at the moment anyway and you have to question what they are going to complain about since 6 September as he has been off the whole time."*

135. At 13.21 on 16 October, Ms Meredith wrote to Mr Pike asking about the definition of whistleblowing. She wrote:

> *"If I was going to dismiss him for whistleblowing I would not have waited 7 weeks to do so rather I have waited until the real picture has been assessed and his resignation has proved to be a nonsense."*

136. At 17.42, Mr Pike sent to Ms Meredith a draft termination letter for her comment.

137. At 17.49, Ms Meredith replied, saying the draft was fine, save querying the part which stated that the claimant resigned as a director without her knowledge. Mr Pike replied, expressing his view that the letter was accurate on that front.

138. At 19.59 on 16 October, Ms Meredith wrote to Mr Pike asking whether she was sending the letter privately to the claimant and him sending it via lawyers and saying that it was good to go the next day. Mr Pike replied at 21:11 on 16 October saying that, if she was happy with it, then she should send it to the claimant by email and blind copy him in and he would then send it to the claimant's solicitors.

139. On 17 October 2017 at 14.35, Ms Meredith sent the claimant the letter of dismissal dated 17 October 2017. She wrote:

> *"I write in relation to your employment with Hilary Meredith solicitors Ltd ("the company") and to confirm that the company is terminating it with immediate effect in accordance with clause 21.3 of your service agreement.*

"As you are aware, you resigned from your employment with the company on 6 September 2017, serving 12 months' notice. You were placed on garden leave on 11 September 2017 whilst discussions took place to identify whether an early release from your service agreement could be agreed; however, as this proved impossible I wrote to you on 27 September 2017 to confirm that you were required to return to work as of 2 October 2017. You failed to return as directed or at all. You have attended 2 meetings with me since that time to discuss returning to work but have not done so and have also failed to follow through with agreed actions arising from those meetings.

"Since you and Tim Ritchie resigned from your employment, I have had to devote all of my time and attention towards seeking to address the purported £1.5m hole in the accounts which Tim alleged that there was, as well as being responsible for performing the roles of both the CEO and CFO who were no longer in the business and made it clear they had no desire to be either. The consequence of this is that it is not until now that I have been able to reflect on the situation that the company presently finds itself in and the reasons for this. Having now done so, it is my view that your conduct fell substantially short of what should be expected of a director and fiduciary and was in breach of numerous obligations towards the Company.

"Upon being presented by Tim Ritchie with the purported hole in the accounts, you took no steps whatsoever to seek to verify the accuracy of the figures that Tim presented to you and indeed have subsequently admitted to me did not look at them at all. You simply took Tim's word for it, despite the fact he had been in the business only 4 days and was still getting up to speed with the operations of the Company. Upon learning about this alleged hole in the accounts you then took no steps whatsoever to seek to protect the position of the Company. Instead, yourself and Tim insisted on a quorum of directors being formed immediately with Zoe Holland on the phone, so that you could resign from your employment. You also resigned as a director of the company without notifying me you had done so." [Ms Meredith accepts that the last sentence was a mistake]

"Your actions have destabilised the Company significantly and have meant that it has suffered substantial damage way beyond what might reasonably have been expected had these matters been dealt with in a responsible and professional manner and in accordance with your duties to the Company. That failure to do so means, in my view, you have acted in serious breach of your duties as a director and of the terms of your service agreement."

140. The letter went on to identify the terms of the service agreement that the claimant was alleged to have broken and asserted that the company was entitled to terminate the claimant's employment immediately and without notice under the provisions of clause 28 of the service agreement.

141. We have considered the explanations for the reasons for dismissal given by Ms Meredith in the response form and her witness statements. We have referred, in particular, to paragraphs 31 to 33 of the grounds of resistance. We note that this sets out the context that the parties were not reaching settlement and that it was necessary in these circumstances to consider the claimant's employment going

forward. Assertions were made about the claimant having resigned on the basis of unsubstantiated allegations without steps taken to verify matters causing significant damage and that he had refused to return to work when instructed.

142. We have considered, in particular, paragraphs 98 to 100 and paragraph 104 of Ms Meredith's main witness statement. Although paragraph 104 does not say anything which is untrue, we consider that it conveys an impression about advice given which does not correspond to the advice we now know was given to Ms Meredith. In the supplementary witness statement, we have considered, in particular, paragraphs 2, 5 and 8. In paragraph 5.3, we consider that a similarly misleading impression has been given as to the advice given, to that in paragraph 104 of the main witness statement.

143. Ms Meredith's oral evidence to this Tribunal has been consistent in referring, as a reason for the claimant's dismissal, to the claimant leaving so fast and damaging the business because of that.

Submissions

144. The representatives made detailed written and oral submissions on behalf of the parties.

145. We give here only a short summary of the main submissions. We do not seek to summarise the submissions as to the decisions on the facts which the representatives urged us to make. We also do not seek to summarise the submissions about credibility of witnesses. We have sought to address the principal arguments in explaining our reasons for making the findings of fact which we have made.

Respondent's submissions

146. Mr Lewinski submitted that the case fundamentally turned on one factual issue: why did the respondents dismiss the claimant? The respondents submitted that it was because the claimant had resigned from his position as director and shareholder, indicating that he wanted to leave the company, and had "run for the hills", leaving Ms Meredith to sort out the issues that had arisen, rather than staying on as CEO and helping/running the firm as needed.

147. The respondent accepted that disclosures made in respect of the Disbursements issue were capable of amounting to a protected disclosure. In respect of the Costs issue, the respondent disputed that the claimant could have had a reasonable belief that monies received by the Novitas arrangement could not properly be regarded as profit costs.

148. Mr Lewinski submitted that it was manifestly clear from the evidence how matters developed in this case. Disclosures were made and Ms Meredith took no issue with those, but rather sought to engage with the matters they raised and expected others to do the same. From Ms Meredith's perspective, problems were caused by the claimant's resignation which left her without support either in resolving the issues that had arisen or in managing the business. The parties railed to reach a settlement. In light of the claimant's refusal to return to take up his role in the

business again, Ms Meredith felt very seriously let down by the claimant's actions and so terminated the employment relationship.

149. Mr Lewinski referred, in particular, to the following authorities:

> *Harrow London Borough v Knight [2003] IRLR 140 EAT* and *Fecitt v NHS Manchester [2012] IRLR 64* in relation to what must be required to establish proper causation, in particular the principle that causation must be established by reference to the employer's subjective reasons for acting, not merely according to the "but for" test.
>
> *Eiger Securities LLP v Korshunova [2017] IRLR 115* as establishing the different tests applicable to detriment and dismissal.
>
> *Panayiotou v Chief Constable of Hampshire Police [2014] IRLR 500* and *Parsons v Airplus International Ltd UKEAT/0111/17* as demonstrating that a distinction may be drawn between disclosures made and the manner in which they are made, or between the disclosure of information and the steps taken by the employee in relation to the information disclosed; dismissing someone or subjecting them to a detriment by reason of the latter being permissible and not unlawful.

Claimant's submissions

150. Mr Roberts also referred to *Fecitt,* for the proposition that Ms Meredith had to show that the protected disclosures did not "materially influence (in the sense of being more than a trivial influence)" her decision to dismiss.

151. Mr Roberts referred to *Kuzel v Roche Products Ltd [2008] ICR 799 CA,* reminding the tribunal that there is rarely direct evidence of whistleblowing detriment and that the tribunal may draw reasonable inferences as to causation from the primary facts established in the evidence.

152. Mr Roberts referred to *Martin v Devonshires Solicitors [2011] ICR 352, EAT,* and *Shinwari v Vue Entertainment Ltd [2015] UKEAT/0394/14* for the proposition that tribunals should not readily accept a distinction between the disclosure and conduct related to that disclosure or between a "series of features and/or consequences" of the protected disclosures and the disclosures themselves.

153. Mr Roberts submitted that it was reasonable for the claimant to believe on 6, 7 and 8 September 2017 that money received from Novitas by the respondent was being incorrectly recorded on the respondent's accounts as profit costs (i.e. revenue) and was not being recorded as a company loan (i.e. a liability).

154. The claimant submitted that Ms Meredith could not and did not truly believe that the claimant had committed misconduct justifying summary dismissal. To the extent that she did, the claimant's conduct was inseparable from the protected disclosures and their consequences. He submitted that Ms Meredith had made a decision to get him out from early on and was looking to rely on any grounds she could to do so.

155. The claimant submitted that the respondent was in serious financial/regulatory/accounting trouble. That put both respondents to substantial expense and reputational risk. The claimant had disclosed the problem. The majority of damage to the firm was caused by the claimant's disclosure of the problem. Why, as of 7 September 2017, was Ms Meredith inviting the claimant back to work if she genuinely thought he had committed gross misconduct requiring and justifying summary dismissal? The change in Ms Meredith's approach was because she had reflected on the nature and consequences of the claimant's protected disclosures. Ms Meredith was repeatedly downplaying the seriousness of the problem. She took against the claimant in part because he refused to downplay or overlook the problem. After 17 September 2017, what Ms Meredith was saying about her intention for the claimant to return to work does not fit with the evidence; she made the decision to dismiss at some point well before she did dismiss him. The reasons given by the respondents for dismissal are materially influenced by and inseparable from the disclosures themselves.

156. The claimant submitted that the principal reason for the claimant's dismissal was his protected disclosures so the complaint under s.103A ERA should succeed.

157. In relation to the detriment claim, the claimant submitted that Ms Meredith had not demonstrated her grounds for dismissal were in no sense whatsoever the protected disclosures or that the protected disclosures were not more than a "trivial influence" on her decision to dismiss so that complaint should succeed.

The Law

158. Section 47B(1) ERA provides: "A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure."

159. What constitutes a protected disclosure is defined by sections 43A to 43H ERA. Section 43A provides: "In this Act a "protected disclosure" means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H."

160. The relevant parts of section 43B for this case are as follows:

> "(1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following –
>
> (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,

161. It is agreed in this case that the disclosure was made to the claimant's employer, so section 43C is relevant.

162. Section 48(2) ERA provides that in relation to a complaint including a complaint that the worker had been subjected to a detriment in contravention of section 47B

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

163. Section 103A ERA provides:

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

164. As confirmed by the EAT in *Eiger Securities LLP v Korshunova [2017] IRLR 115,* different tests are to be applied to claims under ERA ss.103A and 47B: for a claim under ERA s.103A to succeed, the ET must be satisfied that the reason or the principal reason for the dismissal is the protected disclosure whereas for a claim under ERA s.47B (1) to be made out, the ET must be satisfied that the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer's detrimental treatment of the claimant. The EAT relied on the Court of Appeal decision in *Fecitt v NHS Manchester [2012] IRLR 64,* which established the test to be applied for a s.47B claim.

165. We have to consider, in relation to the detriment claim, whether the decision to dismiss was materially influenced by the protected disclosures. We have been referred to case law which alerts us to the possibility of severing the manner of making protected disclosures or the consequences of making protected disclosures from the making of the disclosures themselves. The case law also exhorts us to take care in considering arguments that the dismissal, or in this case the detriment, was because of acts related to the disclosures rather than because of the disclosure itself.

166. In relation to the unfair dismissal claim, since the claimant did not have two years' service, the burden of proof is on him to establish that the reason or principal reason for the dismissal was that he made a protected disclosure.

Conclusions

167. We consider first whether the disclosure about the Novitas matter was a protected disclosure. It has been agreed that the claimant had made the following disclosures of information: that amounts paid by Novitas were being recorded as profit costs whereas they should be recorded as commercial loans and that, in taking an advance from Novitas, the first respondent had breached the terms of an overdraft facility with Yorkshire Bank. The issue for us was whether the claimant's belief was reasonable that these disclosures of information tended to show that a person had failed, was failing or was likely to fail to comply with the legal obligation to which they were subject.

168. The claimant did not investigate these matters himself; he relied on information from Mr Ritchie, who was an experienced Chartered Accountant. We consider it reasonable for the claimant to rely on the information from Mr Ritchie that this appeared to raise an issue about incorrect accounting records. We conclude, on this basis, that the claimant did have a reasonable belief that the disclosures of information about the Novitas issue tended to show that the first respondent had

failed, was failing or was likely to fail to comply with the legal obligation to which they were subject, which is relating to correct accounting practices.

169. We do not consider it necessary, therefore, for us to grapple with the correct interpretation of the agreements between the respondent, Just Costs and Novitas. However, having read those documents, we can understand how Mr Ritchie may reasonably have formed an initial view that this was a loan which had not been correctly recorded in the accounts, even if he may have been satisfied, after further investigation, that there was no breach of accounting rules in this regard.

170. We conclude that the disclosures about the Novitas matter were protected disclosures. The respondents conceded that the disclosures about disbursements were protected disclosures

171. We turn next to consider the detriment claim. We consider first matters which Mr Roberts, on behalf of the claimant, asked us to take into account when evaluating the explanation for dismissal given by Ms Meredith. Mr Roberts has made points about disclosure and alleged failures of disclosure. We consider that the particular matters that he has raised do not relate to documents which go the heart of the issue i.e. the reason for dismissal. We are not satisfied that there were clear failures to disclose relevant material, particularly where no request for the particular categories of documents had been made by the claimant in advance of the hearing. We note that material disclosed pursuant to the Tribunal's order, following waiving of privilege by Ms Meredith in relation to some documents, resulted in the disclosure of documents which were, in their contents, largely consistent with Ms Meredith's evidence. It is not clear to us, as Mr Roberts submits, that the Novitas agreement flatly contradicted Ms Meredith's evidence, although we have acknowledged that Mr Ritchie could reasonably take an initial view, at least, that the arrangement showed a loan which should be recorded as such in the accounts.

172. We have not found Ms Meredith's witness statement to be inaccurate about the advice she was given but we have found that the way this was constructed gave a misleading impression that the advice supported her view about gross misconduct.

173. There are some aspects in respect of which Ms Meredith's evidence has been shown not to be entirely reliable. For example, she made an allegation that an entire paragraph of the claimant's notes was a complete fabrication. However, under cross examination, it appeared that Ms Meredith took issue only with a small part of what had been recorded. On the other hand, one aspect of the claimant's evidence was also shown to be incorrect: whether he had been told the notification had been made to the SRA when he made his SRA notification.

174. Mr Roberts made complaints about the re-examination conducted of Ms Meredith by Mr Lewinski. This was much longer than we had anticipated, given Mr Lewinski's estimate prior to the break for lunch. However, we did not consider that Mr Lewinski was asking leading questions and that was not the basis of the objection made by Mr Roberts at the time. We consider that Mr Lewinski's questions legitimately arose from the cross examination of Ms Meredith by Mr Roberts.

175. We have taken no account of the accusations made against the claimant in relation to a previous SRA investigation, as requested by Mr Roberts. We consider it

has no relevance to the dismissal since Ms Meredith was unaware of it at the time. We do not, therefore, consider it is appropriate for us to make any findings in relation to this matter.

176. We turn then to the evidence relating to the reason for dismissal. In relation to the detriment claim, the burden is on Ms Meredith to satisfy us that her decision was not materially influenced by the protected disclosures. We have taken account of all relevant evidence in considering whether she has satisfied this burden of proof. We consider the following matters to be of particular significance. Ms Meredith has never made any criticism of the claimant for making disclosures. Ms Meredith acted immediately to investigate fully the issues raised and made appropriate notification to the SRA after the matters were raised with her. She made no attempt to hide the problem. Ms Meredith and the claimant had an amicable relationship until around the meeting of 4 October when Ms Meredith began to criticise the claimant and Mr Ritchie for acting as she considered precipitously by resigning. She suggested that they had overreacted by resigning and suggested that Mr Watson should have stayed to work through the problem rather than "running for the hills". She also alleged, in terms, that they had "spooked" another director into resigning. Despite that, we found that she still wanted Mr Watson, as at 4 October 2017, to return to his permanent role. Consideration of dismissal arose in the context of ongoing settlement negotiations. The settlement negotiations were considering a bigger picture than just the claimant's employment situation; they were considering also the investment the claimant had made of £100,000 in shares of the first respondent and his wish to recover that investment. Formal communications between the parties and their solicitors must be viewed in the context of ongoing negotiations and be seen as part of a strategy by all involved parties to try to negotiate a deal on terms acceptable to them. This is supported by some of Mr Pike's communications to Ms Meredith which talk of a strategy.

177. We find the most illuminating material, in terms of Ms Meredith's thought process, to be what she was writing at the time to Mr Pike, not expecting it to be seen other than by her legal advisor. What she wrote is consistent with criticisms that she made in meetings of the 4 and 9 October of the claimant in "running for the hills" and not staying to sort out the problems. We rely, in particular, on the draft letter that the claimant sent to Mr Pike on 9 October. This was a draft letter addressed to the claimant, although it was never sent to the claimant. We found it sheds light on Ms Meredith's thoughts at the time. This included the following: -

> *"You asked me why my attitude may have changed somewhat and I have confided in you that at the time this happened I was in complete shock and disbelief.*
>
> *"You and Tim dictated the events that followed and you both insisted that a quorum of 4 directors was formed immediately with Zoe Holland on the phone so you two could resign. This subsequently caused Zoe Holland to also resign.*
>
> *"The panic that ensued and your leaving me on my own to deal with it has most definitely changed my views on the way both you and Tim reacted at the first sign of a problem, (you ran for the hills). I thought you were made of more than this.*

> *"You have destabilised the company and forced further directors to resign in the wake of your panic."*

She continued further: -

> *"On reflection Peter, I'm afraid my feelings are that you left me at the first sign of a situation".*

178. In setting out a list of the ways in which Ms Meredith considered that the claimant was in breach of various duties as a director, she wrote, amongst other things, that he had "failed to use his best endeavours (to put it mildly) to promote the best interests of the company". She wrote that her view now was that he should be dismissed for gross misconduct and "appalling behaviour".

179. What Ms Meredith wrote in this draft letter all relates to how the claimant reacted to the problems after disclosure had been made; it did not make any criticism of the claimant making the disclosures.

180. The context of the period in which the letter was drafted was that the parties were still trying to reach a settlement and Ms Meredith was still hopeful that agreement would be reached.

181. On 11 October 2017, Ms Meredith wrote to Jonathon Pains, another solicitor at SPB, writing "This is really difficult for me. Peter Watson is still employed and I am now still paying him to sit at home".

182. On 12 October 2017, a without prejudice letter was sent to the claimant.

183. Communications around this time indicate that Ms Meredith had an intention to dismiss the claimant if a settlement agreement could not be reached.

184. On 16 October 2017, Ms Meredith received advice from her solicitors that she may not have grounds to summarily dismiss the claimant but tactically it would get him off the books.

185. The claimant did not reply to the without prejudice letter. No settlement agreement was reached prior to dismissal.

186. The claimant raised a grievance by letter dated 16 October 2017.

187. The claimant was dismissed by letter of 17 October 2017. The letter had been drafted on 16 October, prior to the respondents being notified that the claimant was intending to raise a grievance.

188. We conclude that the respondent has shown, on the basis of all the evidence, that Ms Meredith's reasons for dismissal were not materially influenced by the disclosures. All the evidence is consistent with Ms Meredith not taking issue with the making of the disclosures. After reflection, she took issue with the way that the claimant resigned so quickly, without staying to see the real extent of the problem and working to see if it could be resolved. She decided to dismiss the claimant once

it became apparent that settlement terms were not going to be reached. Her view, as expressed to Mr Pike after the 9 October meeting, was that neither the claimant nor she wanted the claimant to return to work. Dismissal served, in the words of Mr Pike, to get the claimant "off the books".

189. There is clearly a causal link between the matters forming part of the reason for dismissal and the protected disclosures. However, the test we have to apply in deciding whether the claimant suffered a detriment on the ground of making a protected disclosure is not whether "but for" the protected disclosures the claimant would have been dismissed. We have to consider whether the protected disclosures materially influenced the decision to dismiss. Can the claimant's actions following the making of the protected disclosures be severed from the protected disclosures themselves? We conclude that they can.

190. For these reasons, we conclude that the complaint of detriment in relation to dismissal is not well founded.

191. We turn then to the complaint of unfair dismissal. We conclude that the protected disclosures were not the reason or principal reason for the dismissal. We rely on the reasons we have given in concluding, in relation to the detriment claim, that the protected disclosures did not materially influence the decision to dismiss the claimant. The complaint of unfair dismissal is not well founded.

Employment Judge Slater

Date: 4 April 2019

JUDGMENT AND REASONS SENT TO THE PARTIES ON

16 April 2019

FOR THE TRIBUNAL OFFICE