



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 4100035/2018 Hearing at Edinburgh on 30 and 31 July, 1 August, and 5, 7 and 8 November 2018; and members' meeting on 7 December 2018

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Employment Judge: M A Macleod
Mr S Currie
Mr R Quinn

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Yaya Barry

Claimant
Represented by
Mr R Lawson
Solicitor

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The Mosque of the Custodian of the Two Holy Mosques and
Islamic Centre of Edinburgh Trust Limited

Respondent
Represented by
Mr I MacLean
Consultant

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The unanimous decision of the Employment Tribunal is that the claimant was subjected to a detriment on the ground of having made protected disclosures, and that the claimant was automatically unfairly dismissed on the ground of having made protected disclosures.

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REASONS

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1. The claimant presented a claim to the Employment Tribunal on 5 January 2018, in which he complained that he was automatically unfairly dismissed by the respondent and unlawfully subjected to detriments by them on the

grounds of having made protected disclosures to them; in addition, he complained that he had been unlawfully deprived of pay in respect of annual leave accrued but untaken as at the date of termination.

- 5 2. The respondent submitted an ET3 in which the claimant's claims were resisted.
3. A Hearing was fixed to take place on 30 and 31 July, and 1 August 2018,. Mr Lawson appeared for the claimant, who was also in attendance with him, and Mr MacLean appeared for the respondent.
- 10 4. The parties made a joint application for postponement of that hearing, on the basis that they had come to the realisation in preparation for the case that 3 days would be insufficient to conclude the evidence and submissions. Having considered the application, and noting that no prior concern had been raised about the duration of the hearing, the Tribunal was not
15 persuaded that the claimant would be prejudiced by the case going part heard. Many hearings go part heard, and it is not clear how the respondent would gain any advantage by having time to reflect upon the claimant's evidence since the claim was set out in full in the ET1. We did not consider it necessary in the interests of justice, nor consistent with the overriding
20 objective of the Tribunal, to adjourn the hearing, particularly given the requirement of the Tribunal to hear cases efficiently and without delay. Accordingly, the application to adjourn was refused.
- 25 5. The hearing proceeded on the 3 allocated dates, and then a further 5 days was set down for 5 to 9 November 2018. As it turned out, that diet was interrupted when the sitting Employment Judge suffered a close family bereavement on 5 November, but after adjourning at lunchtime on
5 November, having explained the circumstances to the parties, the hearing was able to resume on Wednesday 7 November, and then to conclude on 8 November.
- 30 6. At the outset of the first diet of hearing, it was agreed that the hearing would be restricted to liability only, and that remedy would be addressed, if required, at a further and separate hearing.

7. Mr Lawson intimated that the claimant wished to withdraw his holiday pay claim, at the start of the hearing, and accordingly, this is dismissed as a result.
8. The parties presented a joint bundle of documents upon which they both placed reliance during the course of the hearing.
9. The claimant gave evidence on his own account, and in addition called Abduldaim Israfil, former Facilities Manager, and Ahmed Werfali, a teacher at the University of Dundee who formerly provided accountancy and book-keeping services for the respondent on a self-employed basis.
10. The respondent called as witnesses Khalid Shakir, Psychotherapist/Counsellor; Dr Mohamed Hashim Al-Rasheid, Assistant Director; and Haleemah Herkes, Secretary.

The Issues

11. A list of issues was presented to the Tribunal (30), identified as a List of Issues for the claimant. However, there appeared to be no objection to their terms, and accordingly we adopt these issues as relevant to the case.
12. The issues were divided into 3 headings, namely Protected Disclosure, Pay in Lieu of Accrued but Untaken Annual Leave and Remedy. Neither the second nor third of these headings were applicable to this hearing, the holiday pay claim having been withdrawn, and the issue of remedy having been left over to a separate hearing if required.
13. The issues in this case are therefore as follows:
- 1.1 Did the claimant make a qualifying disclosure within the meaning of section 43B(1)(a) or (b) of the Employment Rights Act 1996? In particular:*
- 1.1.1 Did the claimant make a disclosure of information which in the claimant's reasonable belief tends to show:*

1.1.1.1 *that a criminal offence had been committed, was being committed or was likely to be committed;*

1.1.1.2 *that the respondent had failed, was failing or was likely to fail to comply with any legal obligation to which it was subject?*

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1.1.2 *If so, did the claimant reasonably believe that the disclosure was made in the public interest?*

1.2 *Did the respondent subject the claimant to any detriment on the ground that he had made a protected disclosure in terms of section 47B of the 1996 Act?*

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1.3 *Was the reason, or if more than one the principal reason, for the claimant's dismissal the fact that the claimant had made a protected disclosure and was the dismissal therefore unfair within the meaning of section 103A of the 1996 Act?*

15 **Findings in Fact**

14. Based on the evidence led, and the information provided, the Tribunal was able to find the following facts admitted or proved.

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15. The claimant, whose date of birth is 17 September 1983, commenced employment with the respondent as Imam on 1 December 2015. The respondent is responsible for the management of the Edinburgh Central Mosque, 50 Potterrow, Edinburgh EH8 9BT, where the claimant was based (hereinafter referred to as "the Mosque").

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16. When the claimant commenced employment he was provided with a written statement of terms and conditions of employment (31ff) which confirmed that his employment began with effect from 1 December 2015. It was stated that his duties "will be as advised by the Director". No formal job description was produced. At the date of the claimant's commencement, the Director was a Mr Abdullah, and Mr Israfil was in post as Facilities Manager.

17. A new Director took up post on or about 13 January 2017, namely Dr Naji Alarfaj (known as Dr Naji). A meeting took place at the Mosque on 16 January 2017 to allow Dr Naji to be formally introduced to staff members, and to “set basic ground rules” among the staff (44). Following that meeting, Ms Herkes, the Administrative Assistant (and later Secretary) issued an email to those present, including the claimant (46). In that email, she wrote, in paragraph 4, that *“Dr Naji would like each person to compile a job description for their current roles based on the tasks and jobs you currently carry out and what responsibilities you currently hold, even if these differ from the original job description of your position. This will give him a clearer picture of the scope of work we are all taking on against the original job description for each position.”*

18. The claimant submitted a Job Analysis Questionnaire, on 9 March 2017 (48ff), in which he set out the general purpose of his position as *“The role of Imam is to lead the daily obligatory prayers and oversee that they are covered by competent Imams. My role also includes teaching the community Islam, the propagation of the religion and representing it in the arena of Da’wah (mission) and outreach.”*

19. He summarised the main duties/responsibilities of the post as follows:

1. *Imamah (leading the prayers) and supervising the Imams* 5%
2. *Imam Office Hours: a time for people to drop in (Mon-Fri 2-4pm)* 20%
3. *Teaching Classes (7 total classes/week) plus preparation* 20%
4. *Outreach (Specialist Mosque Visits & Official Engagements)* 20%
5. *Responding to inquiries (emails, questions, Fatawa, advice)* 20%
6. *Events Management (Islamic programmes & activities)* 5%
7. *Pastoral Care (Counselling, Special Advice, Reconciliation etc)* 10%

20. The claimant also maintained that until February 2017, he had previously supervised the Mosque’s social media platforms, including the website,

Facebook page and Youtube channel; also that he had been responsible for the publication of a newsletter and leading the publication of the 2016 Annual Review, but that these roles had now been delegated to others.

5 21. The claimant stated that he supervised three employees, namely the Support and Outreach Worker, the Personal Assistant/Events Coordinator and the Mosque Visits Coordinator.

10 22. On 1 February 2017, a meeting took place at which the claimant was in attendance, and for which he took minutes (54). At paragraph 6 of the minute, he noted that *“Yahya is to be the Director’s immediate assistant temporarily, up until a full-time official candidate is viable.”*

23. That role was one which the claimant found vague and confusing, and on 16 February he asked the Director to remove it from his duties as he was overwhelmed with the amount of work it required over and above his duties as Imam.

15 24. On 13 February 2017, Ms Herkes emailed the claimant to confirm his availability for a number of specialist visits to the Mosque. Specialist visits are visits by groups who may ask more challenging questions than, for example, primary school visitors, on sensitive subjects in which the Imam is suitably trained to advise. On that date, he also wrote to Hamad Alharkan, a volunteer Imam, to advise that Dr Naji had notified him that Hamad would be conducting all the educational activities of the Mosque from 2 March 2017 (65).

25 25. On 6 March 2017, the claimant sent an email from his home to his work email address (66) summarising the discussions which had taken place at a meeting with Dr Naji Subhi Hashwa, Abid and Dr Muhammad Hashim. The purpose of the meeting was to plan for the visit of the secretary of the Muslim World Council, possibly with the Saudi Arabian Ambassador, to the Mosque. It was proposed that there would be a need to meet weekly in order to put everything in place for the visit. The secretary, Dr Isa, was a person elected to lead the Muslim community, and was, as such, a very powerful figure within Islam. The claimant described him as “the Muslim

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equivalent of the Pope”, though making clear that Islam does not have a papacy.

26. The claimant believed he was excluded from the meetings planning this important visit from either mid-March or early April, though he could not remember, in evidence before us, whether he had attended two or three meetings of the group. He did not have the opportunity to meet with the Secretary-General during the visit.

27. On 19 March, an email was sent to all Mosque staff, including the claimant, by Dr Naji, setting out the appointment of new managers and the structure which would be in place following their appointment (68):

“As the Executive Director of ECM and by the authority vested in me, I hereby:

1. *Appoint Dr Mohamed Hashim as acting Manager of the Administrative and Financial Affairs. Starting date: 20 March 2017.*
2. *Appoint Eng. Subhi Hashwa as acting Manager of the Dawah and Educational Affairs. Starting date: 20 March 2017.*

I ask all staff to offer every assistance and support to them in performing their roles. Please refer to the list below to identify your line manager:

- Administrative and Financial Affairs:

Abid Ihsan

Ahmed Werfali

Ahmed Yazidi

Abduldayim Israfil

Waseem Sarder

Haleema Herkes

All the above named should refer and report to Dr Mohamed Hashim only.

- *Dawah and Educational Affairs*

Yahya Barry

Janice Oliver

Sharon Gray

5 *Tahira Muhammad*

All the above named should refer and report to Eng. Subhi Hashwa only.

Please look at the attached document to get an idea about our new organisational structure hierarchy.

Dr Naji Arfaj

10 *Executive Director”*

28. On 20 March 2017, the claimant emailed Subhi Hashwa (74) to congratulate him on his appointment as acting line manager. He assured him of his cooperation in his role to the best of his ability.

15 29. On 31 March 2017, Ahmed Werfali, who was relied upon by the respondent as a self-employed accountant, met with the director, who had asked him to attend a meeting, at which he was instructed to hand over all paperwork relating to the accounts which he had. He did so. The respondent was concerned that the accountant was not prepared to continue to work for them for a longer period than he had indicated.

20 30. Mr Werfali then approached the claimant and discussed with him what he described as the “toxic environment” within the Mosque. He told the claimant that this was his last day working for the respondent. He said that he had faced the possibility of sacrificing his professional integrity in the face of what he regarded as financial irregularities. He told the claimant of
25 an occasion when the contractor, who was carrying out work on a bathroom within the Mosque, and who was paid out of petty cash, had come down to the administrative department and asked the secretary to write an invoice.

She refused and she said that it was for the contractor to produce his own invoice.

5 31. The claimant discussed a number of issues with Mr Werfali, including the terms of the bank statements. He was told by Mr Werfali that the practice of making cash payments without invoices to contractors was wrong under charity law. He also expressed concern about the way in which the car park receipts would be handed to a volunteer, in that he considered that volunteers should not be given the responsibility to handle money

10 32. On 31 March 2017, the claimant met with Dr Mohamed Hashim and Ms Herkes, following the meeting with the accountant, to tell them what the accountant had said to him. He told them that Ms Herkes had written invoices for contractors. Ms Herkes confirmed that a request had been made to write an invoice for one of the contractors, but she had refused to do it. It was the contractor, Ashiq Hussain, who made the request, through
15 one of his workers (Scott) and not the director.

33. On 3 April 2017, the claimant submitted a letter of grievance to Subhi Hashwa (76), headed "Letter of Grievance re Change to my Terms of Employment":

"Dear Mr Hashwa,

20 *I, Yahya Barry, employed as the Imam of Edinburgh Central Mosque officially write to you this letter of grievance with regard to the change of my terms of employment as communicated to me by Dr Hashim by email correspondence on the date of this letter.*

25 *Having consulted with the UK government's guidelines on employment rights, I write this letter to communicate to you that I protest the changes because not doing otherwise can be legally understood to imply my agreement with the new terms. The new terms as per the email stipulate that: 'from the beginning of April [my] pay is going to be calculated based on the total number of hours/days [I] log via the sign-in/sign-out system in
30 place'.*

My terms of employment which I signed on the 29th of August 2016 state that my 'hours of work are variable each week, actual days, start/finish times will be variable, as may be required by the Employer...' Further to this, I remind you of the email correspondence on the 21st of March wherein I outlined this issue of hours: "My work as Imam involves considerable mobility and flexibility in terms of time and venue. By way of example, just in this month of March, I have had Outreach engagements in the Pentlands and Roslin area. In March alone, I have conducted 3 registered Nikahs in 3 separate locations (2 of which were outside Edinburgh – North Berwick and Musselburgh). In addition to this, the hours of preparation that go behind lesson/class planning and marking and assessments besides the email/phone correspondences cannot be tracked using the new digital system you notified me to start utilising."

In view of the fact that you had not acknowledged my earlier correspondence and further to the email sent by Dr Hashim, I have found it necessary to raise this official grievance with you."

34. Having submitted the letter of grievance, the claimant met on 5 April 2017 with Ammar Thabet and Dr Naji. The claimant asked Mr Israfil to accompany him to the meeting. Notes of the meeting (transcribed from a recording taken by the claimant) were produced at 77ff.

35. At the start of the meeting, the claimant made clear to Mr Thabet that he did not trust him, owing to "a lack of consistency with regards to how you treat people in the masjid (Mosque)"

36. He then set out his concerns about the running of the Mosque:

"...We cannot run a house of Allah like this, such as for example, a lack of transparency from a managerial level. I mean, decisions been made with regards to contracts, with regards to employing people, with regards to appointing people, and the community is not made aware of this. There are no announcements for job descriptions or announcements for the positions. Is there an interviewing process that took place? How were the candidates selected and recruited? With regards to some contracts which have not

5 *been honoured, such as vulnerable people who were being supported through our mental health support group, and arbitrarily, the services being stopped and despite repeated requests, these contracts were being dismissed. I mean there were agreements in place. I mean, what has this left those people? It has left them vulnerable. I mean, someone with mental health issues, you're supporting in, and then all of a sudden, you say: I'm sorry, I can't see you anymore. That's not how the house of Allah should be. Certain staff members, almost as though they are being played off against each other. How comes some staff members don't have an office space, and yet some staff members have office space. I could go on, so, I mean. To be honest with you, no one is above the law, we should all be accountable for our actions, we are all brothers in faith, and, I mean, yea. I could go on, but, that's what I have right now, and if there's further clarification, you're welcome to ask me..."*

15 37. The claimant referred to the mental health group within the Mosque. When he had started as Imam, he had identified individuals who attended the Mosque who had complex mental health issues, and accordingly felt it was appropriate to have someone who was qualified in mental health who could provide the necessary levels of support. He set up a mental health group in the Mosque. For a time, in addition, the claimant arranged that such individuals could be seen by a qualified Psychotherapist, Khalid Shakir. However, Dr Naji reviewed the services being provided by the Mosque, and took the view that it was appropriate to stop the mental health group, and thus the psychotherapy service to which referrals had been made.

20 38. When the mental health support was ended within the Mosque by Dr Naji, the claimant was concerned about the impact upon the vulnerable individuals to whom he had referred, and therefore considered it important to raise this at this meeting on 5 April.

39. In addition, he said, at 81:

30 *"We've lost an accountant who came to my office and said that basically, he's faced with the option of either he sacrifices his professional integrity..."*

Or that he reports to the authorities that there are certain illegal financial transactions that are taking place...

We've lost potentially a very key volunteer who is vulnerable in terms of mental health...."

5 40. On 10 April 2017, the claimant submitted a Whistleblowing form to OSCR (the Office of the Scottish Charity Regulator) by email, attaching the form thereto (85ff).

10 41. He ticked the boxes marked "The charity is not obeying the law" and "There is deliberate covering up of matters relating to one of the issues listed above". He went on to confirm that he had raised the issues with the charity (the respondent), and that while the respondent had a whistleblowing policy in place, *"the issues relate to the very upper echelons of the charity itself. I do not trust a significant number of the Board of Trustee Members to approach any one of them directly"*.

15 42. He then set out the following statement as the main points of his concern:

"Financial violations regards payments of contractors using petty cash – by hand without invoices. The contractor Mr Ashiq Hussain has received multiple cash in hand payments by order of the director from petty cash amounts calculated by the resigned accountant at £8,000 approx. In addition to this, funds generated from the mosque car park are not being consistently banked. A restricted fund for a mental health project is not being used for its purpose. Unilateral decisions to appoint and employ individuals into positions without official recruitment protocol being followed.

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I have notified each of the following: the director Dr Naji Arfaj on a meeting held on the 5th of April in the presence of a trustee member, Mr Ammar Thabet, the manager for Education (Mr Subhi Hashwa) that financial violations had led to the resignation of the accountant Mr Ahmed Werfali. On March 31st I had likewise flagged the issue to Dr M Hashim (Manager of Finance & Admin) and Ms Haleemah Herkes – Company Secretary".

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43. In support of his concerns, the claimant said that he had bank statements showing petty cash payments, Email correspondences and meeting minutes.

44. The whistleblowing form contained 4 allegations, relating to (1) financial violations in relation to contractors; (2) car park receipts not being consistently banked; (3) the reserved fund not being used for its purpose; and (4) the appointment of staff without proper process.

45. With regard to financial violations, the claimant said that he had been told by Mr Werfali, upon his leaving his position as the Mosque's accountant, that multiple petty cash transactions had been carried out to Mr Hussain, the contractor, who was carrying out work at the Mosque. He explained that he had made notes on the bank statement relating to the Mosque business account (88), a copy of which he produced to OSCR, while Mr Werfali explained them to him.

46. He referred in particular to 3 entries on the bank statement:

1. £2,000, with cheque reference number 002388, paid on 24 February 2017; he noted "PETTY CASH Paid in cash to some workers; £550 to Ashiq Hussain; no invoice provided".
2. £3,732.76, with cheque reference number 002369, paid on 21 February 2017, with the note: "This cheque was given to Ashiq Hussain (cash) was pushing Haleemah to pay cash. No invoice. He asked Haleemah to write it. By instruction of Dr Naji."
3. £1,500, with cheque reference number 002363, paid on 10 February 2017; he noted "PETTY CASH Paid to Ashiq Hussain".

47. The claimant considered that these payments were in breach of OSCR regulations on the basis that they had been made without invoices, having been advised that this was the case by Mr Werfali. He contacted a Citizens' Advice Bureau for advice, and having spoken to an employment law specialist, maintained that he had been advised that these were criminal matters as well.

48. The claimant did not have any direct knowledge of any legal obligation or provision of the criminal law which was being contravened by the respondent, but took the accountant at his word.

5 49. With regard to the car park receipts not having been consistently banked, he was told this by a “trustworthy individual” who “would not fabricate such information”, at the end of March or the start of April. The claimant’s concern was that when Dr Naji arrived as director, he insisted that there should be a protocol for banking the car park money; but that he had been told by this “trustworthy individual” that Dr Naji on occasion took funds from the car park
10 when he needed to have funds available, and that this was not properly documented. In particular, the claimant asserted that Dr Naji had taken car park receipts and used them to pay for the work on his private bathroom within the Mosque.

15 50. The claimant was not prepared to disclose the name of the individual as he considered that he may be harmed due to the very punitive approach taken by the respondent to those who do not adhere to their way of doing things.

51. The claimant asserted that money was taken to pay Scott, who was an individual who worked for Mr Hussain, without an invoice being provided.

20 52. He believed that this amounted to criminal activity because the CAB adviser had told him that it did.

53. With regard to the use of the restricted fund, this was a reference to funds which had been provided to the Mosque specifically for the purpose of providing mental health support to members of the community. Funds were used, in part, to pay for the rent of a local church hall for the psychotherapist
25 to use when seeing patients. He made repeated requests for access to the funds but those requests were declined.

54. With regard to the unilaterally decisions being made about recruitment, the claimant referred to the two appointments made in March 2017 as line managers, in the persons of Dr Mohamed Hashim and Subhi Hashwa. He
30 considered that the respondent should have advertised for the posts, and

convened suitable interview panels in order to make the appointments transparently and consistent with a recruitment procedure which would avoid falling foul of the law.

5 55. On 10 April 2017, Mr Hashwa wrote to the claimant (92) to acknowledge receipt of his letter of grievance. He confirmed that he would hear the grievance on 17 April 2017, at 2pm in the Mosque meeting room, and that he would be accompanied by Ms Herkes who would take the minutes of the meeting.

56. He summarised the concerns raised in the grievance as follows:

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- *The implementation of a sign-in and sign-out system to track the hours you have worked*
 - *The use of the above system to calculate pay based on the hours you have worked*
 - *That the above two mentioned points constitutes a change to your terms of employment.*
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57. He confirmed that the claimant could bring with him any supporting documents for consideration, and also that he could be accompanied by a fellow employee who could attend as a witness or speak on his behalf to explain the situation.

20 58. On 15 April 2017, the claimant sent an email to Dr Makhdoom, one of the Trustees of the Mosque (95) in which he enclosed a 22 page report regarding “the current situation” at the Mosque. He said he hoped that Dr Makhdoom would deliver it to “the responsible authorities” in order to resolve the situation. The report contained a preface, dated 6 April 2017 (100-102). In the preface he wrote to warn of the infiltration of the Mosque by certain influences, but in particular addressed the question of financial impropriety. He wrote:

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“...Dr Naji showed administrative and financial corruption. Although the resigned accountant clarified to him multiple times that it is not permissible

to pay in petty cash for certain transactions in the British charity regulations, eh has repeatedly gone against this advice, leading to the resignation of the accountant Ahmed Werfali. According to the regulations of the Association, two bills are to be submitted by contractors before embarking on any project. Dr Naji has spent about 8,000 British pounds – according to the accountant – in the construction of his own bathroom, and this was done by one man – named Hussein – without the invoices and was received in cash so as not to properly accounted for (sic), thereby facilitating potential tax evasion. When the former accountant demanded the need to receive an invoice from the contractor, Naji asked the secretary of the center sister Haleemah to write an invoice for brother Hussein.

It has also reached me from a source of confidence that the financial income that benefits the mosque from the parking spaces behind the building is not deposited in the bank according to the protocol recognised. Since I am not one of the signatories to the commercial mosque account, I can not ascertain whether the mosque's money is being properly banked or not.

Dr Naji stopped the program of mental health care in the mosque, and this caused damage to members of the weak community with mental illnesses, even one of them refers to suicide and left Islam. When the administration was asked to hand over 2,300 British pounds, which was a restricted fund for the mental health project, it did not respond and for a month and a half now this remains the case.

There was an agreement with the previous mosque administration that the project rent a room from the neighbouring church from mid-December to mid-January where it was planned that a separate room be provided by the mosque to accommodate for the mental health services. Dr Naji stopped this important project and declined repeated requests to attend the meetings of the mental health team. If it was narrated upon Ummar ibn al-Khattab – may Allah be pleased with him – that 'If a lost sheep under my care were to die on the banks of the Euphrates, I would expect Allah the Exalted to question me about it on the Day of Resurrection,' how about a mosque

affiliated to the Custodian of the Two Holy Mosques neglect vulnerable Muslims die in the darkness of mental health illnesses?! Indeed, this – by Allah – is not befitting...”

59. The claimant wrote again to Dr Naji and Mr Hashwa on 18 April 2017 submitting a further letter of grievance (103) in which he complained about violations of data protection and safety. That letter was acknowledged by Dr Naji on 19 April 2017 (107).

60. On 24 April 2017, a meeting took place between the Mental Health and Wellbeing Group, including the claimant, and members of the Mosque administration. Handwritten notes, taken by Shiraz, a volunteer, were produced (109ff).

61. In the course of the notes, reference is made, without there being clarity as to who was saying which comment, to the financial deficit of £22,000 which was suffered by the Mosque, and the concerns raised about such a large financial deficit endured by a registered charity.

62. Questions were asked then about the process whereby mentally unwell members of the Mosque could be referred to the Psychotherapist, and in particular it was asked *“Can Yahya just refer patients or do they need to go through GP?”* In response, it was said that it was not based on a specific counselling model, but that it was a *“self-help and therapeutic model; Mosque is not working as a clinical set up as this would require a whole set of different regulations.”*

63. It was then recorded that *“An argument (sic)/debate ensued about financial matters...Yahya was challenging the fact that there is a £22,000 deficit. He left – was feeling unwell.”*

64. An alternative note of that meeting was taken by Mr Hashwa, and was presented to Dr Naji in the form of a letter dated 27 April 2017 (122). He noted that the meeting was with the Mental Health and Wellbeing Group, led by the claimant and Mr Khalid Shakir. He said that the group met every 2 weeks on Mondays, and that he had asked to join the meeting in order to

find out more about the group and assess their activities. He had also invited Chiraz Bensaad Sellami, who had been involved in Mental Health organisations in Cornwall, and Fahad Alanzi, a PhD candidate in Clinical Psychology at Edinburgh University, to attend the meeting in order to provide him with expertise on how to develop the group.

65. He noted:

“The meeting was hostile and some of the participants were very aggressive, in summary:

- *The group is operating without any legal framework.*
- *The group has no known governance, clinical or ethical guidelines.*
- *The group does not follow any known models of therapy and therefore can be classified as experimental.*
- *With no supervision framework and no therapy models, this group cannot provide any continuity of treatment and cannot measure any results.*
- ***I recommend the immediate halting of the program. The Mosque should not be a place for psychological experiments.***

In addition;

- *Hostility was from some of the members of the group and from Yahya the Imam.*
- *Yahya stated ‘That is a lie’ and repeated it when I stated that Dr Naji stated in public that the mosque was 22,000 overdrawn when he took office.*
- *Yahya also said ‘Yes’ when I asked him clearly: ‘Are you saying Dr Naji is lying?’*

- *Other members of the group accused the mosque of having a hidden agenda.*
 - *The group is unwilling to commit in writing to anything, this leaves the full responsibility of the group with the mosque.*
- 5 • *I have written minutes I can provide if necessary.”*

66. The claimant and other members of the group were very unhappy at its closure. He thought it was very unfair that the group was said to have no ethical or governance framework. However, he, and the group, continued their work and continue to do so up to the date of this hearing.

10 67. On 1 May, Ms Herkes sent an email to the claimant, copied to Mr Hashwa, Dr Naji and Dr Hashim (128) stating the following:

“...I have the following notification from Dr Naji Arfaj, Executive Director in regards to the Mental Health and Well-being group. Please circulate to those concerned.

15 *Dear Yahya Barry*

RE: Mental Health and wellbeing group at Central Mosque

20 *With immediate effect, King Fahad Mosque and Islamic Centre of Edinburgh (Central Mosque of Edinburgh) does not condone the activities related and associated with this group, this includes therapy and counselling due to irregularities in governance and ethical framework. As such all future room bookings for the group at the mosque has been cancelled.*

The Mosque does not give permission to the group to use the name of the mosque in any future meetings.

25 *CC to Dr Mohamed Hashim to notify security.*

Regards,

Haleemah”

68. The claimant replied the following day: "Thanks".

69. Following the decision to terminate the group's activities, the donor, who had given the money to the Mosque for the purposes of setting up such a group, was contacted by Dr Mohamed. He was informed of the decision to terminate the activities of the group, and asked if he wished the Mosque to return the monies or use them for other purposes for the Mosque. He advised that he would wish the Mosque to retain the funds, and use them for two purposes, namely for meals for people fasting during Ramadan, and the other for maintenance. The claimant was not informed of this conversation at the time.

70. On 25 April 2017, Mr Hashwa wrote to the claimant (115) to confirm the outcome of the grievance procedure.

71. With regard to the complaint that the implementation of a sign-in, sign-out system had been introduced to track the hours worked, it was said that it appeared clear from the employment handbook that the respondent reserved the right to implement a sign-in and sign-out system for all employees, unless where expressly stated to the contrary. However, they found that *"after consultation with employment law advisers, we have concluded on this point that this may be considered a change to your employment terms. This is on the basis that your exemption from signing in and out would be an implied employment term through custom and practice, that is because you have never had to adhere to this under the previous management."*

72. It followed, then, that the second head of complaint, that this system was being used to calculate the claimant's pay, was to be treated in the same way, and therefore the application of the system would not be implemented for him.

73. He was therefore assured that the respondent would use the established procedures in the event that his terms and conditions were to be amended in the future.

74. On 1 May 2017, the claimant emailed Dr Naji to advise him of some further concerns he had in relation to the Mosque (129). The email is dated in the American style (“5/1/17”) but is agreed to have been sent on 1 May 2017. In addition, it is also agreed that the reference to the phrase “on this date the 5th of May” was an error by the claimant, and again he meant to refer to 1 May 2017.

75. The email, which was also copied to “All ECM Staff members”, stated:

“Dear Dr Naji Arfaj, executive director of Edinburgh central mosque, and all ECM staff on cc,

I write this email notifying you on this date the 5th of May (sic) that I have submitted a qualifying disclosure. I see it as my duty as Imam serving this hallowed institution – the house of Allah and the community of this significant city of Edinburgh to stand up for the objects, aims and objectives for which the Company was established:

- 1) To provide a suitable place of worship of God and for the congregation of Muslims.*
- 2) To propagate the word of God.*
- 3) To disseminate Islam.*
- 4) To be of service to the Muslims...*

Since your arrival Dr Naji, we have lost three key members of staff: Shahida Gill, Abdudaim Israfil and Ahmed Werfali. Furthermore, you have introduced into the work environment individuals/volunteers/staff without announcement of the vacancies, verification, shortlisting and vetting. Individuals therefore seem to be recruited in an opaque manner which could potentially lend itself to the creation of a divisive cult-like system. Some of these individuals were/are granted access to confidential information without clear controls potentially violating the Data Protection Act.

Furthermore, the email I received from an individual named Abdulaziz Sheikh on Friday the 28th of April highlighted areas of concern which I have

identified to be in the public interest. I have referred to the Employee handbook for guidelines on making disclosures, ie whistleblowing, p23 in addition to receiving legal advice. I provide the following timeline:

5 *April 6th: in a meeting held with you in the presence of trustee member Ammar Thabet and Subhi Hashwa, I reported to you my concerns about the administrative, financial and social cohesive issues of the mosque and community. I received no official correspondence following this meeting.*

10 *April 15th: I submitted a 22-page draft report highlighting the above mentioned concerns to Dr Ahmad Makhdoom, the Regional Director of the Muslim World League (UK) and trustee member as well as a source in Saudi Arabia to deliver to the Secretary General of the Muslim World League Dr Issa. I received neither acknowledgement nor official correspondence following my submission.*

15 *I outline for you Dr Naji that it is in the public interest that the law protects whistleblowers so that they can speak out if they find major malpractice in an organisation. The law also covers the deliberate attempt to cover up qualifying disclosures.*

20 *I have been dismayed by the manner in which the institution of Edinburgh central mosque has been systematically moulded into an environment that doesn't allow for accountability, transparency, respect, clear communication and regard for the wider public interest. Dr Naji, no body is above the law, and certainly no one can act in impunity in this country we have found ourselves in. Furthermore, I have been deeply concerned by the manner in which the individuals you have placed as a curtain between yourself and*

25 *your staff and wider community have been executing what appears to be commands without regard to employment legislation such as the interception of my emails, and most recently, the changing of my password and my removal from the mosque's social media accounts. Dr Naji, I wish to outline for you that I truly believe in my work. I am certainly not afraid to*

30 *stand up and defend the values of justice, integrity and uprightness which our beautiful religion of Islam came to teach us. I will certainly expend the*

resources Allah has placed at my disposal to ensure that this disclosure is made in the public interest.

Thanks.

Yahya Barry – Imam, Edinburgh Central Mosque”

5 76. Dr Naji replied to this email on 2 May 2017 (131). Within that reply, he made a number of comments:

“...Shahida Gill withdrew on her own terms and was not terminated. No formal or legal process had to be followed in her case due to the lack of formal employment on behalf of the previous administration.

10 *Abduldaym has been one of the ECM employees contributing to the running of the mosque. He requested annual leave shortly after my arrival due to family circumstances. He then requested an extension and the mosque fully cooperated with this request. Upon his return, Abduldaym submitted his resignation letter and after consultation with us, in hope that we could*
15 *retain him as an employee, he still decided to resign.*

In regards to Ahmed Werfali, he was working on a self-employed basis to provide accounting services to the mosque. Ahmed Werfali advised us that he would no longer be able to commit as much time to the mosque from mid-April. It was therefore agreed that his final day with us would be March
20 *31st, allowing the accounts for 2016-2017 financial year to be put in order and ready for the next audit...*

In regards to the email sent on April 18th by ‘Abdulaziz Sheikh’, which we have also received, we hope to address the points raised within it after a full investigation has been carried out into how, why and when the attached
25 *bank statement was obtained by a non-staff member! This investigation will take time and it may need to include involvement from the police service. I hope that you and all staff and volunteers will remain patient and cooperative during the investigation into this serious matter.*

5 *On April 5th, after dhuhur prayer, you made a public announcement to the community voicing your discontent with the current administration of Edinburgh Central Mosque. On April the 6th, I invited you to an informal meeting in my office to allow you to air your concerns to me directly, rather than publically in my absence. In this meeting the concerns you raised were deemed to be issues with individual characters and not of problems with procedures or policies of the organisation. This meeting was of an informal nature where no minutes were taken and responses were given during the meeting. It was therefore not necessary to provide you with any further official response after its conclusion....*

10 *As for the changing of your password and your removal from the mosque's social media accounts, this was a security measure as a result of the email received from 'Abdulaziz Sheikh', where it has become apparent that a confidential document has been obtained by a non-staff member. This was an internal security measure taken across the board, where all other people listed as admin on the social media accounts have also temporarily had their access to these revoked while we investigate the matter. If an external individual has managed to access our bank statements then they could potentially have access to our other systems. Due to the nature, it required immediate action and therefore no notice was given of access being revoked. I apologise for this inconvenience and I again hope you will be patient and cooperate while our investigation into this incident is ongoing..."*

15 77. The email to which Dr Naji referred, from Abdulaziz Sheikh, was received by the claimant on 29 April 2017 (126). He understood, in evidence, that he had been "blind copied" into the message, which was primarily sent to OSCR. He did not know who the sender was, and nor did the respondent. The sender described himself as a member of the Edinburgh muslim community for many years, and said that he had been attending the Mosque for "some time". He expressed concern about what was happening in the Mosque.

20 78. He continued: *"I write this email to tell community open your eyes, please. I hear new director Naji in Sunday meeting say £20,000 overdraw from*

mosque account when he come. Mr naji may be not bad man but this not true. Bank statement show naji come January 13 no £20,000 overdraw. This he say to make administration before look like corruption. This not reality this not fair.

5 *Bank checks show Najj pay cash in hand from petty cash to Ashiq Hussain many time around £8000 for private bath room and bed room in mosque, no invoice. Accountant say this ill legal (sic) but Mr Najj do what he want and now accountant resign. May be Mr Najj do more ill legal payments after accountant resign...”*

10 79. The letter went on to make allegations about financial improprieties alleged to have been the responsibility of Dr Najj, and insisted, at its finish, that the “truth must come out”.

15 80. The reference, within that letter apparently written by a member of the Mosque community, but not by a member of staff, to bank statements and what it was said that they showed, caused the respondent considerable concern, as they were unclear as to how a non-member of staff could have access to the financial information contained in the bank statements.

20 81. The London Central Mosque Trust and The Islamic Cultural Centre issued a press release confirming, under Latest News, that His Excellency Sheikh Muhammad Bin Abdul Karim Al-Issa (known herein as Dr Issa) visited the Mosque for two days on 7 and 8 May 2017, and that he, the Secretary General of the World Muslim League, “*was hosted by the Edinburg (sic) Central Mosque and conducted the AGM (Annual General Meeting of the Board of Trustees). The Secretary General also held an interactive public*
25 *forum with Trustees, the Director of the Mosque, Dr Najj Al-Arfaj and community leaders where he addressed an august gathering of the Muslim community in Scotland.*” (136).

30 82. He also met with the University of Edinburgh Saudi Club, in the Mosque, during his visit. A flyer advertising that meeting was produced (135). The claimant was unaware of the dates or details of these meetings, and was

sent a copy of the flyer by a member of the Mosque expressing surprise that he had not been in attendance.

83. The claimant was upset and felt humiliated at what he regarded as a deliberate exclusion from the planning of the visit, and from the visit itself. As the Imam in the Mosque, he found it frustrating and belittling to have been excluded from this visit by such a significant figure in Muslim world affairs. He considered that there was no doubt that his exclusion was caused by the fact that he had made disclosures to and about the Mosque.

84. The claimant sent a further email to OSCR on 25 May 2017 (137):

"I would like to bring further information to OSCR's attention with regard to the governance of Edinburgh Central Mosque.

The Mental Health & Wellbeing project which received a 2300 GBP restricted fund has now been overhauled by the current administration. I attach documentation in this regard."

85. Attached to that document were correspondence between the claimant and the director under whom he served in his first year, in which the group was sanctioned by the Mosque, together with a copy of the 2016 review which showed pictures of the group in action, and an email from the Director confirming that the group was no longer permitted to operate from the Mosque.

86. On 2 June 2017, Dr Mohamed Hashim wrote to the claimant (150) to confirm the respondent's response to the grievance, following the grievance meeting held on 25 April 2017.

87. The issues raised, which were addressed in the response, were said to be:

- *"That since Friday the 14th of April 19:35 BST, the email correspondences sent to your email via the mosque website through the 'Ask the Imam page' have been intercepted by Mr Subhi Hashwa.*

- *That you found brother Usamah sitting at your desk taking photographs of your computer monitor and that you are concerned about what he was doing with your computer for that period of time.*
- *That Mr Abid Ihsan has been handing you letters addressed to yourself, whose envelopes were opened prior to receiving them.*
- *That the director Dr Naji Arfaj has access to live CCTV footage and that this is a violation of the Data Protection Act.*
- *The appointment of individuals whose legal status as being employees or volunteers has remained opaque within the workplace of Edinburgh Central Mosque, and that such individual have access to your personal data, threatening your safety and well being."*

88. Dr Hashim referred to investigations having been carried out in relation to the grievance, and set out the findings and conclusions in the pages which followed.

89. With regard to the first complaint, Dr Mohamed Hashim said that he had reviewed the settings of the office 365 portal admin centre to review the mail flow rules of the exchange admin centre, but was unable to find any rule other than that adding a disclaimer to outgoing messages. He said, therefore, *"From this, I can conclude that interception, which is defined as the contents of a communication being made available to someone other than the intended recipient during the course of its transmission, has not occurred. Additionally, no staff inboxes were being monitored until Thursday the 25th of May, when all staff received an email from the Director informing them that their work inboxes will now be monitored."*

90. The second complaint, related to finding a colleague viewing his computer monitor, received the following response: *"I cannot conclusively state whether your computer was restarted or not, however, from reviewing that CCTV footage, it appears as though there was sufficient time for your computer to fully reboot in this case and appear as though it was not restarted by the time you returned."*

I conclude on this point, given the above information and that which you provided during the grievance hearing, that there is enough evidence to show that your concern around Usamah carrying out any potentially malicious activity with your device cannot be substantiated...”

5 91. On the third complaint, he found that there were conflicting statements, and referred to the Employee Handbook which confirmed that all mail addressed to the Mosque would be opened, including that addressed to the employee, and that private correspondence should not be sent to the Mosque. As a result, he found that there was no breach or violation of his rights in the opening of one or two envelopes before being handed to him.

10 92. The fourth complaint was dealt with by confirming that Dr Naji had access to view remotely live CCTV footage, but that there was no evidence provided or found that he was accessing the footage in order to monitor or track employees in the workplace. It was confirmed by Dr Mohamed that no concern had been raised by the Security company with Dr Naji about the legality or appropriateness of his accessing CCTV footage. The claimant had mentioned that he thought that there may be audio or video devices in his office in order to monitor his activities, and so Dr Mohamed had a member of the security company search his office for such devices, and found none. This complaint was therefore found to be unsubstantiated.

15 93. The final complaint related to the legal status of employees or volunteers within the Mosque. Dr Mohamed confirmed that he concluded that this complaint was not substantiated, but that a recommendation would be made that a new volunteers' recruitment policy should be developed and endorsed.

20 94. The claimant was dissatisfied with this outcome, and appealed against it to Dr Naji by letter dated 8 June 2017 (160). That letter was acknowledged on 9 June by Dr Mohamed Hashim (168) confirming that Dr Naji, being implicated in the grievance, could not handle the appeal himself and would therefore make alternative arrangements.

30

95. In the meantime, the claimant wrote to Subhi Hashwa on 1 June 2017 (166) to ask what the protocol for new visits (by groups to the Mosque) was, complaining that his multiple questions on this point had gone unanswered. In reply, Mr Hashwa said (165) on 8 June that *“As you know we had hired Chiraz to do the school visits.”* He went on to explain that now that Chiraz had left the Mosque, *“...I believe you’re probably the best person to take this forward...Currently we’re following the original process you’re familiar with of visit requests going to Haleemah who will log it and check availability with a pool of people who usually do the visits (Yourself included) and we want to move to a more robust process hence this piece of work.”* He asked the claimant to review the documents created with regard to arranging visits to the Mosque.

96. The claimant was extremely unhappy with this reply, and emailed Mr Hashwa on the same day (164/5) to say:

15 *“Thank you for the email.*

You have said: ‘As you know...’ a number of times now, and the honest reply is: ‘no, I actually didn’t know’. Lines of communication are cut sadly.

20 *I have consulted the Citizen’s Advice Bureau and my Trade Union about the ways that I am being marginalised and treated at work such as this ‘Visits’ fiasco which is unprofessional and unacceptable and have been given an appointment with an employment specialist on Wednesday. The preliminary advice I received was that you taking the role away from me (ie the hosting of specialist visits) without notifying me is not only unethical but also potentially going against the employment code of practice. So until I receive*

25 *the specialist advice I will not be touching this portfolio.*

On this note I would like to ask you: what is it that you are playing at? Why are you treating the Imam of the mosque in this way? Don’t you have a nerve of respect?”

97. Mr Hashwa responded on 9 June 2017 (164) by accepting that communication had not been clear, and that this was his fault due to a heavy workload. He apologised for the inconvenience caused.

5 98. He went on to express his concern that the claimant held the view that he had taken away his role of conducting specialist visits. He summarised the visits which Chiraz had carried out, including 5 primary school visits, 2 cubs/scouts visits, 1 high school visit, 1 college/university visit (at which he said the claimant was present), 1 adult visit (which Chiraz shadowed, and 1 other visit which was difficult to categorise. Of those, he said that 2
10 were specialist, at which the claimant had been present for both.

99. Mr Hashwa therefore disagreed with the claimant's assertion that the role of conducting specialist visits had been removed. He said that this was clearly not the case.

15 100. The claimant confirmed to Mr Hashwa, in an email on 2 June, that he had been invited to deliver a khutbah (or Friday sermon) at HWU (understood to be Heriot-Watt University), and asking if there was any objection to his doing this (172). Mr Hashwa replied on 9 June to advise that he should decline the invitation as it was not part of his duties with the Mosque (171). The claimant responded by asking "*May I ask what are my
20 duties actually?*" (171).

101. The claimant sent two further emails pressing for a response to this question, on 9 and 12 June (174), saying that "*It's becoming increasingly unclear to me the role I am playing as Imam*".

25 102. On 13 June 2017, Craig Tomlinson, Senior Inquiry Officer, OSCR, wrote to "Mr Mohamed Alrasheid" (understood to be Dr Mohamed Hashim) under the reference MI/INQ/17-0129 (175). He notified the respondent that OSCR had received a concern about the charity (the Mosque). He confirmed that the complaint had led to OSCR identifying a number of matters of a regulatory nature which they considered warranted further
30 investigation.

103. He went on to say that the concerns *“are around the current governance of the charity and subsidiary company and issues involving possible misuse of charitable funds. We are concerned that the trustees may not be complying fully with section 66 of the 2005 Act.”* He said that OSCR wished to meet with the trustees to discuss the concerns in detail.

104. On 14 June 2017, Mr Tomlinson wrote to the claimant (185) to advise that the information had been assessed and OSCR would be looking into the concerns of *“Governance issues”* and *“Possible misuse of charitable funds”*.

105. On 23 June 2017, the claimant submitted a letter of grievance to the respondent in respect of alleged breach of contract (186).

106. Within that grievance letter, he complained that:

“... Certain ‘responsibilities being taken away’, ‘marginalisation’ in decision making/planning and removal from certain roles in addition to the unilateral dismissal constitute a breach of contract in Employment Law.

I have furthermore from the period of June the 9th to the 12th sent three requests to my line manager – Mr Subhi Hashwa – for a clarification of my job role since it appeared obfuscated. I am yet to receive such a clarification. I am in possession of documentary evidence showing that certain areas of work under my portfolio as Imam of Edinburgh Central Mosque have been delegated to other members of staff/volunteers/self-employed individuals. Despite all these changes taking place, I have maintained my position of cooperation and collaboration even when my employment rights are flaunted and I am mistreated and disrespected...”

107. On 27 July 2017, Mr Hashwa submitted a complaint to Dr Naji about the claimant’s behaviour towards him (200). In that email, he said:

“I would like to complain about the behaviour from a member of staff, Yahya Barry, the Imam.

Yesterday on Wednesday 26th July at 2pm, I had a meeting with Yahya regarding the football activity for the youth in the summer in his office.

During the meeting Yahya acted inappropriately by raising his voice and shouting at myself. He also used inappropriate phrases like ‘Who do you think you are’, when discussing an unrelated matter of a program of education for the congregation after prayers.

The minutes of the meeting was recorded by the Mosque secretary Haleemah Herkes who also witnessed the incident.

I kindly ask you to help ensure that the mosque environment returns to a peaceful one where there isn’t a risk of verbal abuse from other members of staff.”

108. The appeal hearing, in respect of the claimant’s appeal against the grievance outcome, was fixed to take place on 27 July 2017 (198). It was arranged that a Consultant from Peninsula’s HRFace2Face service would hear the appeal.

109. The appeal hearing took place on 27 July 2017, chaired by Linda Satterley of HRFace2Face. She produced a report following that meeting, dated 31 July 2017 (201ff). She observed in the background section of the report that the claimant had now raised a third grievance against the respondent.

110. Minutes of the meeting were included in the report from 204ff.

111. The conclusions of Ms Satterley were set out at 212ff. No evidence was heard from Ms Satterley but no dispute arose before this Tribunal as to the validity of the document or the conclusions reached.

112. Ms Satterley confirmed that she upheld two aspects of the grievance appeal: firstly, that the Mosque could be at risk of breaching Employment Law within the UK by not following a thorough recruitment and selection process; and secondly, that the expectations of one Director over another as to the role to be performed by the claimant may not have been clearly

communicated, and that in order to avoid confusion the claimant should be provided with a job profile.

113. She went on to find, at paragraph 63 (216), *“...that there is a clear break down in the working relationship between the parties and that this is causing disturbance to the work place and therefore would recommend that The Mosque considers work place mediation in order to build a professional workable relationship between parties. Mediation is voluntary and is only possible if all parties agree to partake.”*

114. The claimant was satisfied with this outcome and was willing to participate in mediation. No mediation process took place.

115. On 31 July 2017, Ms Herkes presented a letter to Dr Mohamed Hashim (219):

“Dear Dr Mohamed,

Further to our phone call today, I am writing to provide you information in regards to the meeting held between Mr Yahya Barry and Mr Subhi Hashwa on Wednesday 26th of July in regards to the football coaching project for the youth.

Mr Subhi Hashwa asked me to attend the meeting on the morning of it day it would help to take minutes and I agreed. During the meeting Mr Hashwa was enquiring about reasons for why the football coach had decided to pull out of coaching for the Mosque. Mr Yahya Barry was avoiding answering the question and asking Mr Hashwa to speak to the coach directly. Mr Yahya Barry was becoming increasingly angry and raising his voice as Mr Hashwa was asking for this information. Mr Barry was also being up different and completely off-topic issue that he obviously had a problem with. Mr Hashwa remained extremely calm throughout and kept trying to bring the conversation back to the issue at hand – the football coaching – so he could understand why the coach wanted to remove the activities from Edinburgh Central Mosque. Mr Barry never provided this information.

5 *Personally, I found the raising of his voice (sic) and the apparent anger coming from him very intimidating even though it was in no way directed at me. I was extremely uncomfortable throughout the meeting and did at some point consider leaving when he started raising his voice and using an angry tone. I decided not to because I did not want Mr Hashwa to be left alone with him. I tried, as sufficiently as I could, to continue taking written minutes of the meeting however I was not able to properly concentrate due to the way he was acting. Therefore his behaviour has directly affected my ability to take and produce through (sic) minutes of what was discussed.*

10 *Personally, I do not believe I will be comfortable taking minutes again in a meeting where he is present unless everything is also audio recorded, especially if he is going to behave in such an inappropriate manner over what should have been a simple information-gathering meeting.*

15 *I hope this is helpful and if you need any more information please do not hesitate to ask.*

Regards,

Haleemah Herkes

Secretary”

20 116. On 4 August, Janice Oliver wrote to Dr Mohamed Hashim (220) to say that while holding a support meeting for young women in the congregation in the Meeting Room on 26 July, *“I became aware at some point that Yahya, who’s office in (sic) next to the Meeting Room, was speaking in a raised and angry voice though I am not sure what about or who was with him at the time. The only raised voice I heard was his and I*
25 *did not hear anyone replying to him in a raised or angry tone.”*

117. Dr Mohamed Hashim wrote to the claimant on 7 August 2017 (221) to enclose the third party consultant’s report on the grievance appeal, and to confirm that this report represented his decision.

118. He confirmed that as a result of those parts of the appeal which had been upheld, *“The Mosque will be taking appropriate action:*

- *Adding more signage about CCTV monitoring in public spaces*
- *Clarifying who are the authorized individuals to handle and open all company mail*
- *Creation and implementation of a clear recruitment policy*
- *Providing role profiles for all employees.”*

119. On 14 August 2017, Dr Mohamed wrote to the claimant (222) to advise that following the grievance appeal hearing, it had been decided not to hold a separate grievance hearing in relation to the grievance lodged in relation to breach of contract and changes in terms of employment, on the basis that the matters were discussed in that appeal hearing. He stressed that at no point had the claimant been dismissed from one role and re-employed in another at the Mosque, but appreciated that the delay in clarifying his job role and job description had been causing uncertainty. This, he said, would be clarified and finalised in the coming weeks.

120. On 20 August 2017, Dr Mohamed wrote to the claimant (2260) to invite him to attend a formal disciplinary hearing on 23 August 2017. He confirmed that:

“The hearing will discuss the following matters of concern:

1. *Allegations of calling the Director a liar publicly. Particulars being during a Mental Health and Wellbeing group on 24 April 2017 you had acted in a hostile and aggressive manner. Further allegations being that you stated ‘that is a lie’ and repeated it when Mr Subhi Hashwa mentioned the Director had stated in public that the Mosque accounts were £22,000 over drawn.*
2. *Alleged you have displayed uncooperative and aggressive behaviour towards work colleagues. In particular it is alleged that you have*

5 *displayed uncooperative, aggressive and intimidating behaviour during a meeting on 26 July 2017 towards Subhi Hashwa. Particulars being that during the information gathering meeting you acted inappropriately by raising your voice and used inappropriate phrases such as ‘who do you think your (sic) are’. Furthermore it is alleged that your aggressive behaviour resulted in the minute taker feeling uncomfortable in carrying out the role appropriately.”*

121. He enclosed copies of the meeting minutes of the meeting of 24 April 2017; a document from Subhi Hashwa dated 27 April 2017; a letter of
10 complaint from Mr Hashwa dated 27 July 2017; a document from Ms Herkes dated 31 July 2017 and a document from Janice Oliver dated 4 August 2017.

122. He advised that the hearing would be conducted by an impartial
15 Consultant, who would then produce a report following the hearing. He said: *“If you are unable to provide a satisfactory explanation for the matters of concern set out above, your employment may be terminated in accordance with our disciplinary procedure.”*

123. The meeting was postponed at the claimant’s request, until 29 August (228).

20 124. On 27 August 2017, a group of members of the local community with an interest in promoting health and wellbeing awareness within the Muslim community, particularly in relation to mental health, submitted a letter to the respondent (229). The signatories were Kholoud Htewash, Creative
25 Designer; Daniel Mathieson, History Graduate; Khalid Shakir, Mental Health Practitioner; Aleena Khan, Forensic Financial Analyst; and Muddassir Azam Ali, Postgraduate MSc Candidate.

125. In that letter, they said:

“We are shocked and saddened by the allegations brought forward by individuals of the Edinburgh Central Mosque administration against Imam

Yahya Barry. As we were present at the meeting on the 24/04/2017, we wish to provide a collective witness statement....

5 *The mention by Mr Hashwa of a financial deficit left by the previous administration prompted Mr Barry to express reservations – he claimed to have seen previous documentary evidence contrary to Mr Hashwa’s statement. Mr Hashwa said that he has not seen any documentary evidence pertaining to either claims, however, he had accepted on trust what Dr Naji al-Arfaj has claimed. Mr Barry then expressed his disbelief, to which Mr Hashwa pointed and accusatorily asked whether he was calling Dr*
10 *Naji al-Arfaj a liar. At no point in the meeting did Mr Barry explicitly do this, nor did he raise his voice or use an aggressive tone, although he did express his disbelief in the allegations of financial maladministration of the mosque and asked Mr Hashwa not to speak negatively of the previous administration without factual evidence.*

15 *Mr Barry left approximately half an hour into the meeting as he was unwell, as documented by the minutes. The meeting then continued between our group and the administration for a further approximately 3 hours. At the end of the meeting it was clear that the relationship between the Edinburgh Central Mosque and our group had broken down. We attempted to explain*
20 *to Mr Hashwa that we are a voluntary focus group looking into designing awareness campaigns pertaining to health and wellness, and as such his statements about lacking a legal governance framework, psychological models or an ethical framework were not applicable; no treatment was being offered or carried out by the group...”*

25 126. The scheduled disciplinary hearing took place on 23 August 2017. The hearing was chaired by Vicky Hart, of HRFace2Face Consultants. The claimant attended and was accompanied by Derek Ormiston, Regional Officer for Unite, the trade union.

30 127. A report dated 6 September 2017 was provided by Ms Hart following the meeting (249ff), which included minutes of the meeting (251ff). A further

copy of that report, dated 11 September, was provided at 272ff with annotations by the claimant.

128. The two reports were not identical. Some amendments were made to the terms of the reports following a draft having been tendered to the respondent, though it is not clear from the evidence who suggested that such amendments should be made.

129. When Ms Hart asked the claimant what had led up to the meeting of 24 April 2017, the claimant replied:

“So during the meeting, it was recalled, or it was mentioned that the previous mosque administration had left the mosque accounts, £22,000 deficit. That was not the first instance that this comment or this remark had been made. It had been made at another public announcement by the Director himself, Dr Naji... that the previous administration had left a £22,000 deficit. The first instance that he mentioned it, himself, the Director, I did not say anything, and it may have been said a second time as well, that was during a community meeting, which I did not attend, but I was informed about it. So this would have been the third instance that such an allegation was made about the previous administration, and the way I perceived it, in a way it was kind of, insinuating that there was some element of misappropriation, all why the mosque was left in such a bad state. Since I was a signatory on the mosque accounts, and I had seen that this was not the case, I challenged that. I said, I don’t think that’s correct, that the mosque was – that the accounts were overdrawn by £20,000 and furthermore, I felt that we should be fair to people. The previous director may have had his shortcomings, but we shouldn’t say things about him or his administration.

So you challenging this, then led to the allegations being put forward, is that what you’re saying? (Vicky Hart)

Yes, so I made a comment that I don’t believe that this is correct, and I recall very specifically that Mr Subhi Hashwa saying to me ‘Are you therefore calling Dr Naji a liar?’ I said to him very clearly, and this is one of

the very few moments in that meeting, that I remembers something so clearly, I said to him 'Please don't put words into my mouth, I'm not going to say that he's a liar.'

130. The claimant told Ms Hart that he had witness statements from six
5 members of the congregation who attended the meeting, and when she
asked him if he had presented them before, he said that he had not been
given the chance. This was a reference to the letter from the 6 members of
the Mental Health and Wellbeing Group (229).

131. The claimant went on to explain the position with regard to the
10 football coaching:

*“...So the idea to start a football coaching session was actually my son's
idea. We discussed it over I think, breakfast, he said it would be good to
have football, and I knew a volunteer who was a qualified UEFA licenced
coach. So I asked the mosque, can we consider this? I went through all the
15 steps, so the email basically shows the steps I had been through, sat with
the coach, we went and we looked at the facilities in the Craggs and in the
Meadows. We compiled a list of a programme, the mosque asked us to
compile a list of what we currently need, and to come up with the cost, the
budget. We did everything, and then the mosque delayed, and furthermore
20 they were not responding to these requests. So the coach, obviously he
was feeling eager, so he feels that the mosque is not really being serious in
the matter, and he asked me, or he told me that he's considering actually
taking his services elsewhere, because this is his profession, he doesn't
want to be – he lives all the way past Livingston, he doesn't want to be
25 coming and wasting his time, and he has other institutions, like he used to
coach for the Hibernians, the youth team. He doesn't want to come and
have his time wasted. At that moment I did not want to, let's say, I wanted
Sobi to hear from him directly, when he summoned me for a meeting to
explain why it was that, you know, he is now considering withdrawing his
30 services. But in that particular meeting, which the event details, Sobi kept
trying to ask, again and again, so what did the coach say, what did he say?*

Who else was present?

5 *Helema (sic) was present at that moment. So I can't recall, I mean, obviously I must have got impatient, and I did feel provoked that how come he is pushing me for information, where I have told him in an email, please, I*
10 *asked you to ask the coach, and I believe that's more ethical, because I did not want to jeopardize the coach's own relationship with the mosque, by saying that 'Oh, he thinks that you guys are not serious', because that's what he actually said, 'These people are not serious'. But I would have preferred that he speak to Sobi directly, but Sobi's trying to get information from me, which I felt was a bit unethical, and that he was pushing me."*

132. When asked about whether or not he felt he had "any issues with Haleemah", the claimant observed that he thought she may have certain issues against him because he had raised concerns about malpractice. He was asked if he had raised formal concerns about the transactions which
15 *were taking place, and he replied "Yes I have, so I wrote the Director a letter, stating these concerns and furthermore I've also had to make a disclosure in the public interest, so I have lodged a disclosure with OSCR, the Scottish Charity Regulator, telling them that this is what the accountant has told me, and I'm really concerned about what's happening. So I guess*
20 *when I'm so up front, and let's say, not going with the current, because I believe that we should do things properly, I 'm not going to be – I guess it's going to make me unpopular."*

133. He went on to say that he felt that since he had made a disclosure on
25 *5 April there had been a "gradual strangling, and a very systematic, kind of, strategy to marginalise me, silence me, and just to make life very difficult for me, to the point of pushing me to leave, or resign. It's been a very stressful environment to work..."*

134. When asked why he had raised his voice, he said that it was not
30 *raised throughout the meeting, and that he had to say something in a passionate way, but that there was a difference between saying something in that way and seeking in a premeditated way to make someone feel*

uncomfortable. He did not think his colleagues would consider him to be aggressive or hostile, but that he felt he had been provoked, and while in hindsight he regretted that he had *“momentarily lost my cool”*.

135. He accepted that he thought he did say *“Who do you think you are?”*

5 136. He also agreed that he would be happy to apologise to the individuals who had expressed concerns about his raising his voice, and that he would be prepared to engage in mediation with colleagues, if that were a recommendation made by Ms Hart arising from her investigation.

10 137. Following the inclusion of the minutes, the report then went on to make findings in relation to the allegations made against the claimant (288ff).

138. The first allegation stated:

15 *“Allegations of calling the Director a liar publicly. Particulars being during a Mental Health and Wellbeing group on 24 April 2017 you had acted in a hostile and aggressive manner. Further allegations being that you stated ‘that is a lie’ and repeated it when Mr Subhi Hashwa mentioned the Director had stated in public that the Mosque accounts were £22,000 over drawn.”*

20 139. Ms Hart found that during the meeting, the claimant had expressed his disbelief, and had had to leave the meeting early for what she found appeared to be down to frustration. She also found that on further investigation, the account was withdrawn and it was the claimant who informed the director and other employees of this. In view of this it was her belief that the claimant was fully aware of the deficit and at no point raised his concerns before, as he had always denied that the account was
25 overdrawn. She upheld this allegation as serious misconduct.

140. The second allegation stated:

“Alleged you have displayed uncooperative and aggressive behaviour towards work colleagues. In particular it is alleged that you have displayed uncooperative, aggressive and intimidating behaviour during a meeting on

145. Ms Hart pointed out that it was for the respondent to decide if it wished to accept her recommendations.

146. The report was submitted to the respondent for their consideration.

147. Having received the report, Dr Mohamed Hashim wrote to the claimant by letter dated 18 September 2017, in the following terms (293):

“Dear Mr Yahya Barry,

Outcome of Disciplinary Hearing and Termination of Employment

As you know, we engaged a third party consultant to conduct a disciplinary hearing on the 29th of August 2017. Please find attached their report, within this report two options have been made available. The first is a first and final warning and secondly dismissal under short service. In the circumstances the company has decided to opt for the later.

This will take effect immediately and you will be paid two months’ pay in lieu of notice.

You have the right to appeal against this decision and should you wish to do so you should write to myself within 5 working days of receiving this letter giving the full reasons why you believe the disciplinary action taken against you is too severe or inappropriate.”

148. The claimant was told by Dr Mohamed that the decision had been taken by the Board of Trustees of the respondent, though no mention was made in the letter of dismissal of this.

149. He decided to appeal against the decision to dismiss him, and did so by letter dated 21 September 2017 (294ff).

150. He submitted that the disciplinary action was severe and inappropriate. He said that the events in relation to the April meeting were not properly investigated, some four months after the event, to determine who was present and what transpired at the meeting.

151. He disputed that the process of investigation or formal action was halted because he had lodged grievances. He said that at the point of the meeting of 24 April, only one grievance had been presented, and the next grievance was not sent until 4 May.

5 152. He denied that he was fully aware of the deficit. He said that following the director taking office on 13 January, he had informed the director and other employees of the fact that cheques had bounced, due to the mosque account having insufficient funds. This was resolved on 22 February. He saw the bank account to confirm this as a signatory of the
10 account at the time.

153. He went on to say, in relation to paragraph 22 of the report:

*“Ms Hart asserts in her report ‘E stated that this is the very first time that YB has informed E that he is the one who made a disclosure to OSCR...’ This point along with that of the previous one (no 21) is incorrect. The director of ECM was made aware of my submitting a public interest disclosure in an
15 email sent the 1st of May. A second email was sent to him notifying him that I had to report him to OSCR following the decision to expel the Mental Health Focus Group from the mosque grounds sent – surprisingly and coincidentally – also on May 1st. Ms Hart concurs with a one-sided
20 perspective without investigating the facts thoroughly despite claiming to be impartial when she states: ‘CH confirms that she is [in] receipt of a pdf file that YB sent to one of the trustees where he appears to make it look like it was someone else who did that and not him.’ I and other members of the community, mosque employees and ex-employees have received evidence
25 showing that multiple disclosures were submitted to OSCR following the serious concerns behind certain decisions in the running of the charity.”*

154. The respondent acknowledged receipt of the letter of appeal, and confirmed that a Consultant from HRFace2Face would hear the appeal on 6 October 2017, by letter of 3 October (297). That meeting was
30 subsequently postponed at the claimant’s request in order to allow his trade

union representative to accompany him (299), until 12 October 2017, and then moved to 11 October 2017 (300).

155. On the advice of his trade union representative, the claimant prepared and read out a statement (303ff).

5 156. In that statement, he set out his concerns as to the process and to the way in which he had been treated.

157. He said that he had maintained a timeline showing the *“increasing marginalisation and ostracization I systematically received”* from 1 May onwards. He went on to say that *“I note on the timeline that on May 7th, I was removed from the planning committee responsible for hosting the Secretary General of the Muslim World League Dr Al-Issa during his Edinburgh visit. Upon his arrival, I was excluded from meeting Dr Al-Issa. May 10th: the director notified me that he was removing me from the ECM account signatory list. May 14th: I was marginalised from the organisation of the mosque’s Ramadan programme of events and activities. The administration then dropped me from the organisation of the mosque’s annual Qur’an competition. I was then sidelined from the Eid-al-Fitr celebration. On May 29th, I documented on the timeline evidence of deliberate marginalisation from outreach work by members of senior staff whom I line managed prior to this. I was subsequently removed from hosting specialist visits to the mosque.”*

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158. The claimant went on to say: *“There is evidence showing that concerted efforts have been made to find something to warrant my dismissal since my disclosure was made. The manager for Admin & Finance, Mohamed Hashim admitted in a meeting with him and Haleemah Herkes on September the 11th that he and Mr Subhi Hashwa entered my office on the 8th of August when I was away on annual leave and ‘conducted an investigation’. This was without notifying me of the nature of the investigation and its results. What makes this particularly disheartening is that it followed a report drafted by HR Face2Face employee Ms Linda Satterley dismissing my grievance regarding infringements on data*

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30

protection regulations, my own privacy and feeling safe at work as being 'paranoia'. Following the disclosure notification on the 1st of May, my emails were intercepted, my inbox monitored and my letters opened."

5 159. A report was provided by Saragh Reid, of HRFace2Face Consultants, dated 23 October 2017 (309ff). It was noted that Ms Reid had spoken with Haleemah Herkes and Ammar Thabet (Board Member) (as examples) as part of the appeal process.

10 160. He read his statement and also provided certain documents to the appeal hearing. Included within those documents was an extract from the respondent's bank statement (366).

161. The Tribunal noted, and was puzzled by, the terms of the bank statement at 366 when compared with the bank statement produced at 72/3.

162. The bank statement at 366, relating to the Business Current account no: 00673725, shows 3 entries on 1 February 2017, as follows:

- 15
- A cheque, numbered 002324, in the sum of £35,363.55, leaving a balance of -£21,518.99.
 - A cheque, numbered 002338, for £150.88, leaving a balance of -£21,669.87; and
 - A direct debit paid from the account in the sum of £540, left a balance
- 20 shown as -£22,209.87;

163. What was puzzling to the Tribunal is that the bank statement presented at 72/3, apparently for the same account, discloses, on 31 January 2017, a balance of £13,844.56, but on 1 February 2017 shows no payment of £35,363.55. More curiously, a calculation demonstrates that

25 if one were to deduct £35,363.55 from a credit balance of £13,844.56, the debit balance left would be -£21,518.99.

164. However, it appears, from close inspection of the statement on 72, that the payment of £35,363.55 was made from the account on 27 February

2017 at a point when the balance was £122,443.60, and therefore the Tribunal concluded in fact that when the statement at 366 was printed off, the payment had been made and was shown as taken from the account, but the cheque was rejected when it was presented, and as a result, the money was restored to the account.

5

165. What does not become clear from this set of deductions is why certain entries, such as the payment of £50,000 from the Muslim World League on 1 February 2017 (73) does not appear in the same order on 366. Nevertheless, the Tribunal was satisfied that the explanation given in the foregoing paragraph was the correct one.

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166. As a result, the Tribunal was unable to sustain the assertion that the Mosque was £22,000 overdrawn when the new director took over, which would have been on 13 January 2017, largely because no evidence was led in relation to the bank account at that date.

15

167. Ms Reid stated, at paragraph 15ff:

“15. In relation to YB’s claim that he was penalised due to Blowing the Whistle, as per the ACAS Code of conduct:

a. Disclosures should be made in the public interest.

b. If workers cannot go to their employer with the disclosure first they should contact a prescribed person or body.

20

16. SR believes that YB’s disclosure amounted to a grievance and therefore does not uphold this as a disclosure.

17. YB did not go to the prescribed body with his disclosure, OSCR (Office of The Scottish Charity Regulator) as a result, SR believes that YB has not made a protected disclosure and this point of grievance is not upheld.

25

18. Having spoken with Mr Ammar Thabet, Board Member, in relation to the decision taken by himself and his colleagues to dismiss YB, he advised: ‘The actions of Yahya Barry during the last few months have led to a

complete breakdown of trust and I can see no basis for any kind of working relationship.'

168. Ms Reid concluded that the appeal should not be upheld, and that the original sanction of dismissal should remain.

5 169. Dr Mohamed wrote to the claimant on 1 November 2017 (321) to confirm that the decision to dismiss the claimant was upheld by the appeal.

Submissions

170. Mr Lawson presented a written submission for the claimant, to which he spoke briefly. A summary of the submission follows.

10 171. Mr Lawson addressed the issues in the case, in turn.

172. First, he submitted that the claimant had made a number of qualifying disclosures within the meaning of section 43B(1)(a) or (b) of the Employment Rights Act 1996 (ERA). He identified 6 specific disclosures:

15 (a) 31 March 2017 – a verbal disclosure by the claimant to Dr Mohamed Hashim and Haleemah Herkes regarding payments being made from petty cash and Dr Naji inappropriately conveying a request for Ms Herkes to produce an invoice for a contractor.

20 (b) 5 April 2017 – a verbal disclosure by the claimant to Ammar Thabet and Subhi Hashwa about recruitment processes, the cessation of support to people through the mental health and wellbeing group and illegal financial transactions.

25 (c) 10 April 2017 – a written disclosure to OSCR, in relation to payments to contractors from petty cash without invoices, funds from the mosque car park not being consistently banked, a restricted fund for a mental health project not being used for its purpose and the lack of any recruitment processes.

(d) 15 April 2017 – written disclosures to Dr Makhdoum, in relation to a list of issues, namely recruitment processes, payments from petty cash,

5 failure to obtain two quotes from contractors before embarking on the construction of a bathroom for the director's personal use at the cost of £8,000, payments being made in case and therefore not properly accounted for, an invoice being request from Ms Herkes, car park funds not being deposited in the bank according to protocol, the cessation of the mental health programme and the failure to apply a restricted fund to that project.

(e) 1 May 2017 – a written disclosure to Dr Najji regarding recruitment processes and financial irregularities.

10 (f) 25 May 2017 – a written disclosure to OSCR, in relation to the restricted fund and its use.

173. Mr Lawson went on to argue that the claimant had been shown to have had a reasonable belief that the disclosures were made in the public interest, and tended to show either that the respondent had committed, was committing or was likely to commit a criminal offence or a breach of their legal obligations. In adopting this subjective belief, the claimant relied upon advice received from the Citizens' Advice Bureau and OSCR, and even if he were mistaken he would still be entitled to the protection of the legislation.

174. He submitted that the disclosures were made under section 43C(1)(a) of ERA, in relation to (a), (b), (d) and (e), and under section 43F of ERA in relation to (c) and (f).

175. Mr Lawson then moved to the detriments which the claimant alleges were visited upon him on the ground that he had made a protected disclosure. The detriments he relied upon were:

- 25
- Removal/restriction of duties, including
 - Responsibility for welcoming and hosting groups visiting the mosque.
 - Repeated refusals of permission to attend external events.

- Exclusion from planning the visit by the Secretary General of the Muslim World League and exclusion from the visit itself.
- Exclusion from panning for Ramadan events in 2017 which he had undertaken in 2016.
- 5 • Removal of access to email accounts and administrator privileges for Facebook.
- Removal as signatory of mosque bank accounts.
- Being excluded from a discussion on 20 April 2017 in relation to the Mental Health and Wellbeing Group.
- 10 • Being subjected to a disciplinary process arising in part from events which occurred more than 4 months earlier.

176. Mr Lawson submitted that the question for the Tribunal is whether the protected disclosures materially influenced the respondent's treatment of the claimant; if so, the treatment will be regarded as being "on the ground
15 of" the disclosure in terms of section 47B.

177. He also argued, moving (it appears) to the complaint in relation to dismissal, that when faced with a case in which the claimant alleges that he has made multiple protected disclosures, the Tribunal should ask itself whether, taken as a whole, the disclosures were the principal reason for
20 dismissal.

178. He then submitted that this was a case in which the Tribunal can and should rely upon the reversal of the burden of proof under section 48(2) of ERA. He said that the respondent has chosen not to adduce evidence from the individual most involved in the treatment which the claimant alleges to have constituted detriments, Dr Naji. Since there is, as often in such case,
25 a dearth of direct evidence that the respondent took decisions on the ground of having made protected disclosures, the Tribunal can and should draw inferences.

179. The absence of investigation into most of the disclosures suggests that the respondent did not wish to deal with the matters raised. He argued that the respondent acted in this way in order to persuade the claimant to resign, and this provocation resulted in the claimant's conduct on 26 July 2017.

180. He set out the time line of events in order to suggest that the sequence should give rise to an inference. He was subjected to detriments because he made the disclosures.

181. With regard to the dismissal, there is no reverse burden of proof, and therefore the claimant must show on the balance of probabilities that the dismissal was for automatically unfair reasons. The Tribunal must consider the decision making process in the mind of the dismissing officer, but this is not possible in this case. Again, the Tribunal may draw inferences, and Mr Lawson invited us to draw inferences from these factors:

- The four month delay in taking action against the claimant in relation to allegations about conduct at a meeting on 24 April 2017.
- The respondent's failure to investigate all but one of the disclosures made by the claimant.
- The respondent's heavy-handed removal of the claimant from the premises by security on the day of his dismissal.
- The inaccuracies and ambiguities contained in the grounds of resistance to the claim.
- An unexplained amendment to a key part of the HRFace2Face report forming the basis of the claimant's dismissal.
- Paragraph 17 of the appeal outcome which said that no disclosure had been made to OSCR which was clearly erroneous.

182. Mr Lawson submitted that the claimant and his witnesses were credible and reliable, and that the Tribunal should prefer their evidence to that of the respondent's witnesses in the event of a conflict.

183. Mr Lawson referred the Tribunal to a number of authorities in this area.

184. He invited the Tribunal to find in favour of the claimant in relation to all claims made.

185. For the respondent, Mr MacLean made an oral submission, whose terms are summarised briefly below.

186. He referred to a recent Court of Appeal decision, **Kilraine v London Borough of Wandsworth [2018] EWCA Civ 1436**, and in particular to paragraphs 35 and 36 as to the nature of a disclosure.

187. He submitted that when one considers the substance of the disclosures, he was not sure what section of section 43B these complaints fit into.

188. In the ET1, he observed, there seemed to be suggestions of criminal acts or breaches of legal obligations, but he remained unsure as to how they could fall under either definition, as they do not provide sufficient detail to qualify as qualifying disclosures.

189. Mr MacLean submitted that the claimant and his witnesses did diverge on certain points. For example, with regard to petty cash, he pointed out that the claimant said he was concerned that petty cash payments were being made without invoices, but the accountant said that he authorised it and then noted and recorded what was distributed. The claimant's own handwritten notes on the bank statement contradict that position. If there is a discrepancy between the claimant and the accountant, this is of importance because the claimant said that the financial irregularities came to his attention from the accountant.

190. With regard to the car park receipts, the claimant said in evidence, for the first time, that the money from the car park was taken by Dr Naji and used for inappropriate purposes. That was not what the accountant said. He was concerned that the funds were not banked on the same day. While there was a big issue about a breach of protocol, there was no evidence as to what the protocol actually was. The issue for OSCR was that the funds were not consistently banked but that only happened on one occasion.

191. Mr MacLean submitted that there were indeed proper grounds for the cancellation of the Mental Health and Wellbeing Group. The claimant said it was a self-help group, with no counselling or therapy provided, but that was not supported by the evidence. The notes showed that they were considering psychotherapy, and Mr Khalid Shakir said that he was providing counselling services to patients referred to him by the claimant. This suggests that there were concerns about the management and operation of the group.

192. Mr MacLean submitted that the respondent had demonstrated that they had grounds to dismiss. With regard to the suggestion that the claimant had called the director a liar, he said that he could “almost accept that he may not have used those words” but that he had made clear that he disputed the statement in relation to the mosque finances, and one of the witnesses said that the claimant had challenged the veracity – the truthfulness – of the statement. There were grounds to support that even if he may not have used the words “lied” or “liar”,

193. The claimant accepted that he raised his voice. The respondent says that this was in an aggressive manner, and he accepted that he used inappropriate language to his line manager. Even if the Tribunal is not prepared to accept that he called Dr Naji a liar there is evidence that he spoke aggressively to his line manager.

194. With regard to the alleged detriments, the claimant said that he was restricted from dealing with school visits, said Mr MacLean, but he was also aware that someone had been appointed to do this so it is difficult to

understand why he was surprised about it. His Facebook privileges were all removed because of the breach of confidentiality in relation to financial information, done as a general process rather than singling him out.

5 195. The respondent delayed taking disciplinary action because of the claimant having lodged grievances, and they did so having taken advice. It was reasonable for them to have done so.

10 196. Mr MacLean invited the Tribunal to accept that based on the evidence the concerns do not meet the requirements to be qualifying disclosures, and therefore the statutory protections do not apply. Accordingly, there is no basis for the claims of detriments or unfair dismissal. In any event, he submitted, there is no basis for finding that the disclosures were the sole or principal reason for the dismissal. He therefore invited the Tribunal to dismiss the claims in their entirety.

The Relevant Law

15 197. Section 43A of the Employment Rights Act 1996 (“ERA”) 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.”

20

198. A qualifying disclosure is defined in section 43B as *“any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following:*

25

a. That a criminal offence has been committed, is being committed or is likely to be committed;

b. That a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject;

30

c. That a miscarriage of justice has occurred, is occurring or is likely to occur;

- d. *That the health or safety of any individual has been, is being or is likely to be endangered;*
- e. *That the environment has been, is being or is likely to be damaged;*
or
- 5 f. *That information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed.”*

199. Section 47B prohibits a worker who has made a protected disclosure
10 from being subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker made a protected disclosure.

200. Helpful guidance is provided in the decision of **Blackbay Ventures Ltd (t/a Chemistree) v Gahir [2014] IRLR 416** at paragraph 98:
15

“It may be helpful if we suggest the approach that should be taken by employment tribunals considering claims by employees for victimisation for having made protected disclosures.

20 1. *Each disclosure should be identified by reference to date and content.*

2.. *The alleged failure or likely failure to comply with a legal obligation, or matter giving rise to the health and safety of an individual having been or likely to be endangered or as the case may be should be identified.*

25

3. *The basis upon which the disclosure is said to be protected and qualifying should be addressed.*

4. *Each failure or likely failure should be separately identified.*

30

5. *Save in obvious cases if a breach of a legal obligation is asserted, the source of the obligation should be identified and capable of verification by reference for example to statute or regulation. It is not sufficient as here for the employment tribunal to simply lump together a number of complaints,*

5 *some which may be culpable, but others of which may simply have been references to a check list of legal requirements or do not amount to disclosure of information tending to show breaches of legal obligations. Unless the employment tribunal undertakes this exercise it is impossible to know which failures or likely failures were regarded as culpable and which attracted the act or omission said to be the detriment suffered. If the employment tribunal adopts a rolled up approach it may not be possible to identify the date when the act or deliberate failure to act occurred as logically that date could not be earlier than the latest of act or deliberate failure to act relied upon and it will not be possible for the Appeal Tribunal to understand whether, how or why the detriment suffered was as a result of any particular disclosure; it is of course proper for an employment tribunal to have regard to the cumulative effect of a no of complaints providing always have been identified as protected disclosures.*

15
6. *The employment tribunal should then determine whether or not the claimant had the reasonable belief referred to in s43B(1) and under the 'old law' whether each disclosure was made in good faith and under the 'new' law whether it was made in the public interest.*

20
7. *Where it is alleged that the claimant has suffered a detriment, short of dismissal it is necessary to identify the detriment in question and where relevant the date of the act or deliberate failure to act relied upon by the claimant. This is particularly important in the case of deliberate failures to act because unless the date of a deliberate failure to act can be ascertained by direct evidence the failure of the respondent to act is deemed to take place when the period expired within which he might reasonably have been expected to do the failed act.*

30
8. *The employment tribunal under the 'old law; should then determine whether or not the claimant acted in good faith and under the 'new' law whether the disclosure was made in the public interest."*

201. In addition, reference was made to the well-known decisions in **Kuzel v Roche Products Ltd [2008] EWCA Civ 380**, **Fecitt & Ors v NHS Manchester [2012] ICR 372** and **Cavendish Munro Professional Risks Management Ltd v Geduld [2010] ICR 325 EAT**.

5 202. In, **Kilraine v London Borough of Wandsworth [2018] EWCA Civ 1436**, at paragraphs 35 and 36, the Court of Appeal set out guidance on whether a particular statement should be regarded as a qualifying disclosure:

10 *“35. The question in each case in relation to section 43B(1) (as it stood prior to amendment in 2013) is whether a particular statement or disclosure is a ‘disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the matters set out in sub-paragraphs (a) to (f). Grammatically, the word ‘information’ has to be read with the qualifying phrase ‘which tends to show [etc]’ (as, for example,*
15 *in the present case, information which tends to show ‘that a person has failed or is likely to fail to comply with any legal obligation to which he is subject’). In order for a statement or disclosure to be a qualifying disclosure according to this language, it has to have a sufficient factual content and specificity such as is capable of tending to show one of the matters listed in subsection (1). The statements in the solicitors’ letter in Cavendish Munro did not meet that standard.*

20 *36. Whether an identified statement or disclosure in any particular case does meet that standard will be a matter for evaluative judgment by a tribunal in light of all the facts of the case. It is a question which is likely to be closely aligned with the other requirement set out in section 43B(1), namely that the worker making the disclosure should have the reasonable belief that the information he discloses does tend to show one of the listed matters. As explained by Underhill J in Chesterton Global at [8], this has both a subjective and an objective element. If the worker subjectively*
25 *believes that the information he discloses does tend to show one of the listed matters and the statement or disclosure he makes has a sufficient*
30

factual content and specificity such that it is capable of tending to show that listed matter, it is likely that his belief will be a reasonable belief.”

Discussion and Decision

5 203. As set out above, the issues for determination by the Tribunal are as follows:

a. *Did the claimant make a qualifying disclosure within the meaning of section 43B(1)(a) or (b) of the Employment Rights Act 1996? In particular:*

10 i. *Did the claimant make a disclosure of information which in the claimant’s reasonable belief tends to show:*

1. *that a criminal offence had been committed, was being committed or was likely to be committed;*

15 2. *that the respondent had failed, was failing or was likely to fail to comply with any legal obligation to which it was subject?*

ii. *If so, did the **claimant** reasonably believe that the disclosure was made in the public interest?*

20 b. *Did the respondent subject the claimant to any detriment on the ground that he had made a protected disclosure in terms of section 47B of the 1996 Act?*

c. *Was the reason, or if more than one the principal reason, for the claimant’s dismissal the fact that the claimant had made a protected disclosure and was the dismissal therefore unfair within the meaning of section 103A of the 1996 Act?*

25 204. The Tribunal addressed the first issue as set out here:

a. *Did the claimant make a qualifying disclosure within the meaning of section 43B(1)(a) or (b) of the Employment Rights Act 1996? In particular:*

5

i. *Did the claimant make a disclosure of information which in the claimant's reasonable belief tends to show:*

1. *that a criminal offence had been committed, was being committed or was likely to be committed;*

2. *that the respondent had failed, was failing or was likely to fail to comply with any legal obligation to which it was subject?*

10

ii. *If so, did the claimant reasonably believe that the disclosure was made in the public interest?*

205. The claimant asserted that he had made disclosures on six separate occasions, and accordingly it is necessary to determine whether any or all of these alleged disclosures meet the test of qualifying disclosures.

15

206. The first disclosure was allegedly made, verbally, on **31 March 2017**, by the claimant to Dr Mohamed Hashim and Ms Herkes.

207. It should be noted that the ET1 makes no reference to such a disclosure.

20

208. What the claimant said in evidence was that he had told Dr Mohamed and Ms Herkes that Dr Naji instructed Ms Herkes to write invoices for work done on his personal bathroom within the Mosque.

25

209. However, it is our conclusion that that is not what he said. Dr Mohamed and Ms Herkes, who were both straightforward in their evidence, said that the claimant approached them and told them that a contractor was instructing Ms Herkes to write invoices for them. In addition, Mr Werfali, in his evidence before us, did not say that he had told the claimant that the director was instructing Ms Herkes to write invoices for contractors, but that the contractor himself had done so.

210. As a result, the claimant's version of events is not supported by any other witness, and in particular it is not supported by the person he said was the source of his information, Mr Werfali.

211. Accordingly, we do not accept that this amounted to the disclosure which the claimant asserted he made on 31 March 2017, and we cannot
5 conclude that such a disclosure was made on that date. In any event, no notice is given in the ET1 that such an assertion was to be made, and accordingly the claim is not relevant to the complaint before this Tribunal.

212. The second disclosure was alleged to have been made on **5 April**
10 **2017**, verbally, in a meeting with Ammar Thabet and Subhi Hashwa, in the presence of Dr Naji. The Tribunal did not hear evidence from either Mr Thabet nor Mr Hashwa, nor Dr Naji.

213. This is referred to at paragraph 3 of the ET1, though the claim suggests that it was on or around 6 April. However, in evidence, the
15 claimant clarified that the meeting took place on 5 April.

214. The claimant made reference to this meeting in his email of 1 May 2017, in which he notified Dr Naji of his making a protected disclosure. He said (129) that at a meeting on 6 April he reported to them "concerns about the administrative, financial and social cohesive issues of the mosque and
20 community."

215. The Tribunal heard no direct evidence about this meeting from the claimant, and the alleged disclosure at paragraph 3 of the ET1 provided no more detail than that set out in the email. As a result, it is not possible to establish whether a qualifying disclosure was made by the claimant at this
25 meeting, as the evidence is too vague to allow us to draw any conclusions about what the content of the concerns referred to at 129 actually were.

216. As a result, the Tribunal does not find that there was a qualifying disclosure made on 5 (or indeed 6) April 2017 by the claimant.

217. The third disclosure relied upon by the claimant related to his email
30 to OSCR, dated **10 April 2017** (85ff).

218. In that form, the claimant set forth the following information:

219. *“Financial violations regards payments of contractors using petty cash – by hand without invoices. The contractor Mr Ashiq Hussain has received multiple cash in hand payments by order of the director from petty cash amounts calculated by the resigned accountant at £8,000 approx. In addition to this, funds generated from the mosque car park are not being consistently banked. A restricted fund for a mental health project is not being used for its purpose. Unilateral decisions to appoint and employ individuals into positions without official recruitment protocol being followed.*

10 *I have notified each of the following: the director Dr Naji Arfaj on a meeting held on the 5th of April in the presence of a trustee member, Mr Ammar Thabet, the manager for Education (Mr Subhi Hashwa) that financial violations had led to the resignation of the accountant Mr Ahmed Werfali. On March 31st I had likewise flagged the issue to Dr M Hashim (Manager of Finance & Admin) and Ms Haleemah Herkes – Company Secretary”.*

220. The claimant asserts before this Tribunal that he made disclosures to OSCR of four matters:

- Payments to contractors from petty cash by hand without invoices;
- Funds generated from the mosque car park not being consistently banked
- A restricted fund for a mental health project not being used for its purpose
- Lack of any recruitment processes.

221. The claimant does refer to each of these matters in the body of his whistleblowing form to OSCR. The question for the Tribunal is whether any or all of these concerns amount to qualifying disclosures within the meaning of the Act.

222. The claimant asserted that payments were being made to contractors from petty cash without invoices being submitted. That, in our judgment, is properly a disclosure of information, rather than an allegation, and is potentially a qualifying disclosure. He obtained the knowledge of these matters from the accountant on 31 March, and also saw and noted the terms of the bank statement (88ff) which the accountant had explained to him.

223. It is not possible to discern a basis upon which it is asserted that the respondent was guilty of any criminal offence in raising this matter, and it is not clear, at the point when the disclosure was made, whether the claimant had taken any specific advice which might lead him to believe reasonably that a criminal offence was being committed. The Tribunal is unable to conclude that this information could amount to a criminal matter, based on what was said to OSCR. In general terms, it might be possible to suggest that cash payments without invoices could be seen to be payments “outwith the books” with the intention of avoiding tax payments, but in this case, since the payments were being made by the respondent rather than to them, it is not possible to see what criminal act could arise from this assertion. The claimant himself appeared to accept in the course of the evidence that this was not a criminal matter, and we would concur with that.

224. However, he also suggested that this information demonstrated that the respondent was not complying with legal obligations to which it was subject. He referred to transparency and to good accounting practices necessary to convince the regulator that the respondent was handling finances appropriately. He certainly believed, in our judgment, that the respondent could not justify payments out of petty cash to contractors without proper written demonstration that the payments were made in response to invoices for work properly carried out.

225. Nevertheless, while the claimant’s concerns may be vague, we are persuaded that this disclosure amounted to a qualifying disclosure. The respondent accepted this in their ET3.

226. The second assertion in the email was that the car park receipts were “not being consistently banked”. The Tribunal was unsure as to precisely what the claimant was complaining about here. In his evidence, he said that the car park receipts should not have been handled by a volunteer, and that protocols were not being followed. However, the disclosure he made here does not go so far as this, at this point, and only suggests that the cash was not being consistently banked. He did not say that the money was not being banked at all, nor did he suggest, as he did before us, that the money was being taken by the director and used for his own purposes within the Mosque.

227. The claimant was not prepared to disclose who had told him this. As a result, this appears to be an anonymous allegation, about which the claimant knew nothing himself. We cannot find that the claimant had a reasonable belief about a matter in relation to which he could not be sure if he were right or not. It is not even clear whether the claimant believed it or not: he simply wanted to raise it as a potential issue, in our judgment.

228. As a result, we are unable to discern what legal obligation or criminal offence the claimant was seeking to accuse the Mosque of having breached or committed, and therefore we do not find that this particular assertion amounted to a qualifying disclosure at 10 April 2017.

229. The third complaint was that a restricted fund was not being used for the purpose for which it was intended. Again, we are unable to understand what criminal offence is being referred to here, but it appears to be clear that the claimant is saying that the respondent cannot use restricted funds for other than the purpose for which the funds were allocated. He refers to their charitable obligations, without defining precisely what they are. However, it is our judgment that this amounts to a disclosure of information, which may in the reasonable belief of the claimant have demonstrated that they failed to comply with a legal obligation to which they were subject, namely only to use funds for the purpose for which they are allocated, or, in this case, donated.

230. The fourth complaint was that unilateral decisions were taken to appoint and employ individuals into positions without the official recruitment protocol being followed. It is understood that this was a reference to the appointment of Dr Mohamed Hashim and Mr Hashwa into management positions without their posts being advertised, interview processes being carried out and a transparent selection process being followed.

231. We accept that this was a disclosure of information. The fact that the posts were allocated “unilaterally” does not of itself suggest any breach of process: any decision on recruitment is taken unilaterally by an employer. The claimant may have meant something else – for example, that the director was acting without authority and therefore unilaterally – but he did not say that explicitly and it is not our understanding that that was what he was saying at the time.

232. However, a charity may be reasonably believed to have transparent recruitment procedures which ensure that the appointment of any individual follows a process which is not discriminatory. It is not for the Tribunal to allocate to this any particular legal provision, but we accept that the claimant honestly believed that the respondent was in breach of its legal obligations in relation to the recruitment of staff. Again, however, we see no basis for suggesting any criminal offence has taken place in this regard.

233. It is our conclusion, therefore, that the first, third and fourth disclosures in the email and attachment sent to OSCR on 10 April 2017 were qualifying disclosures under the Act.

234. The claimant then asserts that he made written disclosures to Dr Makhdoum, a trustee of the respondent, by email dated **15 April 2017**.

235. He suggests that there were a large number of concerns raised at this time with the recipient of the email, enclosing as it did a 22 page report.

236. The claimant relies upon a number of concerns having been raised with Dr Makhdoum in that email and attachment.

237. He maintains that he raised the recruitment processes again, as well as the payments from petty cash and payments being made in cash not being properly accounted for. In addition, he refers to the invoice being requested from Ms Herkes, the failure to obtain two quotes from contractors before embarking on the construction of a bathroom at a cost of £8,000, the car park funds not being deposited in the bank in accordance with protocol, the cessation of the mental health project, and the failure to apply a restricted fund to that project.

238. The letter which the claimant relies upon was produced, in Arabic, at 96ff, with an English translation at 100-104.

239. Within the letter, the claimant repeats his complaint that it is not permissible to pay in petty cash for certain transactions in the British Charity Regulations; and also that contrary to the regulations of "the Association" two "bills", understood to mean quotations, must be submitted by contractors before embarking on any project.

240. Payments were made to the value of £8,000 in order to facilitate potential tax evasion. He also asserted that Dr Naji asked the secretary to write an invoice for the contractor. He says that money is not banked from the car park receipts in accordance with the protocol, though he acknowledges that he does not know whether or not this is the case.

241. He went on to say that the mental health project was stopped, and the funds were not being spent for that project despite being restricted.

242. In our judgment, this disclosure adds little to the previous disclosure on 10 April, other than the fact that it was directed at a trustee of the Board of the respondent. We heard no evidence from Dr Makhdoum and therefore cannot know whether or not he disputes receiving it, though the text messages passing between him and the claimant are suggestive that he did.

243. We cannot find that the assertion that the respondent closed down the Mental Health and Wellbeing Group amounts to a qualifying disclosure.

There is no legal obligation which the claimant suggests is being breached here. It is plain that the claimant was very upset and angry that the work of the group was not supported by the respondent, but that does not mean that the respondent has not complied with any legal obligation by closing it
5 down. Our understanding of the evidence was that the reason which the respondent gave in making this decision was that they had discovered that the group may be offering a service which was becoming part of a care pathway, involving clinical treatment by a qualified psychotherapist, and were very concerned that the respondent may be exposed to risks of which
10 it was not aware and had not contemplated. For example, it was clear that the respondent was anxious that if a patient were to raise legal proceedings for negligence against them in respect of any treatment given, for which they were referred by the group, they may be exposed to a litigation risk for which they were not prepared and for which insurance and other
15 precautions would need to be considered.

244. That disclosure, that the respondent had shut down the work of the group, did not amount to one involving any legal obligation with which the respondent had to comply. As a result, that did not amount to a qualifying disclosure made by the claimant in this email of 15 April.

20 245. In this email, there is mention, for the first time, of the director allegedly having asked Ms Herkes to complete an invoice for a contractor. In our judgment, this is not a disclosure of information but an allegation, and not one based on the information possessed at that time by the claimant. Mr Werfali had not, in our judgment, suggested that Dr Naji had instructed
25 or asked Ms Herkes to produce an invoice, but had told him that the contractor had asked her to do that. As a result, the claimant had no knowledge, and in our judgment no reasonable belief, that such a practice was taking place in the Mosque.

246. There is also mention of the car park funds not having been banked
30 according to a local protocol. The claimant has not, however, proved that there was any such protocol, nor produced such a document, and in the

absence of any information or evidence about this we cannot sustain the submission that this assertion amounted to a qualifying disclosure.

247. However, by way of repeating earlier disclosures which did amount to qualifying disclosures, we have found that the claimant has made protected disclosures in this email.

248. We consider that these matters were in the public interest. The financial probity of a charitable organisation is the subject of scrutiny by the registration body for charities, for very good reason. The respondent's organisation exists on the basis of monies provided either by members of the Mosque or by the Muslim World League, and therefore members of the public have provided financial donations to the organisation. In light of that, it is in the public interest that the financial and other aspects of the governance of the Mosque are raised as concerns by the claimant in this context.

249. The fifth disclosure was the email of **1 May 2017** to Dr Naji (129) again complaining about recruitment processes and financial irregularities.

250. He accused Dr Naji of introducing into the work environment "individuals/volunteers/staff" without announcement of the vacancies, verification, shortlisting and vetting. He also complained that some of the individuals were given access to confidential information without clear controls, potentially violating the Data Protection Act.

251. He also referred to the document he attached to his email and letter to Dr Makhdoum, complaining that he had received neither acknowledgement nor reply.

252. Again, there is little new material in this disclosure, which primarily refers back to the concerns previously raised in relation to recruitment and financial matters.

253. With regard to recruitment, the assertion in this email is vague and very inspecific. It is not clear from its terms that the claimant knew or reasonably believed any of these matters, and it is not clear whom he was

saying was affected. It is a very general accusation rather than the disclosure of information, but in those general terms it may be consistent with the previous disclosure about recruitment processes not being properly followed nor being transparent.

5 254. The sixth disclosure is said to have been a further disclosure to
OSCR dated **25 May 2017** (137). This is simply a reference to the restricted
fund which had now been overhauled by the current administration. This is
not a new matter disclosed by the claimant, though it is, again, a very
unclear assertion. That the restricted fund had been overhauled is not itself
10 an assertion of wrongdoing. The respondent's argument about this fund
was that when the group was disbanded they went to the donor and told him
that the fund would no longer be used for that purpose. His response, we
were told, was that they could use the funds for other particular purposes in
light of that. Whether or not that is true, the assertion that the restricted
15 fund had been overhauled is not of itself a disclosure of wrongdoing but a
statement of fact, which is not particularly surprising in circumstances where
the purpose for which the fund had been restricted is no longer required by
the respondent.

255. It is our judgment, however, that the claimant has made qualifying
20 disclosures as we have set out above, and that he had a reasonable belief
that they were correct and accurate, insofar as they went.

256. The next issue for the Tribunal to determine is as follows:

*b. Did the respondent subject the claimant to any detriment on the
ground that he had made a protected disclosure in terms of section
25 47B of the 1996 Act?*

257. The claimant relies upon a number of detriments to which he says he
was subjected by the respondent on the ground that he had made a
protected disclosure.

258. It is first necessary to establish whether or not the alleged detriments
30 amounted to detriments to the claimant.

259. The claimant complains that he had duties removed from him, or restricted, by the respondent. In particular he says that his responsibility for welcoming and hosting groups to the Mosque were restricted.

5 260. In April 2017, the respondent recruited Chiraz Bensaad Sellami to take responsibility for the visits to the Mosque, and she became the first point of contact for Ms Herkes, when receiving requests, to arrange such visits. It is plain that while she maintained responsibility for such visits, the claimant continued to be involved with some visits, and therefore he was not completely excluded from this responsibility. There is no doubt that his
10 involvement in this matter decreased while Chiraz was working in the Mosque, but she left her position after a month, and therefore the previous shared responsibility for visits resumed.

15 261. The claimant sought to suggest that he was only responsible for those specialist visits, meaning groups of senior school pupils, students and adults, on the basis that he was trained to provide answers to difficult questions about the beliefs of Muslims. However, the evidence demonstrated that a number of people were involved in this process, and that it was not invariably the claimant who attended to all such groups.

20 262. In any event, we concluded that it was not a detriment to the claimant to have appointed an individual to take responsibility for such visits. As we will return to, there was a difficulty in all of this for both parties in that there was no agreed job description given to the claimant at the outset of his employment. Although he drafted a questionnaire setting out what he considered his duties, there was no evidence that the respondent accepted
25 that to be accurate.

30 263. He also complained that he was told by his line manager that he was not to attend to particular venues, such as the BBC or Heriot-Watt University, as they employed him to take care of the duties of an Imam at the Mosque itself. Although these were not clearly defined, it did not appear to us to amount to a detriment to require the claimant to be in attendance at the Mosque in order to take responsibility for daily prayers. The claimant

accepted that that was a duty for which he was responsible, and he accepted, further, that he required to seek the permission of his line manager before attending such meetings outwith the Mosque. While he may have been annoyed at being refused permission, he clearly required to seek it, and understood that. As a result, it is our judgment that it was open to his line manager to decline his request in favour of allowing him to remain in the Mosque to carry out his duties there.

264. The claimant next identified the exclusion he suffered from both the planning of the visit of the Secretary General of the Muslim World League and from the visit itself, as a detriment.

265. It was clear to us that the claimant, as the Imam in the Mosque, felt that to be excluded both from the planning of the visit and the visit itself was an affront to his dignity and status. No explanation was given to him about the fact that he was invited to the first one or two meetings of the planning group, but not thereafter, and that he was not informed of the details of the visit itself nor invited to meet with Dr Al-Assa. He put it very strikingly when he complained that even the security staff were able to meet with him.

266. While the respondent said that the visit was necessarily shorter than had been initially anticipated, and that the meeting itself only involved Trustees of the respondent (of which the claimant was not one), we accepted that the failure to permit the claimant to be involved in either the planning or the visit, without explanation to him, amounted to detrimental treatment by the respondent. The claimant was not, in effect, permitted to meet with a highly influential figure within the governing body for Muslims the world over, and it is entirely understandable to us that he would regard this as embarrassing and possibly humiliating. It appears that it was the decision of Dr Naji, but no evidence was heard from the director before us.

267. The claimant said that he was then excluded from the planning of Ramadan events in 2017, having been responsible for such planning in 2016. We were given very little evidence as to why the claimant considered that this amounted to a detriment, and why it was he understood that he

was no longer to be involved in this matter. It is clear that following the introduction of Dr Naji as director there were some rearrangements made to the structure of the organisation, and this did not appear to us to figure significantly in the claimant's thinking, albeit that he did raise it before the Tribunal. We are unable to sustain the assertion that this amounted to a detriment to which he was subjected, himself.

268. The claimant complained that he had his email accounts and Facebook privileges withdrawn at the start of May. This was not, however, a matter which related only to him, but to the majority of staff of the respondent, because an investigation needed to take place in order to find out where a leak of financial information had come from within the organisation.

269. This was a peculiar matter. There appeared to be a suggestion that the person who emailed to the respondent on 28 April 2017 (Abdulaziz Sheikh) (126) was not only unknown to the claimant but also to the Mosque, despite saying that he had been a member of the Muslim community for many years and had been coming to the Mosque for some time; but there was also a further suggestion, in the disciplinary process, that the claimant was in fact responsible for this email, under an assumed name, since the information contained within it was the same as that which the claimant said he had received, at least to some extent, from Mr Werfali.

270. No action was taken against the claimant in this regard, and no findings were made by the respondent about this. We are consequently unable to make any findings in fact about the identity of the sender of the email of 29 April to OSCR.

271. However, in our judgment, it was entirely reasonable for the respondent to take the view that the email, if taken at face value, disclosed information which was confidential to the respondent's organisation, and must therefore have been received from someone within it or with strong links to it. Taking precautions to ensure that there could be no repeat was understandable. The decision to remove email and Facebook privileges

applied to staff across the organisation. It is clear that while the claimant did not have those privileges restored, neither did many others. There was no detriment visited upon the claimant in this regard.

5 272. The claimant complained that he was removed as a signatory of the bank accounts, and that the only explanation for this was that the respondent had changed its organisational structure.

10 273. In our judgment, this did not amount to a detriment to the claimant. The evidence demonstrated that the claimant's role was primarily spiritual and pastoral, and that responsibility for financial matters fell ultimately to the director but also those line managers appointed by him for the purpose. As a result, we saw nothing detrimental in the restriction of access to the respondent's bank accounts and indeed considered the decision to amount to no more than good governance on the part of the Mosque.

15 274. The claimant complained that he was excluded from a meeting regarding the Mental Health and Wellbeing Group on 20 April 2017. This was perceived to be the claimant's project (and indeed the respondent's witnesses accepted this to be the case in evidence).

20 275. However, it is clear that the decision to terminate the work of the group was taken by the respondent at the meeting of 24 April, at which the claimant was in attendance, or at least communicated to the group at that meeting. It is difficult to see, in light of this opportunity to meet with management, who were responsible for the decision, why the claimant should suggest that he was excluded unfairly from a previous meeting to discuss the matter. We heard very little evidence about such a meeting from
25 the claimant, and accordingly there is no basis upon which we could find that the claimant was either excluded from the meeting or subjected to a detriment by being unable to attend it.

30 276. Finally, the claimant complained that being subjected to a disciplinary process arising in part from events that occurred more than 4 months earlier amounted to a detriment.

277. The difficulty for the Tribunal in addressing this issue is that this is fundamental part of the claimant's claim of automatically unfair dismissal, and accordingly, since the two cannot co-exist, we have determined that it is appropriate to consider the disciplinary process as part of the unfair dismissal claim rather than as a separate detriment.

278. It is therefore our conclusion that the claimant was subjected to a detriment by the respondent in his exclusion from the planning meetings for the visit, and the visit itself, of the Secretary General of the Muslim World League.

279. It is necessary, then, to consider whether or not he was subjected to that detriment on the ground of having made a protected disclosure.

280. It is impossible for the Tribunal to reach a factual conclusion on this matter in the absence of any explanation by the respondent as to why he was not permitted to take part in the visit, given at the time. Dr Hashim said in evidence that the visit had been originally envisaged as a longer visit, with representatives of the wider Scottish Muslim community in attendance, but that was restricted to a meeting with the Board of Trustees in the Mosque.

281. It is difficult for the Tribunal to determine when any such decision was taken in relation to the claimant's involvement, but the visit took place on 7 and 8 May 2017.

282. By those dates, the claimant had submitted his whistleblowing form to OSCR on 10 April 2017. The respondent claimed that they were not aware of that disclosure until the disciplinary process. They did receive a letter from OSCR on 13 June 2017, however, (175) in which it was confirmed to them that a number of concerns had been raised about the current governance of the charity and the possible misuse of charitable funds, and asking to meet with the Trustees. The claimant's name was not mentioned in that letter.

283. Even if the claimant's name had been mentioned by OSCR, the respondent could not have known about the disclosure to OSCR dated 10

April until they were informed about it. We have not found that the respondent was aware of the disclosures prior to that letter, and accordingly that cannot form the basis upon which action was taken against the claimant in relation to Dr Al-Assa's visit.

5 284. The claimant also referred to the disclosure on 15 April 2017 to Dr Makhdoum. We have considered this matter carefully, and in the absence of any contradictory evidence from the respondent, (none of the Trustees having given evidence before us), we are bound to accept the claimant's
10 contention that he sent this to a Trustee of the respondent on 15 April 2017, and that he had subsequent conversations with the Trustee indicating that he had received it.

285. We have no evidence as to who he transmitted this information to, or whether he did or did not do so. However, it is our judgment that the respondent must be taken to have known, when the claimant was excluded
15 from the meetings about the visit, and from the visit itself, that he had raised disclosures about the conduct and governance of the Mosque on 15 April 2017.

286. The respondent would argue that there is no evidence upon which the Tribunal can find specifically that that was the reason why he was
20 excluded or indeed that any such decision was actually made. However, we accept that in the absence of evidence specifically from Dr Naji and Dr Makhdoum we may draw an inference from the facts before us.

287. We have concluded that it is just to draw the inference from these facts, in the absence of any explanation at all from the respondent, that the
25 reason why he was excluded from the planning of the visit of the Secretary General, and from the visit itself, without explanation at the time, was that he had raised disclosures with the respondent about the issues set out in the email and attachment of 15 April 2017.

288. Accordingly, we find that the respondent did subject the claimant to a
30 detriment on the ground of having made a protected disclosure on 15 April 2017.

289. Finally, we address the final issue before us:

5 c. *Was the reason, or if more than one the principal reason, for the claimant's dismissal the fact that the claimant had made a protected disclosure and was the dismissal therefore unfair within the meaning of section 103A of the 1996 Act?*

10 290. In assessing this question, the Tribunal is acutely aware that it is not for us to determine whether the dismissal was fair under section 98 of ERA (by the standards of what might be colloquially known as an "ordinary" unfair dismissal claim). What we require to do is assess what the reason for dismissal was in this case, and thus establish whether the reason or, if more than one, the principal reason was that the claimant had made a protected disclosure or disclosures.

15 291. In this case, the dismissal of the claimant was conveyed to him by Dr Mohamed Hashim, who wrote the letter confirming the decision, but who did not take the decision to dismiss. We did not hear any evidence from any individual who participated in the decision to dismiss the claimant. We heard no explanation from the respondent as to why this was. We understood from the course of the evidence that Dr Naji, the Director of the respondent and thus the senior executive on the Board of Trustees, had been absent from work owing to illness at some stage, but it was not clear
20 to us whether he remained unwell at the point of the hearing in this case.

292. We accept that the burden of proof remains on the claimant to demonstrate that the reason for dismissal was that he had made protected disclosures.

25 293. What the respondent's letter to the claimant dismissing him said was that within the report by the consultant from HRFace2Face there were two options "made available" to the respondent, either to issue a first and final warning or to dismiss "under short service" (293). In the circumstances, the letter said, the respondent had decided to opt for the latter.

294. The consultant report (272ff) had concluded that the two allegations of misconduct levelled at the claimant had been upheld.

295. The two allegations related to the claimant's conduct. The first allegation referred to hostile and aggressive behaviour at the meeting of the Mental Health and Wellbeing Group on 24 April 2017, during which it was alleged that he had said "that is a lie", and repeated it, when informed that the Mosque was £22,000 overdrawn when the Director had taken office.

296. The Tribunal had considerable difficulty with the conclusions reached by the consultant in this report on this allegation. The only person who suggested that the claimant had accused the director of lying at that meeting was Subhi Hashwa, in his letter of 27 April 2017 (122).

297. There appeared to be no attempt to investigate this matter further. The claimant was presented with the allegation at a disciplinary hearing, and denied it. A letter was provided to the respondent, but not taken into account in the investigation, by some others who were present at the meeting (229) in which it was specifically said that the claimant did not call the director a liar, nor did he adopt an aggressive tone. It is not clear to us what account, if any, was taken of this letter, but it suggests that a further investigation was called for in order that the claimant's position be clearly established. No statements were taken from any person present at the meeting, and Mr Hashwa's letter appears to have been accepted in its own terms, without any questioning of its accuracy.

298. As a result, the Tribunal had great misgivings about the extent to which there was a fair investigation of this matter.

299. Interestingly, Mr MacLean's submission on this point did not assert strongly that the claimant was guilty of calling the director a liar, but suggested that the respondent still had grounds to find that he had been guilty of misconduct. That submission cannot be sustained, of itself. The respondent's decision must be judged on what it was, not what it could have been. The inference was that the claimant had challenged the truthfulness of a statement attributed to the director, about the financial affairs of the

Mosque when he took office. Again, it is instructive, in our judgment, that the respondent should take such a position with regard to what may well have been a legitimate suggestion by the claimant. After all, on the evidence we saw, the overdrawn figure of approximately £22,000 appeared on the bank statement on 1 February 2017, not 13 January when the director came into post. At the very least the accuracy of the respondent's statement was at least open to question. However, that very questioning was clearly offensive to the respondent.

300. In addition, as was pointed out by Mr Lawson, the gap in time between the meeting of 24 April and the claimant's dismissal letter of 18 September was some 5 months. The explanation appears to have been that the respondent was dealing with grievances lodged by the claimant and that they received advice which told them not to proceed to a disciplinary hearing until they had concluded those grievances.

301. We were unpersuaded by that submission, on the evidence we heard. We were provided with no evidence as to the reasoning why the director or the board of trustees chose not to take disciplinary action against the claimant for some months, as we heard no evidence from any of them. The disciplinary issue was separate to the issues raised under the grievances, in any event, and in our judgment could have been readily addressed at a much earlier stage. There is no explanation provided by the respondent as to why no action was taken on the strong allegations made by Mr Hashwa on 27 April until much later.

302. The second allegation was that the claimant had behaved over time in an aggressive and hostile manner, and in particular had displayed aggressive and intimidating behaviour towards Mr Hashwa in a meeting on 26 July 2017, including using the phrase "who do you think you are" towards him.

303. The claimant accepted, in the disciplinary hearing, that he had both "raised his voice", and "lost his cool", and that he had used the offending phrase. As a result, we were satisfied that it was reasonable for the

respondent to conclude that at that meeting he had behaved in a way which they found unacceptable.

304. The report went on, however, to find that this was not the first time that the claimant had raised his voice in meetings. This was a very general allegation, not accepted by the claimant, and not supported by any particular evidence.

305. Finally, the report found that there had been “an irrevocable breakdown of trust and confidence”. There is no substance to this comment, which appears to have been added as an afterthought following the presentation of the original draft report, and accordingly the reason for this conclusion is not clearly set out.

306. In our judgment, there were a number of failings, therefore, with the process which led to the recommendation to dismiss the claimant by the HR Consultant, and in particular:

- The delay in bringing the allegations to a disciplinary hearing until after the claimant’s disclosures had been communicated to the respondent;
- The failure to investigate the allegations properly, to the extent that in submissions before us there appeared to be an acceptance that the claimant may not have used the word “liar” in the meeting of 24 April 2017;
- The failure to question the terms of Mr Hashwa’s letter of 27 April, or to take statements from any other persons at the meeting, notwithstanding the fact that they wrote to the respondent denying the very allegation which was made against the claimant;
- The conclusion that the claimant had been generally hostile and aggressive without any substance to that allegation, other than the example given on 26 July;

- The conclusion that an irrevocable breakdown of relationships had taken place, without any opportunity for the claimant to express a view on that matter, or any attempt to establish whether any breakdown of relationships was in fact irrevocable; and
- 5 • The decision to take the option of dismissal rather than a final warning, without any explanation.

307. We found the final aspect of the decision making process particularly difficult to understand. We have no evidence before us as to why it was that the respondent chose to dismiss the claimant rather than issue him with a final warning. It appears to have been their position that they were given options by the HR Consultant and they simply chose, with impunity, the more severe sanction. To do so without explaining why they had reached the conclusion that the claimant should lose his livelihood seemed to us extraordinary. They also referred to dismissing the claimant under short service: this appears to have been a reference to the fact that since he had insufficient qualifying service upon which to base a claim of unfair dismissal, they were free to dismiss him without further ado.

308. The claimant argues that these facts all give rise to an inference that he was dismissed on the ground of having made protected disclosures to and about the respondent.

309. It is our judgment that that is a fair and correct inference. The respondent was clearly unhappy at any form of criticism from the claimant, and resisted in particular his suggestion that it was not correct to say that the Mosque was £22,000 overdrawn when the director took over. They reacted to that in an extraordinarily defensive way, in our judgment, instead of looking at the facts to determine whether or not the claimant had a point.

310. That defensiveness was, in our judgment, redolent of an employer which was not prepared to accept criticism, and the claimant's persistence in raising matters both with the management of the Mosque and with OSCR led directly to the process which resulted in his dismissal. The respondent may well say that the consultant who heard the disciplinary and made the

recommendation was independent of them, and in one sense that is true; but the reality is that when the matter was referred to the respondent's management, they had two options open to them, and chose, without giving any explanation, the more serious sanction of dismissal. In our judgment,
5 the reason they decided to dismiss him was that they were deeply unhappy with his persistent raising of the same issues about the director and the organisation, and thought they could simply dispose of his employment with impunity since he lacked the necessary qualifying service to claim unfair dismissal.

10 311. We have therefore concluded that one of the reasons for the claimant's dismissal in this case was that he had raised protected disclosures; and therefore we find that the claimant was automatically unfairly dismissed by the respondent.

15 312. The claimant's claim therefore succeeds. The case must now be listed for a hearing in order to determine what remedy should be awarded to the claimant, and date listing letters will be issued to the parties for that purpose.

20 Employment Judge: M A Macleod
Date of Judgement: 14 February 2019
Entered in register: 15 February 2019
And copied to parties