THE EMPLOYMENT TRIBUNALS

Claimant: **Mr D Lambert**

Respondent: **Continuous Retorts Limited**

Heard at: **North Shields** **On:** **14, 15, 16 & 17 May 2018**
21, 22 & 23 May 2018
4, 5, 6 & 7 June 2018

Before: **Employment Judge Johnson**

Members: **Miss B G Kirby**
Mr D Morgan

Representation:

Claimant: **Mr A Tinnion of Counsel**
Respondent: **Mr S Sweeney of Counsel**

RESERVED JUDGMENT

The unanimous judgment of the Employment Tribunal is as follows:-

1 The claimant's complaint of unfair constructive dismissal is not well-founded and is dismissed.

2 The claimant's complaint of automatic unfair dismissal for making protected disclosures is not well-founded and is dismissed.

3 The claimant's complaints of being subjected to detriments because he had made protected disclosures are not well-founded and are dismissed.

REASONS

Background

1 By claim form presented on 17 October 2017, the claimant brought complaints of unfair constructive dismissal, automatic unfair dismissal for making protected disclosures and being subjected to detriments for making protected disclosures. The respondent defended all of those claims. In his pleaded case, the claimant

alleged 12 separate protected disclosures and alleged eight separate detriments, other than dismissal. It is common ground that the claimant was not "dismissed" by the respondent, but resigned by letter dated 21 August 2017, with immediate effect.

2 The claimant alleges that he made a series of protected disclosures between 1 April 2017 and 28 July 2017 and that because he made those protected disclosures he was subjected to various detriments by the respondent. The claimant alleges that his treatment at the hands of the respondent amounted to a fundamental breach of his contract of employment, which indicated that the respondent no longer intended to be bound by the essential terms of that contract and that as a result he resigned. The respondent denies that the claimant made any protected disclosures, denies that he was subjected to any detriment and denies that it committed any breach, let alone a fundamental breach, of the claimant's contract of employment.

3 Whilst the number of alleged protected disclosures and the number of alleged detriments and the allegations of breach of contract would make this case unusual in itself, the nature of the various disputes between the claimant and the respondent and others made this an inordinately complex case for the parties, their representatives and the Employment Tribunal. It is important at this stage to set out a brief background of the subject matter of the disputes.

4 The claimant is presently aged 65 and is by profession an Engineer. In 2009 he established a business to develop a machine known as a "retort", which cooks food at high temperatures to enable it to be stored thereafter at ambient temperatures for long periods. The claimant founded a limited company, called Continuous Retorts Limited (the respondent) to develop that technology, with a view to the retorts being sold to major food production companies, whose own products in turn would be supplied to and sold by major supermarkets both nationally and internationally. It is well recognised that those companies are particularly "risk averse" and thus unwilling to purchase machinery of this type which is untried, untested and unproven in the commercial market. As a result of that, the research and development costs of designing and building such machinery can be substantial. By the middle of 2013 CRL had raised approximately £600,000 of equity funding and by early 2014 additional £570,000 was raised by a further share issue. By that time, CRL had not yet completed the design and construction of a fully working retort to the extent that it was available for sale and installation to a prospective customer. If an order were to be obtained from such a customer, they would be unlikely to be willing to make "staged payments" and would require the machine to be installed and fully working before payment would be made. That meant that a substantial amount of working capital was required by CRL to get anywhere near the stage where a machine could be ready for sale.

5 The claimant was one of the original shareholders and investors in CRL and from its incorporation was a Statutory Director and the Managing Director. The other shareholders included Dave Routledge, Steve Andrews and Peter Harding. Funds were provided to CRL by way of equity, investment and loans. However, my mid 2014 CRL was running out of money. An approach was made to Reece Group Limited ("RGL") on the basis that they may be a suitable candidate as either a manufacturing partner or as an independent funder of CRL. Terms were

agreed for the introduction of £750,000 in return for 50% of the issued share capital in CRL. Thereafter, if progress was satisfactory, a further £750,000 would be introduced by way of share capital, which would bring RGL's shareholding in CRL up to 75%. A further £3.5 m could thereafter be introduced by way of loan from RGL to CRL.

6 Those terms having been agreed in principal, lawyers were instructed by all parties and a series of detailed and complex legal documents were prepared, agreed and signed by all parties. The claimant remained as Managing Director of CRL. Mr John Reece of RGL was appointed as Investor Director of CRL and a Non-Executive Director of CRL.

7 By the end of 2015, the funds invested by RGL had largely been spent by CRL, without CRL having obtained a satisfactory order for the supply of a retort. CRL's business plan at that stage showed that a further £600,000 would be required to get the machine to a stage where an order could be obtained. RGL agreed to invest a further £750,000 at that stage, but on the basis that their share capital in CRL would immediately increase to 75%. The minority shareholders in CRL somewhat reluctantly agreed to this new proposal and those funds were introduced.

8 By March 2017 RGL had invested £1.5 million in CRL in return for 75% of the share capital and had also introduced a further £250,000 via the loan facility. Because of their concerns at the way in which the retort project was being managed and particularly at the way in which cash was being expended by CRL, RGL decided to recall the loan of £250,000, together with £10,000 interest.

9 It was the withdrawal of this £260,000 which triggered the deterioration in the relationship between RGL, CRL and the claimant. The claimant began to allege that the removal of the funds meant that CRL was "technically insolvent" and that he and John Reece as the two Statutory Directors may be liable to accusations of "wrongful trading". The claimant went on to allege that the removal of the funds amounted to a breach of the various agreements which had been completed in 2015 and that RGL's actions through its directors amounted to oppression of the minority shareholders in CRL. RGL insisted that it was entitled to recall the funds, but that in so doing it made no difference to CRL's solvency position as RGL would reintroduce the funds on a "drip-feed" basis to ensure that all CRL's debts were to be paid as and when they fell due. That is what subsequently happened – sufficient cash was introduced to CRL by RGL. All of CRL's debts have continued to be paid and the company still continues to operate in its pursuit of completion of the retort to the extent where it can be sold to customers. As yet, no firm order has been received for the purchase of a retort from CRL.

10 Meanwhile, negotiations continued between CRL, RGL and their various directors as to the basis upon which further funding would be provided to CRL by RGL. Those negotiations included a proposal by RGL that the claimant should stand down as Managing Director of CRL and adopt a position of Technical Director. This proposal was due to RGL's concerns about the claimant's ability to produce and follow a meaningful business plan and in particular to properly manage the cash which had been introduced by RGL.

11 The claimant raised a number of complaints about RGL's treatment of CRL and its treatment of himself. Negotiations could not settle the differences between

the claimant and the other parties and the claimant eventually resigned on 21 August 2017.

Findings of Fact

12. Continuous Retorts Limited ("CRL") was incorporated in 2009. The original shareholders were: -

a. North East Technology Fund
b. David Lambert
c. John Clough
d. Peter Harding
e. David Routledge
f. Stephen Andrews
g. Research and Development Services Limited
h. White Brothers (Newcastle) Limited

David Lambert (The Claimant) owns some 27% of the shares, with 46% being owned by North East Technology Fund, managed by IP Group which actively provides financial support to small companies seeking to establish themselves in the North East of England.

13. CRL moved into its first factory in 2010 and began to build a proto-type 24-inch retort. A retort is a large machine used to sterilise or pasteurise food to extend its shelf-life. Food containers (such as tins, cans, glass jars, pouches and trays) are placed into the retort and then made safe by heating the container to a high temperature using water and/or steam. It is accepted that CRL's technology, whilst unproven on a commercial scale, has significant potential. The CRL system sterilises and pasteurises food using a torpedo system, which rotates the food whilst heating it, ensuring that there is an even heating and cooling distribution and shorter processing time. Interest in the technology was expressed by Greencore PLC and Nestle, but by 2014, neither they nor any other prospective purchaser had placed an order for a Retort.

14. £600,000.00 of Equity Funding had been introduced into CRL by the original investors and an additional £570,000.00 was raised by a further share issue in 2013. Almost all this money had been spent by CRL by 2014 in the design and development of the Retort, but no commercial orders had been received. Without additional funding, it was unlikely that CRL would have been able to continue to develop the retort technology and to manufacture a machine which was capable of being sold. The Claimant was a Statutory Director of CRL and also its Managing Director. The only other Director was Mr Peter Harding. The Claimant, as a fully qualified and experienced engineer, ran the company on a day-to-day basis, whilst Mr Harding provided financial investment. In 2015 the company had seven employees, by 2016, they had eleven employees, but that was reduced to six employees in 2017.

15. Mr Steven Lant is a partner in UNW LLP, a firm of Chartered Accountants which delivers accountancy and business advisory services to its clients. Mr Lant first became involved in CRL in 2012 when one of his private clients Mr John Clough became Chairman of CRL and acquired shares in that company. In 2014 UNW were appointed to prepare the CRL accounts. Mr Lant became involved in discussions about the

company's business strategy and funding. The retort was innovative but disruptive technology and potential customers were risk averse. The price per unit was significant (approximately £500,000) and it became clear that, to enable a retort to be sold, CRL would have to construct a fully working prototype to demonstrate how the technology worked. Potential customers would be unlikely to place an order with CRL because of its small size and lack of manufacturing track record. Customers would be unwilling to pay for a machine until it was installed and fully working. That meant that CRL would have to fund, manufacture, install and test the retort. This would require a significant amount of working capital, as customers would be unwilling to make "staged payments", instead requiring the machine to be fully operational before any payment was made. Approximately £600,000.00 had been invested by the original shareholders and a further £570,000.00 was raised from them in March and April 2014. It became clear that CRL required a significant injection of working capital, from either a manufacturing partner or funder/investor.

16. Reece Group Limited ("RGL") was another client of Mr Lant and one known to him to have a manufacturing capability through its subsidiary companies, strong cash reserves and a willingness to invest in innovation. Introductions were made via Mr Phil Kyte, the RGL Chief Executive and an initial meeting took place in March 2015. That meeting was attended by Phil Kyte, John Reece (Chairman of RGL) and the Claimant. RGL expressed initial interest and agreed to arrange further meetings in the future.

17. In June 2015, CRL raised further funds of £80,000.00 through the issue of new shares to NETF, Mr Clough and Mr Routledge. In August 2015, RGL approved their proposal to invest in CRL and Mr Reece, Mr Kyte and Mr Lant prepared an investment proposal to put to CRL. RGL wanted the Claimant to continue to hold a significant shareholding in the company, as they saw him as a key to the business. RGL was aware of the amounts invested by the shareholders in CRL and did not want to make an offer for the entire company, which might be seen by those shareholders as being somewhat derisory. The financial forecast prepared by the Claimant showed a requirement of £500,000.00 to fund the business until the prototype retort was complete and an order obtained. In order to allow for potential overruns, RGL offered the sum of £750,000.00 in return for 50% of the issued share capital in CRL. That was "Stage One" of the investment proposal. "Stage Two" was dependent upon CRL receiving its first significant order for a retort. The terms of that order had to be satisfactory to RGL before it would agree to invest any further monies. The Claimant's forecast showed a funding requirement of up to £4m pounds to complete and order a machine. RGL agreed to fund up to £5m, again to allow for overruns. The second part of the funding would be provided by way of share capital to increase RGL's shareholding from 50% to 75%, with the balance of the money being provided by way of a loan. An anomaly was identified in relation to the split of the £5m between share capital and loans. In Stage One, RGL would subscribe £750,000.00 for shares, which would give it a 50% of the issued share capital in CRL. If at Stage Two RGL subscribed £375,000.00 for shares to increase its holding to 75%, the share issue price would need to be significantly lower at £4.48 per share, compared to £17.92 per share. In order to avoid that anomaly on the share price becoming a point of negotiation, a proposal was that the £5m of funding be provided by £1.5m by way of share subscription at the same price as at Stage One, with up to £3.5m being made available by way of loan, rather than £375,000.00 by way of share subscription and £4,625,000 by way of loans.

18. That proposal was set out in a letter dated 14 August 2015 (page 154-155). On the same day, Mr Kite, Mr Lant and the Claimant met to discuss the proposals. The proposal was acceptable to the Claimant and was approved by the other shareholders in CRL at a meeting on the 25 August 2015. RGL appointed Bond Dickinson Solicitors to act on their behalf in the completion of the legal documents, whilst the CRL shareholders appointed Blackett Heart & Pratt, with IP Group on behalf of NETF using their own in-house counsel. The transaction was completed on the 23 October 2015 with the execution of the Investment Agreement, a copy of which appears at page 164. The agreement is between the Claimant (1), seven other shareholders (2), Continuous Retorts Limited (3) and Reece Group Limited (4). All those parties had the benefit of expert legal advice as to the contents and effect of that agreement and the Tribunal found that all parties entered into it willingly and with full knowledge of its meaning and effect. The investment agreement set out three stages of investment: -

i. Stage One - RGL invested £750,000.00 in October 2015 in return for a 50% shareholding of CRL.

ii. Stage Two – If CRL obtained a customer order for a Retort which was acceptable to RGL, then £1.5m would be invested by RGL in return for an additional 25% shareholding of CRL. In addition, to that £1.5m investment, RGL also agreed that it would at Stage 2 provide a loan facility of up to £3.5m, under the terms of a capital Facility Agreement, which was attached to the Investment Agreement.

iii. Stage Three – If CRL's business proved to be successful, then RGL could acquire 100% of the shareholding of CRL, acquiring the remaining 25% of shares from the minority shareholders and thus providing a financial exit and a return on their initial investment.

19. The Investment Agreement allowed for RGL to appoint "Investor Directors" onto the Board of CRL. John Reece and Phil Kite were appointed as Investor Directors of CRL by RGL. The sum of £755,000.00 was transferred from RGL to CRL on the 23 October 2015. On the 27 November 2015, CRL was placed on to RGL's Group banking platform. Both banked with HSBC and no objection was raised by CRL or the claimant about this action.

20. By August 2016, CRL had expended all of the initial Stage One investment in the sum of £750,000.00 but had not obtained an order for a retort. The trigger for the Stage Two investment by RGL (a satisfactory customer order) had not been met and RGL had to decide whether or not to invest any further sums in CRL. As no order had been received, there was no obligation on RGL to invest any further sums. The Claimant produced a CRL Business Plan dated the 02 September 2016 (page 193-198) which the Claimant stated, "sets out a revised route to develop a profitable business, that is still readily expandable in line with the original objectives of the October 2015 business plan". The plan goes on to state that, "large or continuous CRL retorts will sell for between £1.5m and £5m depending on output. Whatever the retort's type, CRL's customers will need to see the key components in full production before making any purchasing decisions, and achieving this single goal is the principle objective of this plan. However, it is recognised that RGL support is not unlimited and the business

needs to demonstrate some successes before further support, beyond that set out in this plan, will be forthcoming."

"Financial Forecast"

The plan shows key cash required in 2016 in the sum of £506,000.00, in 2017 of £1,114.365.00 and in 2018 £1,328,660.00. Those forecasts assume that £524,000.00 would be invested in CRL`s Gosforth Facility and its equipment, that food processing revenue would start in 2016, the engineering resource would continue to be incurred throughout 2017 and 2018 to complete the equipment, engineering plant and prepare for Retort sales and that UKFP (UK Food Products) would buy a retort in 2018.

"Summary and Conclusions"

It states: - "It is recognised initial progress under RGL ownership has not been fully delivered and lessons have been learned. The business is now in the position in which it has a less ambitious, but clearly defined engineering plan to which all parties have contributed. The resources of the business have been strengthened with the addition of Peter Imlah, as Engineering Director, as well as the recruitment of a Quality Manager, and additional Control Engineer and a further Processing Production Manager – the business is therefore in a better position to deliver the plan."

21. CRL had by this time effectively run out of money and was borrowing from RGL on a monthly basis to stay afloat. By September 2016 RGL had loaned CRL the sum of £118,000.00.

22. In September 2016, RGL's Management Board provisionally decided to invest further in CRL, subject to the agreement of the other shareholders and to the agreement of a satisfactory business plan. The terms of RGL's proposed investment were different to that set out in the original investment agreement. The proposed new terms were to: -

i. RGL would pay £750,000.00 for the "Stage Two" shares, thereby taking its shareholding in CRL to 75%.
ii. RGL will provide a loan facility of up to £250,000.00 to CRL.

The original investment agreement in 2015 referred to a loan of "up to £3.5m" which could be used as working capital towards the production of a tretort for a customer. As no order had been obtained and the original Stage Two trigger had not been activated, the new proposal was to keep the mechanisms the same, but to cap the loan facility at £250,000.00 rather than £3.5m. Furthermore, any loans already made by RGL to CRL would be taken into account as part of the £250,000.00 loan facility.

The position was made clear in an email from Steve Lant to John Clough which states: -

> "For the avoidance of doubt, there will be no commitment by RGL or obligation on RGL to provide any further funding over the £1 million."

23. All the CRL shareholders confirmed their agreement to this new funding proposal. Rather than prepare new and specific agreements for the loan of £250,000.00, RGL's solicitors advised that the most expedient arrangement for the longer term would be to

restate the original Investment Agreement and issue the Facility Agreement on the terms originally agreed as follows: -

i. Bring the £220,000.00 already advanced by RGL to CRL into the security afforded by the Debenture which had been completed at the same time as the Investment Agreement.

ii. Formalise the position with regard to interest.

iii. Allow RGL to exercise its discretion to require a repayment as and when it required.

iv. Allow RGL to make further secured advances within the terms of the Facility Agreement, should the need arise, instead of on the ad-hoc basis. The initial funding would still be used as working capital to build a retort for a customer, once CRL receive its first order.

The appropriate documents were agreed and prepared by the party's legal advisors. The new terms were as follows: -

Stage Two

- RGL to invest £750,000.00 in return for an additional 25% of the initial shared capital in CRL.
- RGL to enter into a new Facility Agreement by which CRL "may borrow up to £3.5m".
- CRL to grant a debenture to RGL to secure sums loaned under the Facility Agreement.

Stage Three

The Claimant and the other minority shareholders were to be allowed an extra year for CRL to develop before RGL could exercise its option to acquire their shares.

All the relevant documents were signed on the 17 October 2016.

24. By this time, CRL had developed a 24-inch retort at its Gosforth facility to such an extent that it was capable of food processing. CRL were processing products for a company called Bare Naked Foods, for onward supply to Morrison's supermarkets. Some of Morrison's customers reported that the packages which CRL had supplied, failed in their microwaves. As a result, Bare Naked Food cancelled their contract with CRL and refused to pay any outstanding invoices. At that time, this was the only food processing income available to CRL and under its business plan, it was that food processing income which was intended to subsidise the design and development of the retort. As a result, it was agreed at a CRL Management Review meeting on the 26 January 2017 as follows: -

"The Board has therefore decided to adopt a revised plan based on lower food revenues, a delay in selling their first retort to later in 2018 and commence with

reductions in overhead expenditure to keep the business in funds by ensuring that cash breakeven is achieved within the extended cash runway. Significant redundancies are a key element of this revised plan and announcements are to be made at the end of January 2017 and the outcome of the necessary consultation process will be needed before the detailed plan can be issued. The intention here is to present, then adopt this plan at the February Board Meeting."

25. CRL implemented redundancies, with the loss of three staff in January 2017. That included Peter Imlah and two other engineers. Whilst made redundant by CRL, Mr Imlah then immediately took up another role at Reece Innovation Limited.

26. In February 2017, Mr Phil Kite (then Chief Executive Officer of RGL and a Director of CRL) left RGL. His departure was announced on the 27 February 2017. Mr Kite had effectively been RGL's "eyes and ears" inside CRL and his departure led RGL to closely examine the way in which CRL was being operated and managed.

27. 2016 had been a poor year for all of RGL's subsidiaries, in terms of performance. In his evidence to the Tribunal, Mr Reece confirmed that RGL suffered its worst ever financial year in 2016, in which it made a loss of approximately £4m. At a meeting on the 06 January 2017, the Managing Directors of all the RGL subsidiaries were told that improvements were required so that at least a break-even situation would be achieved for 2017. As part of its overall examination of its subsidiaries, RGL identified that there were insufficient financial checks and controls within CRL to protect RGL's investment. RGL were particularly concerned that CRL "continued to spend money at an alarming rate and was at this time making a loss of between £60,000.00 and £100,000.00 per month". RGL had by letter dated the 18 August 2016 provided a short-term loan facility to CRL in the sum of £200,000.00. The letter states that, "any cash provided under this facility will be repayable in full on the 30 September 2016 together with all interest accrued up to the date of repayment". That letter was signed by Mr Lambert by way of acceptance on behalf of CRL. The terms of the Facility Agreement (at page 286BD) state as follows: -

4. <u>Repayment</u>

4.1 The borrower shall make repayments of the loan in instalments as and when the Investor Director decides.
4.2 All repayments under this agreement shall be made together with any interest which has accrued on the loan.
4.3 Any outstanding balance of the loan shall be repaid in full, together with all accrued interest on the last day of the term.

5. <u>Re-drawing</u>

5.1. The Investor Director may request that some or all of the loan that has been repaid is made available for re-drawing by the borrower.
5.2 Any re-drawing of the loan shall be at the discretion of the lender.

28. On the 21 February 2017, Mr Lamb prepared his summary of the loan and interest charges from RGL to CRL as at the end of 2016. The sum loaned including interest was then £256,555.00. By then, RGL had developed significant concerns about the rate at which cash was being spent within CRL, the absence of a credible or realistic business plan and the fact that the Claimant and his wife were able to spend money on the CRL account without the counter-signature of any other Director. RGL had by then invested £1.5m. in equity and all of that had been spent in less than eighteen months. There was no finalised 30-inch retort, no likelihood of a customer order and the food processing business was largely inoperative. The company was making significant monthly losses. The RGL Management Board concluded that greater finding financial control was required. As a result, RGL took the decision to require repayment of the £250,000.00 loan facility which had by then been fully drawn down by CRL. The sum of £338,000.00 remained in CRL's bank account. RGL decided to require repayment of the loan plus interest in the sum of £260,000.00 thus reducing CRL's bank account balance to £78,456.00. They also decided that CRL would require prior permission to expend more than £1,000 on any particular item. Mr Lamb and Mr Reece met with the Claimant on the 15 March to inform him of RGL's decision. Mr Reece explained that withdrawal was intended to be a temporary measure and he set out what was required for the loan to be made re-available for draw-down by CRL. Mr Reece emphasized that the business plan would have to include a credible chance of CRL breaking even in 2017 with its food processing revenue. The Claimant expressed concern that CRL would be left with only one months' worth of funding in its bank account, if RGL had recalled the loan. Mr Reece reassured the Claimant that RGL would provide interim funding to CRL if necessary, whilst a credible plan was agreed and that if money was owed to any creditors then additional funds would be re-introduced by RGL. The Claimant queried whether the removal of the loan would "make CRL technically insolvent". Mr Reece and Mr Lamb assured the Claimant that if any creditors needed to be paid then the loan money would be re-introduced to ensure that there was no preferential creditor treatment or any risk of trading whilst insolvent. The Claimant expressed concern about RGL's appetite to provide further funding, particularly because Phil Kite had left the organisation. The Claimant explained that he had explored the possibility of an IPO (Initial Public Offering) in case an alternative source of funding was required, should RGL withdraw. At no time during this meeting did the Claimant challenge the legality of RGL withdrawing the loan and interest, nor did he insist that, or even refer to the possibility that, RGL was obliged to pay the full £3.5m under the terms of the new loan facility. He did not complain about the limit on expenditure. In fact, in his document "CRL Shareholder Update 08 April 2017" the Claimant informed the minority shareholders in CRL that: -

"As is usual under circumstances such as this, your Board has taken the opportunity to review the plan that was put in place in December 2016 under Phil's stewardship. As part of that review process, Reece Group decided to call in its £250,000.00 loan with all accrued interest, with the proviso that the loan and interest could be reinstated if a revised plan with a probable chance of achieving break even through food revenues in 2017 was presented to and agreed by the group board".

Later in that document, the Claimant states: -

"In the meantime, CRL will continue to have its short-term cash flow funded by Reece Group, but in a more closely controlled manner and on condition that it is converted into equity once the full quantum is agreed."

29. On the 21 March 2017, the Claimant, Dave Routledge, John Reece and Brian Lamb met with Mr Graham Summers to discuss the Claimant's proposal for an IPO. Again, during this meeting, the Claimant did not raise any concerns or make any allegations relating to the repayment of the £250,000.00 loan. At a subsequent meeting of the RGL Board on the 31 March 2017, the Claimant did not raise any concerns or make any allegations relating to the withdrawal of the loan.

30. By email dated the 01 April, the Claimant sent the following message to Mr John Reece: -

"Many thanks for your and the Reece Group Board's time at Armstrong Works yesterday. I trust that like me, you and the Board found yesterday's meeting positive and productive. It hopefully gave everyone the opportunity to question both Graham and me in depth on the proposals for CRL going forward. By way of a follow up to the practical concern raised by myself at yesterday's meeting on the issue of wrongful trading (due to the withdrawal of the £250,000.00 loan and accrued interest) it is a reality that you and I as the only Directors of CRL are in a difficult position from today as the business is technically insolvent without access to further funding. In order to meet our fiduciary duties to CRL we would as a matter of some urgency need to secure written comfort from the Reece Group that creditors will continue to be paid as they fall due and hopefully we can get something suitable put in place as soon as possible in this regard. Happy to discuss this further today if necessary."

31. By email dated the 02 April 2017, Ann Reece replied on behalf of John Reece stating: -

"Dear David,

You are correct that the Board approved the further investment to test the feasibility of the AIM Listing to raise the further development capital required. The form of funding is not agreed, however. This is clearly an equity investment, not a short term working capital loan and as such we would expect RGL to pay proportionately according to shareholding. The actual amount required was not clear either – I am assuming you – or you and Ryan – will work out a budget now the concept has been agreed. We can of course move quickly on immediate cash requirements".

32. The Claimant replied by email the same afternoon stating: -

"This is welcome news indeed and I will immediately start the process of gaining the necessary shareholder approvals in parallel with getting a good handle on the short-term quantum with Ryan this coming week. Finally, I would like to thank the Board for their ongoing support and you personally for your belief in this exciting opportunity for our nascent company".

33. By email dated the 07 April, Ryan Lamb informed the Claimant as follows: -

"However, given the tight timescales, the Group would provide funding in the interim to cover your immediate April shortfall (namely for payroll and travel costs) whilstt the funding to May as mentioned above is resolved among shareholders. It is envisaged that any amounts transferred would then form part of the total equity required by the Group up to the end of May."

It was following this exchange that the Claimant prepared his "Shareholder Update" dated the 08 April, referred to in para. 36 above.

34. Meanwhile, the Claimant had been invited to visit Campbell's Soup (CSC) in Philadelphia to discuss interest expressed by CSC in the retort machinery. Because of his concerns about the Claimant's management of CRL, Mr John Reece of RGL asked Craig Priday to accompany the Claimant on this trip. Mr Priday's brief from Mr Reece was to report back to the RGL Board as to whether there was any realistic potential business opportunity with CSC and also to provide a confidential assessment of the Claimant's approach and performance. At that time, CSC was the only major player who had expressed an interest in the retort and was seen as the only realistic opportunity of CRL securing an order in 2017. CSC's interest was therefore a crucial factor in RGL considering further investment in CRL.

The Claimant's response to John Reece when he learned that Mr Priday would accompany him, was set out in his email of the 01 April when he stated, "your suggestion of Craig accompanying me to the States is a great idea that will add significantly to the weight of our proposition for Campbells and the US Millitary."

35. There were two meetings in the USA. The first was on the 10 April, which involved a presentation by the Claimant to CSC in Philadelphia. The second was a breakfast meeting on the 11 April 2017 in Cincinnati with a Mr John Geisner, a Food Industry Consultant. Mr Priday prepared a detailed report of the CSC meeting which was agreed with the Claimant and submitted to RGL. A copy appears at page 450-452 in the bundle. The Report confirms CSC's positive interest in the retort, together with discussion about the possibility of a formal Order as early as August 2017. The next stage would be for CRL to provide a prototype demonstration retort which CSC would view in action at the CRL factory. However, Mr Priday's opinion of the meeting was that it was very unlikely that CSC would provide anything like a letter of intent to purchase a retort, conditional upon performance or otherwise. Mr Priday felt that if the point was pushed, it may raise doubts about the viability of CRL which may jeopardise the potential of an order altogether.

36. Separately to that formal report, Mr Priday provided Mr John Reece with some private and confidential observations about the Claimant's performance throughout the USA trip. Mr Priday acknowledged that the Claimant was "passionate about the product and definitely held his own in a room full of experienced food specialists" but felt that the Claimant was not a technical salesman, in that: -

a. His presentation was amateurish
b. He didn't know how to use PowerPoint
c. The content of the presentation was weak and included a lot of outdated information.

d. It focused on outdated technology.
e. Animation of the proposed loads/unloaded material handling equipment was poor.
f. There were no photos/videos of the actual retort which had already been built or the food it had produced.
g. The proposed plant layout was unrealistic and didn't include essential equipment.

Mr Priday went on to state at point 7 in his letter: -

"David is essential in the near term, even if we decide to only sell off the IP. He is shaken by recent events and needs careful handling if you want him to perform. At 64 he may not be fit to drive the company forward for much longer. I'm not sure if there is anyone who could replace him if he became ill. I have no confidence in David's ability to put together a formal offer for a pilot machine for Campbells, both in terms of content and the ability to calculate a price. He would need close support and supervision to do this. Over a beer, he mentioned legal action by the minority shareholders if RGL were to allow CRL to go into bankruptcy. I don't know if this was just cheap talk, or whether this had actually been discussed with the others."

That last point was Mr Priday's recollection of what he described as "a discussion over a beer in the bar" after the CSC presentation. The Claimant's version of this discussion appears at paragraph 38 in his witness statement. The Claimant said: -

"Mr Priday told me Miss Reece wanted to sell off CRL's assets and intellectual property so RGL could recover its investments. I reminded Mr Priday that there were contractual agreements in place with the minority shareholders which would result in legal action against RGL if they try to wind up CRL just to sell off its assets, particularly when there was no justifiable reason to do it."

37. Mr Priday vehemently denied under cross-examination that he had ever said that Ann Reece wished to close all of the loss-making businesses in the RGL Group. Mr Priday insisted that nothing he said to the Claimant during this "chat" could possibly lead the Claimant to think that was the case. Mr Priday's recollection was that he simply cautioned the Claimant against over-enthusiasm with regard to the CSC potential. Mr Priday's recollection was that the Claimant had said that the shareholders may bring legal proceedings, but he did not say why. Mr Priday regarded it at the time as "a throw away comment" in an informal environment. Mr Priday was adamant that there was no discussion about the possibility of CRL being closed down by RGL.

The Tribunal found the Claimant's version of this discussion to be highly unlikely. There was nothing by way of documentary evidence or corroborating evidence from any of the witnesses to support what the Claimant alleges, namely that Miss Reece wanted to sell off CRL's assets. The Tribunal found that the Claimant's version of this discussion was both distorted and inaccurate, designed to support his contention that the reason behind the repayment of £250,000.00 loan was because "RGL wanted to close CRL's business".

38. On the 03 May 2017 a meeting took place of the minority shareholders in CRL, who wished to have a discussion on the company's current situation and also to consider the

delivery and funding of the CSE project. John Reece, Craig Priday and Ryan Lamb attended. Mr Lamb described the meeting as "a friendly meeting and no-one present took notes or minutes. No one raised any concerns or allegations about minority shareholder oppression or about the decisions taken by RGL, including that to temporarily remove the loan facility in March 2017. The Claimant himself did not raise any concerns, either verbally or in writing". Mr Priday's recollection of meeting was that it was relatively constructive, but some of the minority shareholders said that they hoped RGL would continue to invest past the £1.5m that they had put in for equity and that they would not have given away 75% of the equity had they known that RGL's attitude to advancing known capital would have been so limited. Mr Priday stated that no one present at the meeting raised any concerns about RGL's decision to temporarily remove their own facility in March 2017. However, some concerns were raised by John Clough regarding the management of the company by the Claimant in the past. Mr Lamb's precise recollection of what was said by Mr Clough was;

"I am sorry to say this David, but there needs to be a tighter leash placed on management, as CRL has been in this position before with plans not being carried out and rabbits being chased."

39. Immediately following this Shareholders meeting, the Claimant alleges that he had a private discussion with Mr John Reece in the corridor outside the meeting room. The Claimant's version at paragraph 47 of his statement is as follows: -

"Mr Reece beckoned me to join him outside the meeting room and he asked me questions regarding the minority shareholders threats. I told him I believed RGL and CRL's actions could constitute unfairly prejudicial conduct against the minority shareholders as well as being a breach of S. 239 of the Insolvency Act 1986 by creating a preference for RGL and that I would produce a more detailed report on the matters for CRL's board."

John Reece's evidence at paragraph 99 of his witness statement is as follows: -

> "This conversation did not take place, whether as alleged or at all. To suggest otherwise is disingenuous and untruthful.
>
> 1. There are no documents or witnesses to support his assertion.
> 2. The Claimant did not voice any of his concerns about minority shareholder prejudice during the shareholders meeting.
> 3. No mention is made of the alleged conversation until the Claimant submitted his claim to the Employment Tribunal. More particularly, no mention is made of it in his letter of resignation or at any of the subsequent meetings or in any subsequent correspondence."

40. Mr Priday's evidence was that he was not aware of any such conversation taking place. In particular, the Claimant did not raise any concerns during the shareholders meeting itself and that Mr Reece had not mentioned to Mr Priday that he had held any such conversation with the Claimant.

41. Mr Lamb's version at paragraph 91 of his statement is as follows: -

"I find it difficult to accept that this conversation took place between David and John for the following reasons: -

1. If David had concerns, then I believe he would have raised them during the Shareholder's meeting.
2. I do not accept that David would have raised any alleged concerns verbally in private with John alone after the meeting. This is not David's style. If he had raised any concerns on the 03 May 2017 then I believe he would have also raised these with me. Had David raised any allegations or concerns, then John Reece would have brought these allegations and concerns to my attention or to the attention of the RGL Board Management Team or legal advisors.
3. There aren't any documents which refer to this alleged (incident) on the 03 May 2017. Significantly, David doesn't mention the alleged conversation with John within his letter of resignation dated the 21 August 2017 or any of the meetings leading up to him making that decision or in any of the otherwise comprehensive correspondence which he sent to IGL during that period."

42. The Tribunal found the evidence of the Respondent's three witnesses about this incident to be consistent, plausible and likely to be correct. The Tribunal found that no such conversation was likely to have taken place between the Claimant and Mr John Reece.

43. On the 09 May 2017, Mr Lant prepared an "Investment Board Paper", the purpose of which was to enable the RGL Board to consider whether to continue to fund CRL. The report included a comprehensive analysis of the financial considerations behind such further investment and concluded that approximately £1m would be required to enable CRL to secure a Retort order from CSC. That included a cash requirement of £600,000.00 by September 2017 and a further £400,000.00 for production of the pilot system to CSC. The price quoted to CSC for a Retort had been £1.539m. The report mentions that the Claimant believes that the tasks required could be achieved by the current employees, whereas John Reece and Peter Imlah were of a different view. Mr Lamb identified that consideration may be given to the appointment of another mechanical engineer and a project manager. If that approach were to be taken, then the claimant`s experience of the industry would still be critical to the building of the retort, but his attentions could be focused on generating food processing revenue. By email dated the 10 May 2017 Mr Reese suggested to Craig Priday and Ryan Lamb the following thoughts on the team to carry out the CRL programme: -

Chairman	Craig Priday
NED	John Reece (or vice versa – maybe one of the other shareholders)
MD	David Lambert
Project Manager	Peter Imlah or Roger Anderton
Project Team	Dan Lambert, Jason Singh, others.

David to focus on customers and food processing, Chair and NED look after Project Management.

-or-

David as Chairman, Craig is MD?

44. By emailed dated the 10 May, Craig Priday replied to Mr Reece stating,

> "We should discuss in advance of the Board Meeting so that we are aligned. For your information, as things stand, I would vote to continue to run CRL and push hard to win the Campbell's order. However, we must not leave David in charge of the project or finances."

45. That report was presented to the RGL Management Board Meeting on the 12 May. It was agreed that Mr Lamb should set up an authorisation process so that he and John Reece would countersign all CRL invoices/contracts to ensure greater financial control. The RGL Board agreed in principle to make available approximately £700,000.00 by way of further funding to CRL to enable it to fulfil the Campbell's project. This however was to be subject to CRL agreeing to stricter financial controls and also to CRL agreeing that the Claimant would focus on the food production side of CRL's business, rather than on the Campbell's project delivery team. On the 17 May 2017, John Reece and Ryan Lamb met with Steve Lant to consider putting together the precise terms of the offer which RGL was going to make to CRL. Mr Lant and Mr Reece wanted Mr Lant to act as the go-between for CRL, RGL and the minority shareholders of CRL. Mr Reece's personal preference was to drop RGL's stipulation that the other minority shareholders match RGL in terms of an equity injection and that instead RGL would finance the project by way of an additional loan under the facility agreement which had been put in place in October 2016. Mr Reece and Mr Lamb informed Mr Lant that CRL was running out of money, although there had been a recent positive development in the form of serious interest from CSC. It was agreed that John Reece and Ryan Lamb would meet with the Claimant on the 30 May to discuss the proposed investment, with the expectation that RGL would provide a loan of approximately £700,000.00 to allow a demonstrator model to be built which was hoped would help to secure an order from CSC. The exact amount to be loaned would be decided once a final business plan was agreed with the Claimant. It would be a requirement of any new loan that a new Project Manager would be appointed who would not report to the Claimant. It was decided that a meeting should be arranged with the Claimant to present those proposed terms and thereafter to arrange a meeting with the other shareholders to obtain their agreement. Mr Lant's evidence about the proposal was as follows: -

1. A project plan which was acceptable to RGL would need to be produced.
2. A Project Manager would need to be appointed to drive forward the CSE project with David Lambert (MD of CRL) retaining some involvement in the project but focusing on CRL's food production business.
3. Funding may be ceased if satisfactory progress was not made.
4. Funding may be ceased if CSC did not place a retort order.
5. Funding provided by RGL would be as a loan under the existing Facility Agreement.

Mr Lant summarised the proposal in an email to John Reece and Ryan Lamb on the 18 May. The draft of that specifies that in the event of RGL did cease to provide funding, it was anticipated that CRL would be able to meet any debts accrued to that point as it

would be paying for materials up front rather than by credit, but that if RGL did cease to provide funding, that would inevitably lead to a cessation of trading by CRL.

46. Following on from the meeting with CESC in Philadelphia earlier in the year, the Claimant had provided a "rough order of magnitude (ROM) quotation to CSC for the provision of a 30-inch retort". Provisional arrangements had been made for representatives from CSC to travel to CRL's facility in May or June 2017 to examine the operation of the 30-inch Retrrt together with test rigs for the loading and unloading of various food products. The Claimant was keen to ensure that the machinery was manufactured in readiness for this proposed visit. Mr Lamb, Mr Priday and Mr Reece believed the Claimant's timescale for the manufacture of the machine to be totally unrealistic and an example of the Claimant "over-promising and under-achieving". At that time, RGL was still implementing strict controls over CRL's expenditure. The 30-inch retort required two 2,000 litre tanks as part of the thermal processing system. Those tanks would be ordered from Wessington Cryogenics, a North-East Manufacturer. The cost of the tanks was approximately £20,000.00. The Claimant sought permission to order those tanks by email sent on the 23 May. Mr Reece considered it unnecessary to order and pay a deposit for the tanks at that stage and by email sent later on the 23 May, Mr Lamb informed the Claimant, "spoken to John – instructions not to place any significant orders such as this until next week. He is aware of the lead times." The Claimant took great exception to this refusal, insisting that it would impact upon CRL's ability to complete the construction of the 30-inch retort in time for the proposed CSC visit. The Claimant went ahead and ordered the tanks, paying the deposit of £5,000.00 through Research and Development Services Limited (another minority shareholder in CRL).

47. On the 22 May the Claimant telephoned and spoke to Mr Ryan Lamb, during which he made a number of allegations which Mr Lamb described as having come "completely out of the blue". The Claimant indicated that he intended to set out these allegations in a letter to Mr John Reece. Mr Lamb explained to the Claimant that RGL were about to make a formal offer of additional funding to CRL and that it may be prudent to wait until after that offer had been made before making any complaints to Mr Reece. Later that day, Mr Lamb received from the Claimant a letter which the Claimant proposed to send to Mr Reece, which letter is dated the 21 May and appears at page 515 in the bundle. The letter contained several allegations of unfair prejudice and minority shareholder oppressions. The letter also implied that RGL had created a situation where CRL was likely to fail to succeed with the Campbells project. After what Mr Lamb described as a "difficult conversation," the Claimant agreed not to send the letter to Mr Reece and agreed with Mr Lambert that they would meet on the 30 May to discuss the position further. On the 24 May the Claimant sent a further email to Mr Lamb insisting that Mr Lamb forward the letter of the 21 May to Mr Reece. The Claimant's email complained about "prevarication" over Campbells and that the "withdrawal of the £260,000.00 was unlawful". The Claimant stated that he believed that the recent actions of the majority shareholder "verged upon corporate sabotage of our business". On the morning of the 24 May, the Claimant sent a further letter to Mr Lamb (copying it to Mr Reece) concerning the restriction on expenditure. The letter alleged that the CRL Board had not discussed nor agreed changing the existing authority levels whereby the Directors could spend sums of up to £10,000.00. Mr Reece telephoned Mr Lamb to enquire about the content and meaning of the letter. Mr Lamb asked Mr Reece to let him sort it out. Mr Lamb called the Claimant again on the 24 May and believed he had persuaded

the Claimant not to send the original letter until after their meeting on the 30 May. However, at 8am on the 25 May the Claimant sent his letter direct to Mr Reece. The contents of the letter were discussed by Mr Lamb, Mr Reece, Mr Priday and Mr Lant. All were concerned that the Claimant's attitude may require them to "rethink what might be the best way to approach any funding discussions with David".

48. The Claimant's letter dated the 21 May states as follows: -

"After the CRL shareholder meeting on the 21 March 2017, you asked me why Dave Routledge said he thought that the majority of shareholders and the company had acted in an oppressive way towards a minority shareholders. Although I gave you my immediate views, I have had a further look at this issue over the past month, and unfortunately, this confirms what I said to you at the time – there is a real risk that some of the recent actions of CRL and RGL, in particular the removal of the £250,000.00 plus accrued interest, could constitute unfairly prejudicial conduct against the minority shareholders, as well as having created a preference for a connected party. I have set out my reasons below with a view to minimising any further risks to our business or our fiduciary duties owed to CRL as Directors going forward."

49. The Claimant then set out over three pages his allegations that the removal of the £250,000.00 plus interest represented oppression of the minority shareholders and potentially unfairly prejudicial conduct in the company's affairs. The Claimant states, "on the 15 March 2017 the CRL Board was told that the £250,000.00 of the working capital facility that had been drawn down as part of IA2 in October 2016 was being removed from the company's bank account that same day plus over £10,000.00 of accrued interest, making the business technically insolvent."

50. The Claimant's covering letter to Mr Lamb of the 24 May appears at page 529 in the bundle and states as follows: -

"Further to your email (below) our subsequent telephone conversations and thinking things through overnight, I feel is it now essential to send John the letter I sent to you on Monday. I fully appreciate your concerns over this, but I think matters are now so serious that I have no option other than to put on record where I stand. My reasons are as follows: -

1. The constant prevarication over Campbells means it is now likely that we will miss the opportunity and that would most likely result in the failure of the business.

2. As I have said all along, I firmly believe that the withdrawal of the £260,000.00 was unlawful and as a Director of CRL, I have concerns over my liabilities in this regard in connection with the fiduciary duties I owe CRL – John has even more liabilities as a Director of both CRL and RGL as he was the instigator of the transfer. If the funds are not quickly returned to CRL, the company and RGL could be in breach of Section 239 of the Insolvency Act 1986.

3. I believe that the recent actions of the majority shareholder verge upon corporate sabotage of our business and in the long term the constant battle within the RGL name board over our survival, would make it impossible for CRL to flourish.

4. Please confirm that you will forward the letter to John by return.

5. In the meantime, I will order the long leads time elements of the tank through Research and Development Systems Limited, in an attempt to keep the Campbells opportunity alive."

51. Later, on the 25 May the Claimant attended a meeting with John Clough, Peter Harding and Dave Routledge, three of the other minority shareholders in CRL. The Claimant prepared minutes of that meeting which appear at page 547-548 in the bundle. Those minutes record how, "DL (the Claimant) presented a number of emails demonstrating how near CRL is to securing its vital first retort order with Campbells (CSE)". Later in the minutes the Claimant records, "DL reported that there was not unanimous support for CRL within the RGL Board and that this conflict was the reason behind the ongoing delays." Later in the minutes, it states, "JC, PH and DR were of the unanimous opinion that RGL should remedy the breach of the shareholders agreement and immediately return the £260,000.00 instead of expecting the minority shareholders to fund the business. DL explained that £100,000.00 of this had already been returned by RGL and that he personally had had to pay the deposit on the longest lead time items from R & DSL instead of CRL." Further down it states, "the second concern raised by DR was that if they did provide bridging finance to CRL, what guarantees could be put in place that RGL would not sweep that money as well."

52.Finally, the minutes record, "DL gave examples of how he was staying firmly on the side of all shareholders, creditors and employees and that this was a source of increasing friction within RGL, nevertheless, he agreed to seek legal advice for the company."

53.By letter dated the 29 May, the claimant on CRL letterhead wrote to HSBC Bank, stating: -

> "As the Director responsible, I am currently investigating the possibility that the company's recent transfer of our bank accounts to the control of our parent company's HSBC's Net Platform, as well as the setting up of this facility on the 11 December 2015 was not properly authorised and should not have taken place. I am therefore writing to confirm that the original individual HSBC online banking system in the sole name of Continuous Retorts Limited should be reinstated and the link to the HSBC Net Platform in the name of Reece Group should be deactivated until further notice."

54. On the 29 May, the Claimant sent a further email to Mr John Reece, a copy of which appears at page 549-550 in the bundle. The relevant extracts state as follows: -

> "1. We should both make strenuous efforts to get the balance of the £260,000.00 returned from RGL to CRL's Bank account without further delay pending an investigation into: -
>
> i. The reason behind the stripping out the cash, and: -

ii. The effect it has on the October 2016 Shareholder Agreement.

2. The Banking arrangements need to be returned to the direct control of CRL's Board (as defined by the existing mandates) pending a full investigation into the validity of their transfer to RGL's control.

3. The company should immediately seek independent legal advice regarding the validity of the increasing number of new constraints being placed on our business by RGL as well as RGL's potential lack of compliance with a number of clauses within the various investment documents.

These are serious allegations and they personally affect both you and I, as well as the company and RGL, and I strongly advise that we meet as soon as practicable tomorrow to agree a joint plan of action to resolve matters as a top priority."

55. On the 30 May the Claimant sent a further email to Mr Reece, copying the same to Mr Priday and Mr Lamb. The message is headed up "Report on Transfer of CRL's Bank Accounts". The relevant parts of the report are set out below: -

"After three days of checking the various investment agreements and associated documents over this Bank Holiday weekend, I have found no requirement for the company to hand over control of CRL's bank account to RGL. Further, the matter did not appear to have been discussed or agreed by CRL's board. The removal of just over £260,000.00 from CRL's business banking account made the business technically insolvent and as the immediate prospects of the business were improving, there appears to have been no logical reasoning behind the transaction. "

Recommendations and Immediate Actions

"HSBC should immediately be instructed by CRL to reinstate the original banking arrangements to stop further cash being removed by RGL. RGL should immediately return the balance to avoid the business from failing and to potentially giving rise to further contractual issues. RGL Senior Management should be made aware that by issuing direct instructions to CRL that the Directors of CRL routinely comply with, they are potentially acting as de-facto or shadow directors with all of the associated liabilities and fiduciary duties owed to CRL, particularly if the business subsequently fails."

56. RGL still intended to make an offer of additional funding to CRL. Mr Reece, Mr Lamb and Mr Lant met on the morning of Tuesday 30 May to discuss the situation. It was agreed that Mr Lamb and Mr Lant together with John Flynn (a former Solicitor and Legal Consultant to RGL) should travel to CRL's offices to meet with the Claimant. The Claimant's version of what was said and how it was said at this meeting, differs to that

of Mr Lant, Mr Lamb and Mr Flynn. The Claimant's version at paragraph (87) of his witness statement is as follows: -

"On the 30 May 2017 I met with Mr Lamb, Steve Lant and John Flynn. They had been instructed by Mr Reece in a pre-meeting to propose a funding package for CRL on the following terms: -

a. Balance of loan and interest RGL removed in March 2017 could be returned.
b. Additional funding could be provided but no guaranteed amount.
c. RGL would provide funds from within the existing known facility and drop its attempts to get extra shares for the funding.
d. Mr Anderton to be brought back to run the CSC project and report to me on day-to-day issues but not project matters.
e. I would have to stop complaining about the treatment of the other shareholders and stop investigating RGL's alleged undoing etc.…"

57. At paragraph 88 of his witness statement, the Claimant goes on to state: -

"Mr Flynn told me that whilst my letter of the 21 May 2017 had succeeded in getting RGL to drop the dilution of the minority shareholders, in the pre-meeting, Mr Reece had told him that it made me a pariah in Mr Reece's eyes and if the proposal was to go ahead, I would have to agree to stop raising any corporate government issues in future (a condition which relates directly to the numerous protected disclosures I had raised regarding corporate governance issues.)"

At paragraph (91) and (92) the Claimant goes on to state: -

"There is no justification for Mr Reece to tell Mr Flynn that I was a pariah – an insult to a professional person who had done no more than stop clear wrongdoings. Worse still was that by becoming a pariah Mr Reece told Mr. Flynn that I was now such a person that Mr Reece did not want anything to do with, and he could no longer deal with me on a face-to-face basis – as if I were a leper".

58. Mr Lamb's version of the incident is set out in paragraph (133) of his witness statement as follows: -

"I am astonished to now read that David claims he was subjected to a detriment by me on the 30 May 2017 in that he alleges I told him that his actions in trying to resolve matters raised by other shareholders had resulted in RGL dropping their attempts to dilute their shareholdings and it had made David a pariah in the eyes of John Reece and RGL. I did not make these alleged comments. Steve Lant and John Flynn were present at this meeting and will support this position. In fact, these comments were raised in David's email of the 30 May 2017 at page (575), but he doesn't attribute them to me. He has simply lifted the wording from his email and tried to suggest that I made the comments which is simply not true."

59. Mr Lant's version of the incident is set out in paragraph (65) of his witness statement as follows: -

"I am aware that David claims he was subject to a detriment by Ryan Lamb during the meeting on the 30 May 2017, claiming that David was now seen as a pariah in the eyes of John Reece and RGL. I was present during this meeting and I can confirm that Ryan never made those alleged comments."

60. John Flynn's version of the incident is at paragraph (13.6) of his witness statement where he states as follows: -

"I note that David claims he was subjected to a detriment by Ryan on the 30 May 2017, based on his allegation that Ryan told allegedly him that his actions in trying to resolve matters raised by other shareholders had made David a pariah in the eyes of John Reece and RGL. I was present throughout this meeting and I can confirm that Ryan did not make this or any similar comments."

61. The Claimant's evidence in this regard was particularly inconsistent. Under cross-examination from Mr Sweeney, the Claimant said that he was mistaken when in his pleaded case he said that Ryan Lamb had said this to him, whereas in fact it had been Mr Flynn. The Tribunal found it strange that the Claimant could make such a basic mistake in respect of something which he alleges to have been so serious. The Tribunal notes that the Claimant sent an email to Mr Lamb later that day in which he states: -

"My big issue however is the clear message put across that my actions in trying to solve the serious matters that have been raised at the shareholder meetings have made me a pariah in the eyes of RGL and this matter is going to be much more difficult to resolve and obviously leaves me feeling particularly exposed."

Whilst the Claimant may well have believed that the attitude of RGL made him feel like a "pariah", the Tribunal found that the word "pariah" was never used during the meeting, either by Mr Lamb or Mr Flynn and also that it had never been used by Mr Reece in his discussions with Mr Lant and Mr Lamb earlier that day. The Claimant's insistence that the word had been used, was simply untrue.

62. The Claimant also alleges in his evidence that, at the beginning of the meeting with Mr Flynn, Mr Lamb and Mr Lant, Mr Flynn had insisted that the Claimant should stop writing things down. The Claimant in his evidence said that he interpreted this to be a means by which RGL would prevent him keeping an accurate record of what was said at the meeting. The version given by Mr Flynn, Mr Lamb and Mr Lant was simply that Mr Flynn was suggesting that they have an informal and friendly discussion about RGL's proposals and the Claimant's concerns as if they were "meeting down the pub". Again, the Tribunal accepted the evidence of Mr Flynn, Mr Lamb and Mr Lant in this regard and found that there was no ulterior motive which was detrimental to the Claimant in Mr Flynn suggesting that their discussions proceed on that basis.

63. Despite those matters, the Claimant goes on to say in his letter of the 30 May: -

"The offer Steve tabled in so far as parts were read out to me, seems on its face to be capable of acceptance and is certainly much better than the earlier proposals, which would have diluted most minority shareholders. Although the proposed changes

in management seem to have not been properly been thought through, I am sure with some sensible compromises on both sides, we can still reach agreement."

64. A meeting of the CRL Shareholders was arranged for the 01 June 2017, the purpose of which was to present RGL's most recent funding proposals. In attendance were John Reece, Ryan Lamb, Steve Lant, Craig Priday, David Lambert, Peter Harding, Dave Routledge, John Clough (by telephone) and Steve Andrews (by telephone). Again, the Claimant's version of what was said and how it was said at this meeting, differs to that of Mr Reece, Mr Lamb, Mr Lant and Mr Priday. Minutes prepared by Mr Lant and Mr Lamb appear at page (589) whereas those prepared by the Claimant appear at page (580). The Tribunal found from the evidence of Mr Lant, Mr Lamb and Mr Reece that their version of the minutes was more likely to be correct. Messrs. Reece, Lamb, Lant and Priday all felt that the Claimant had been intentionally obstructive at this meeting and behaved in a way which was designed to prevent a reasonable discussion amongst the CRL shareholders of RGL's funding proposals. The Claimant insisted upon complaining about things which he considered RGL had done wrong, such as appointing an Engineering Director and failing to honour its funding obligations, which he interpreted as meaning that there was an obligation on RGL to provide the full £3.5m as and when CRL required it. Particularly, the Claimant did not mention that the £250,000.00 loan facility remained available for re-draw and that in fact £100,000.00 had already been drawn down and spent. Mr Priday stated that the Claimant's version of the minutes were "biased and do not reflect what was said or discussed". Mr Lant's evidence was that "David's behaviour and the minutes which he subsequently circulated to the other shareholders were in my opinion designed to inflame hostility from the minority shareholders towards RGL. David's obsessive focus on historic matters and what he perceived to be RGL's unreasonable behaviour meant that RGL's funding proposals were not even put forward to the shareholders (but summarised in the agenda) which had been the entire purpose of the meeting. Mr Lant also stated, "I cannot believe that David could have genuinely or reasonably misunderstood the case to be that RGL had legally committed to provide the entire £3.5m without conditions when entering into the facility agreement. My view was that this was a statement which was purely intended to provoke anger amongst the other minority shareholders against RGL. Mr Lant's comments to the Claimant was that he would be "snatching defeat from the jaws of victory" because of the way he was behaving.

65. The outcome of the meeting was that the minority shareholders of CRL were not willing to consider RGL's funding proposals until what they described as the "management issues" between the Claimant and RGL had been resolved.

At paragraph 143 of his witness statement, Mr Lant states: -

"It was clear that agreement would not be reached. There was a risk that David was biting off the hand that was feeding CRL. Without funding from RGL, the company would be insolvent. It was however reiterated that funding would be provided to meet creditors which fall due and the company would continue to fund the business in the short term once further discussions took place."

66. Another specific point which arose from the shareholders meeting related to a comment allegedly made by Mr Reece about the correspondence he had received from the Claimant. The Claimant's version at page (103) of his witness statement, states: -

> "Mr Reece stated that if Mr Priday ever wrote to him making unfounded allegations, brandishing my letter to him of the 21 May 2017, he would sack him."

Mr Reece's version at paragraph (146) of his witness statement, is: -

"At one point during this meeting, I said something to the effect that "if Craig had sent me emails like that (referencing David's emails) he wouldn't be here right now". My tone was wry rather than angry or threatening. I was making these comments from RGL's perspective, not CRL's perspective. David is not Craig and CRL is not Pearson Engineering, so my words cannot actually be construed as any kind of threat – they are in fact an acknowledgment of David's position as an employee of CRL and the different legal ramifications that existed as a consequence. David's behaviour towards me at this meeting was at times insulting, I think with a view to provoking some kind of reaction".

67. The Tribunal accepted the evidence of the Respondent's witnesses as to what was likely to have been said by Mr Reece at this meeting. The Tribunal found it unlikely that the words "he would be immediately sacked", would have been used by Mr Reece. Again, the Claimants version was exaggerated and distorted to suit his own purposes.

68. After the formal Shareholders meeting had ended, Ryan Lamb, Craig Priday, Steve Lant, David Routledge and the Claimant had a brief discussion, during which (as Mr Lamb states at paragraph 145), "David without prompt stated that if CRL needed funding then he would step aside as MD and would be happy to accept a consultancy role, subject to agreeing paperwork." That proposal was then discussed within RGL on the 02 June, when it was agreed that Ryan Lamb should contact the Claimant to explore what he was thinking about in terms of a consultancy role. It was recognised that RGL could not agree anything with the Claimant as any proposal would have to be handled by CRL as the Claimant's employer. In a subsequent discussion between Mr Lamb and the Claimant, the Claimant stated that he would never accept any funding proposal by RGL which would include someone becoming project manager of the engineering project.

69. By email dated 01 June and sent to Mr John Reece, the Claimant stated as follows: -

"To confirm some points from today, I am employed by CRL's Board and you personally control that Board. At today's Shareholder Meeting, you told me in front of our shareholders, senior managers and professional advisors that my actions in writing to you pointing out potential breaches of contracts and shareholder agreements over the past eleven weeks, is a sackable offence because they are all totally unfounded. I protested that the matters I was formally bringing to your attention were not unfounded and this view was corroborated by at least two of our shareholders who were present in the meeting who had made allegations of corporate wrongdoing by RGL over the past two months."

70. On the same day, an email was sent by Mr Steve Andrews (minority shareholder in CRL) to John Reece and Ryan Lamb, in which he stated: -

"As stated, DL pissed me off and others to an extent I had never experienced before. Offering DL, a consultancy opportunity would be a great mistake – offer him a new position on the payroll – either way make sure you have control of him – really. I think he is critical but that said, you seem to have background smart cookies to hand and I know it is possible to go from nil knowledge to delivery and do it well. I don't know the point I want to make other than I know exactly what area you are coming from – I know we live with the belief he is essential, I know he will piss off most everyone at the point of success."

71. The Tribunal noted that no "corroboration" from any of the other minority shareholders has ever been produced, either relating to what was said at the shareholders meeting on the 01 June, or indeed to support that part of the Claimant's case where that is contradicted by the Respondent's witnesses.

72. By this stage, RGL's Board and, in particular Mr John Reece, had become irritated, frustrated and exasperated by the Claimant's attitude and behaviour, particularly at his habit of sending inflammatory, aggressive and in their opinion, unfounded allegations of wrongdoing. By email dated 02 June page (595) Mr Reece said to Ryan Lamb and the other RGL Board Members: -

"Dear all,

We had been making progress with CRL: -

- Roger Anderton to be Project Director one to two days per week (although away all of September).
- Ian Jones (Velocity and PEL) to be full-time Project Manager.
- Campbells visit moved back to September.
- Product Handling companies interested in that side of the project.
- Loan Mechanism agreed.

However, as of yesterday, the position of David Lambert as MD is no longer tenable. (explanation can follow!). He can probably be retained as a consultant and we can almost certainly retain his son Dan, who Is essential to completing the engineering. This leaves us with a weak/non-existent management team. We would try to fill this with Ryan/Craig/myself until we can appoint a suitable person. On the plus side, it is clearly better that this happens now than midway through the project.

So, now thinking about what to do: -

Go/no go.

Thoughts?

Mr Reece's evidence to the Tribunal is set out in paragraph (152) of his statement.

"The approach adopted by David led me to send a confidential email to the Board of RGL on the 02 June 2017. I sent this email in my capacity as a Director of RGL and not as a Director of CRL. I expressed my concerns regarding his approach and whether or not his position at CRL remained viable from RGL's perspective, or whether it was sensible to continue funding CRL giving a risk to RGL's investment. I had not formed any form of view, as indicated by my "to now thinking about what to do; go/no go" and "thoughts?". We still contemplated retaining David in CRL as a consultant. My sending this email was due to a well-founded lack of confidence in David's ability, motivations and objectives which had been building since RGL first invested in CRL. I should emphasize again that I was at all relevant times completely aware that: -

- Any decisions taken in respect of David's employment were a matter for CRL as his employer.
- RGL could not take management decisions affecting David.
- Any management decisions to be taken by CRL in relation to David should be taken in accordance with fair and reasonable employment practices."

73. On the 04 June 2017, the Claimant sent to all of the CRL minority shareholders an email to which was attached copies of the ten emails and one letter sent to Mr Reece by the Claimant in the thirteen days before the shareholder meeting of the 01 June. Upon receipt of a copy of that email from the Claimant, Mr Reece sent a message to the RGL Board stating: -

> "For your interest, copies of recent correspondence from David Lambert. I think it's time to call it a day with CRL; too many negatives and risks."

74. By email dated the 04 June, Craig Priday said to Mr Reece: -

"I have to agree with your conclusions. I still believe there is an opportunity with the technology but David's aggressive and erratic behaviour have made this impossible. In my opinion he has deliberately generated this crisis, presumably to drive RGL away and open the door to new potential investors. We should now concentrate on recovering as much of our investment as possible."

75. On Monday 05 June, Peter Harding (minority shareholder in CRL) sent an email to the other minority shareholders stating as follows: -

> "Dear all,
>
> I am watching a car crash in slow motion. We have at our fingertips: -
> - World beating technology with patents available to us.
> - Companies queueing up to see it in action.
> - A large investment by all parties (financial and otherwise).
> - And yet here with are at what appears to be an impasse.
> - All parties as ever in these circumstances think they should carry the day.
> - My suggestion would be to ask if an independent arbitration company be appointed to try to bring some sense and compromise. We need some sensible discussions. Other than that, I can see no future for CRL and that would be a wasted opportunity for all and especially the North East.

Please give it some thought, I am happy to organise the company to come in."

76. In Mr Reece's absence on holiday, Ryan Lamb informed the Claimant by telephone on the 07 June that RGL had decided not to provide any further investment to CRL. However, it was confirmed that RGL would continue to fund CRL's day-to-day financial commitments until the end of the month, to allow the Claimant and the other shareholders to explore the possibility of raising an alternative funding. The telephone call was confirmed in Mr Lamb's email to the Claimant on the 09 June page (607) in the following terms: -

"I was asked by the RGL Board in my capacity of a Group Financial Controller for RGL to contact you as soon as possible to give you an update until John could speak to you next week (W/C 12 June) when he was back in the office. I noted it would be appropriate for you both to have a CRL Board meeting, even if over the phone.
I informed you that the RGL Board, after careful consideration, has made the decision not to provide further funding under the facility agreement above the balance of the £260,000.00 (£160,000 not redrawn down). RGL will send a letter to you with more detail in this regard next week.
With regard to expenditure, I was simply passing the message on from John that giving the funding position, you should be careful not to commit CRL to expenditure which it might not be able to pay, in reference to your duty as a Director. I noted that whilst you sought funding in June, RGL would if required continue to fund the ongoing day-to-day running costs (such as staff costs) through the £160,000.00 remaining on the facility agreement, although I note you have sufficient funds in the bank at the moment to pay for the entirety of June running costs which are typically £45,000.00 per month, therefore this isn't required at the moment. Again, however, the message was passed on to be careful about committing to any further expenditure on top of the minimal running costs."

77. In a formal and lengthy letter dated the 13 June page (637-639) Mr John Reece wrote personally to Mr Lambert explaining why RGL had decided not to invest any further in CRL and setting out what was the then current position with regard to the outstanding loan from CRL to RGL. In the final paragraph of his letter, Mr Reece states:

"As I noted in the CRL Shareholder Meeting on the 01 June 2016, provided you adhere to our agreement on incurring liabilities, £160,000.00 of the facility (the balance of the £250,000.00 loan facility plus interest) if required, is still available for draw down to CRL whilst funding for the project is being sought and if, in the unfortunate event, the company is not able to continue to trade, any remaining balance will be available to pay CRL's creditors in an equitable manner and in accordance with insolvency legislation. Until such time as alternative funding has been secured, advances will be made in instalments as required to pay liabilities which fall due and you should seek prior lender approval before incurring any expenditure in excess of £1,000.00 other than current staff costs and rent. We should arrange a CRL Board Meeting at the earliest convenience, even if over the telephone, to discuss those matters further."

Attached to Mr Reece's letter was a document "Report on allegations of breach of fiduciary duties and breach of contract", which had been prepared by Mr John Flynn on behalf of RGL. That document was Mr Flynn's opinion as legal counsel to RGL on the

various allegations which have been made by the Claimant in his various letters from March 2017.

78. By email dated the 14 June, Mr Lambert replied to Mr Reece`s letter of the 13 June, with Mr Lambert's reply typed in red and in which the claimant suggested that Mr Reece should have checked with him before circulating his document to the other shareholders. Mr Reece replied on the 14 June stating, "David, instead of bombarding me with fractious emails I suggest you get on with running the company. Did you consult me before sending so many emails in which you seem have spent most of your time recently?"

79. A meeting of the CRL Shareholders was provisionally arranged for the 27 June. By email sent to Steven Lant on the 26 June, the Claimant set out an alternative funding plan for CRL. Under this proposal, the existing shares would be distributed on a "pari-passu " basis, meaning that each party's shareholding percentage would reflect the percentage of money which they had invested in CRL, compared to the other shareholders. It would mean that RGL's shareholding would reduce from 75% to 45.07% and thus would no longer be a controlling interest. The Claimant's shareholding would increase from 6.73% to 14.79%. It would mean that RGL would see a reduction in its percentage holding, whilst all the minority shareholders would see their percentage shareholding increased, even after any potential further investors came on board, by subscribing for shares in place of those given up by RGL. The effect of issuing shares to new investors would be to further reduce the percentage of each current shareholders` holding by more than half. RGL would just be left with 37,165 shares out of a total of 167,400 a holding of just over 22%.

Mr Lant referred to this proposal by Mr Lambert as "bizarre and not one which an investor in RGL's position would contemplate accepting". Mr Lant described it as a proposal which he "didn't think was feasible".

80. A CRL Board Meeting took place on the 04 July. The Claimant's alternative funding proposal was discussed and it was agreed that it should be put to the RGL Board for consideration. Unbeknown to any of the other attendees, the Claimant had invited Andrew Haslam of Tate Walker (Accountants) to attend that meeting in his capacity as an insolvency practitioner.

81. The RGL Board met on the 05 July to consider the Claimant's alternative funding proposal. RGL decided that the proposal "was without merit" and it was agreed to request any final funding offers from the existing CRL Shareholders by Friday 06 July, with the RGL Board reconvening on the 10 July to discuss any such proposals or to consider the options then open to the Company including, but not limited to, formerly liquidation.

82. A further meeting of the CRL Board took place on the 10 July. Mr Lamb confirmed that the re-draw down of the £162,000.00 from RGL remained available and could be used to settle day-to-day running costs, or should be the business go into liquidation, to settle creditors in the correct manner. No other alternative funding proposal was made.

83. The Claimant then submitted in a further proposal dated the 11 July, (page 692) which required RGL to sell its entire shareholding for £1.00 and to allow the full

drawdown of the remaining £162,000.00 loan on new terms and without any security. All of this was discussed at the RGL Management Board Meeting on the 11 July and rejected as being unacceptable. The RGL Board resolved that Ryan Lamb and Mr Reece should pursue the "best possible exit strategy, provided this did not involve handing back shares at an unacceptably low value."

84. By email dated the 12 July, the Claimant noted that RGL had rejected CRL's proposed rescue package and that: - "in my opinion, the rejection of both proposals by RGL yesterday will inevitably result in the liquidation of the company. On that basis, I recommend that we stop trading immediately, issue the necessary redundancy notices and take formal legal advice in anticipation of the litigation that I cannot now in my opinion be avoided".

Later that day Mr Lamb replied, confirming that RGL's main objective remained to find a fair and equitable solution that would enable CRL to continue to trade. He repeated that the £162,000.00 was still available for redraw down to pay creditors in accordance with Mr Reece's earlier letter of the 13 June.

85. On the 17 July, the Claimant's sent a further email to John Reece, to which was attached to a document headed "Independent Legal Advice to the Board of CRL," which the Claimant had obtained from Kevin Turnbull of TT Law. The advice set out potential features of Companies Act 2006 concerning a directors duty to promote the success of the company and to avoid conflicts of interest. The Claimant sought "restitution" by way of the return of the balance of the money removed in March, which then stood at £142,000.00.

86. On the 14 July, the Claimant had informed Mr Reece and Mr Lamb of the possibility of interest from Princes Foods, which may have resulted in additional work for CRL. Despite their misgivings, it was agreed that Ryan Lamb and John Flynn would again meet with the Claimant on the 21 July to explore the possibility of further RGL funding being agreed and to discuss the management structure and the Claimant's role within CRL. Again, the Claimant's version of what was said and how it was said at this meeting, differs to the version given by Mr Lamb and Mr Flynn. The Claimant's version appears that at paragraphs (149-153) in his witness statement. He states: -

"Mr Flynn said that he had attended pre-meetings with Mr Reece and Mrs Reece and Mr Reece had instructed him to explain that there were only two options left to save CRL – I step down as MD or RGL would immediately liquidate CRL, and if I agreed to step down, there were conditions that would need to be met as follows: -

a) Mr Priday would become interim MD pending a full-time replacement.
b) I would have to become Technical or Sales Director on the same salary.
c) There would be no guarantee of funding even if I agreed to step down.
d) I would have to give undertakings to stop raising corporate government issues (a condition which relates to directly to the numerous protected disclosures I had raised regarding corporate government issues).

I stated that there had never been complaints about my performance and forcing me to step down for protecting the interest of shareholders, could not be a justifiable reason to do so. Mr Flynn pushed me for my agreement. The threats made to me by Mr Reece as transmitted to me by Mr Flynn, had now gone far beyond those Mr Reece made via Mr Flynn on the 30 May 2017, where I was expected to stop raising corporate governance issues which I had rejected – I was now to be removed from office by Mr Reece. The reason I was given for my demotion was again that I had complained of wrongdoing and once this was achieved it was calculated that I would be only able to fulfil the specific terms of my service agreement that related to reporting wrongdoing as well as my obligations as set out within the context of the Manager in the Shareholder Agreement or even the duties I owed as a Director of CRL. At no stage did I consider that Mr Reece had any justification to remove me as Managing Director simply for protecting the rights of all CRL shareholders and looking after the interests of CRL its employees and creditors. Nevertheless, given the threat to liquidate CRL if I did not agree to this proposal, I told Mr Flynn that I would think about it over the weekend."

Mr Flynn's version of the meeting is set out in paragraph 21 of his statement where he says: -

1. David was not given an ultimatum to resign as Managing Director of CRL.
2. There was no ultimatum or threat that CRL would be wound up.
3. David was not threatened that Craig would replace him as Managing Director.
4. David was not asked to give an undertaking to stop writing things down or an undertaking to act in accordance with fiduciary duties.
5. David was not threatened that if he did not agree to step down, then CRL would put together sufficient performance related matters to justify demotion by other means.
6. We discussed a proposed Technical Director role and David asked if he could be involved in the recruitment of this role, which I confirmed he would.
7. The meeting was not handled in a heavy-handed or aggressive manner. The intention and approach we adopted was to encourage David to take a step back and consider as a shareholder RGL's potential funding proposal in terms of what was in the best interest of CRL and himself.

In his supplemental witness statement, Mr Flynn confirmed that he told the claimant that if the funding agreement could not be agreed with RGL, then a potential outcome was that CRL may become insolvent and may need to cease trading. That was not a threat or a detriment, simply reflecting the reality of the situation. Mr Flynn repeated that no threats were made to the Claimant and he was not told that he would be removed as a director or that the company would be liquidated. There was no talk of "demotion".

Mr Lamb's version of the meeting is set out in paragraph (170) of his witness statement where he states: -

1. David was not given an ultimatum to resign as MD or CRL would be wound up.
2. David was not given an ultimatum that Craig would replace him as MD.

3. David was not asked to give an undertaking to stop writing things down or an undertaking back in accordance with fiduciary duties.
4. There was no threat given that if David did not agree to step down, then CRL would put together sufficient performance related matters to justify demotion by other means.

In his supplemental statement at paragraph (17), Mr Lamb states: -

1. David was not informed that he must either step down as MD or CRL would be liquidated. This is taking the conversation completely out of context. David was advised that if a funding agreement could not be agreed, then one potential outcome was that the business may become insolvent. This was simply reflecting the reality of the situation.
2. David was not advised that he was going to be demoted. Furthermore, David's statement "the reason for my demotion was again that I had complained of wrongdoing" is false and not correct. No such comment was made.
3. David's allegation that there was an ultimatum that if he did not agree to step down, then the Respondent would put together sufficient performance related matters to justify the demotion by other means, never took place and David has fabricated this version of events.

87. The Tribunal accepted the version of events given by Mr Flynn and Mr Lamb and found it highly unlikely that the Claimant's version of this meeting was correct. The Claimant's version of what was said is different in his witness statement to that which is set out in his pleaded case and he was confused about whether some of the things said were in a telephone call on the 27 July with Mr Lamb, rather than in the meeting on the 21 July. The Tribunal found that Mr Lamb and Mr Flynn were setting out for the Claimant's benefit a commercial proposal from RGL to CRL in terms of funding, to which were attached conditions relating to the Claimant's role. The Tribunal found that the Claimant had unreasonably distorted what had been said to him, in an attempt to discredit RGL's true motives.

88. The Claimant's response to the unconditional funding proposal put to him by Messrs. Lamb and Flynn was contained in a letter send by Recorded Delivery to Mr Lamb and dated the 24 July 2017 page (709-711). The letter does not specifically accept or reject the proposal. It alleges in lengthy terms that Mr Lamb was in effect acting as a shadow Director of CRL and questioned how Mr Lamb considered that the Claimant's removal as the company's full-time Managing Director "for no other reason than my insisting on proper corporate governance could possibly promote the success of the company for the benefit of its members." The Claimant goes on to allege that "the needs to cut losses within RGL and recover cash must have been a factor in John Reece's decision to instruct you to remove all of the cash owing to RGL from the company in March 2017". The Claimant went on to challenge Mr Flynn's legal status on the basis that he was no longer on the roll of Solicitors and that any advice given by him to RGL could not be relied upon.

89. By a letter of the same date, addressed to Mr Reece's home address, the Claimant set out in a further 2 pages of allegations of "alleged breaches of fiduciary duty". In the main that related to the removal of the £260,000.00 on the 15 March 2017 and sought

from Mr Reece a written explanation as to the basis of that decision and its consequences on CRL. In his letter to Mr Reece, the Claimant states: -

"Unfortunately, matters have deteriorated further since my email to you of the 17 July 2017 in that I have been told by Ryan Lamb and John Flynn at a meeting at Gosforth on the 21 July 2017 and witnessed by Peter Harding, that if I do not agree to step down as Managing Director with immediate effect, and undertake that I will desist in my actions to rectify your alleged breaches of duty, RGL will procure the immediate liquidation of the company. Further I understand that Ryan Lamb and John Flynn met with Dave Routledge on the 20 July 2017 and tried to secure his agreement to have me replaced by a compliant Managing Director. I should also point out that it has been alleged that Ryan later misrepresented the outcome of that meeting in a voicemail he left me."

The letter goes on to again allege that Ryan Lamb had been acting as a Shadow Director of CRL since the departure of Phil Kite in March 2017.

90. On the 25 July the Claimant sent an email entitled "Threaten Liquidation" to John Reece, indicating that he had advice from TT Law about applying for an interim injunction to stop or delay the liquidation of CRL". Ryan Lamb replied within the hour stating: -

"Given that the Reece Group Limited is prepared for the time being to support CRL financially (within the constraints that have been communicated to you previously, (see below) and has no need to intentionally propose a resolution as set out in your email, there is no need for any action to be taken tomorrow with any insolvency practitioner. With regard to the financial support, as has been communicated to you on a number of occasions, RGL will continue to fund the company's minimum day-to-day running costs whilst there are prospects of the long-term funding issue being resolved, through re-draw down of the £262,000.00 facility loan. To that end, £139,500.00 has been re-drawn down to date with another £122,500 available."

91. It is not disputed that RGL continued to provide financial support to CRL throughout this period. On the 02 August, RGL provided a further £30,000.00 to fund engineering work and travel costs, taking the loan balance up to £169,500.00. That was in response to a request from Mr Lambert, who required funds to pursue a possible order from Prince's Food and to travel to the United States to pursue interest from CSC.

92. On 2 August, Craig Priday wrote to the Claimant in detailed terms, setting out a proposal from RGL to provide loan finance in excess of the £250,000.00 which had previously been agreed. The relevant extracts from that letter are as follows: -

"RGL is willing to provide a loan finance in excess of the £250,000.00 agreed in September/October 2016 in order to fund a project for the production of a demonstrator, subject to us developing a satisfactory business plan. However, we must inform you that continued funding from RGL is conditional upon a change in the management structure of the business as set out below. The business is now entering a new and critical stage of its growth with two opportunities to secure is first Retort order. To maximise the chances of success for the business RGL is of the view that a new Managing Director should be recruited and that you should take up a newly created role

of Technical Director, to work alongside a newly appointed Managing Director. RGL recognises your commitment to the business and extensive knowledge of the technology/food industry. Please be assured that there is no intention to remove you from the Core Management Team or the Board the CRL. RGL considers however that your skills are better suited to a Technical Director role, where you can focus your time on the advancement of the technology, the engineering of a demonstrator, new business development and the technical aspects of customer communications, without the burden of general company management such as finance and administration. RGL primary reason for proposing a management change are as follows: -

- The track record of CRL in achieving its business plans in accordance with the investment agreement under your management is poor. This funding round will be the third under our involvement due to cash resources being depleted before the business plan objectives have been achieved.
- CRL has had over £4m of funding and has still not received an order or built an appropriate demonstration unit for large scale customers. RGL cannot maintain this level of support going forward without greater assurance of the achievement of the business plan.
- In the past the business has fallen short of closing its first Retort Order with customers who were at a similar level of interest to Campbells and Princes.
- As principle funder, we consider that arrangements should be put in place to ensure that you are focused on achieving the business plan. You will recall that this was discussed in the shareholder meeting of the 01 June 2017 at which some of the other shareholders suggested that a transfer of your role to that of Technical Director or Consultant would be an appropriate solution.
- We feel it would be in the best interests of the company to recruit a new Managing Director with the appropriate experience and financial acumen to negotiate commercial terms and close deals with large scale food production companies. We have concluded from our involvement in the business to-date and discussions with other shareholders that your skills do not lie in this domain.
- The deterioration of the relationship between you and RGL over the last year means the company is now in the unacceptable position where the Managing Director is not able to deal in a constructive non-confrontational manner with its principle funder. We believe that the proposed change in role will help improve that relationship.

We would of course not want any proposed change in role to be detrimental to you and therefore we propose that your current terms of employment and remuneration package remain the same other than in title and responsibilities and that you retain your current shareholding and the office of Director. We also feel that it is important that you are recognised as the originator of the technology and this should continue to be actively communicated to customers and other stakeholders of the business.

In addition, John Reece is prepared to step away from his Director role at CRL to allow a new relationship to be built between RGL and CRL. To that end, if the above proposal is agreed, RGL proposes that Ryan Lamb and I (with whom RGL believes you have a good working relationship) are appointed as the two new Investor/Directors of

CRL and that John Reece will resign. In the period of transition whilst recruiting a new Managing Director, RGL propose that I take the role of "Interim Managing Director."

The latter paragraph confirms what had been discussed and agreed within RGL, namely that Mr Reece should distance himself from CRL as he believed that the breakdown in the personal relationship between himself and the Claimant was adversely affecting the possibility of a continued working/funding relationship between RGL and CRL.

93. Also on the 02 August, Ward Hadaway Solicitors replied privately to the Claimant on behalf of RGL in respect of "the numerous letters and emails exchanged in recent months between you and RGL." That letter rejected all the Claimant's allegations made against, RGL, John Reece, John Flynn and Ryan Lamb.

94. By letter dated the 03 August, the Claimant replied directly to Mr Priday, dealing with the proposals set out in Mr Priday's letter of the 02 August. In his letter, Mr Lambert required further information about RGL's proposals.

95. A meeting took place on the 07 August between the Claimant, Craig Priday, Ryan Lamb and David Routledge (CRL minority shareholder). The purpose of the meeting was to discuss RGL's funding proposals. Mr Lamb took detailed handwritten notes of the meeting which appear at (749) in the bundle. Again, the Claimants version of what was said at the meeting differs to that of Mr Lamb and Mr Priday. Mr Lamb states at paragraph (493) of his statement that during this meeting, the Claimant accepted that RGL had the right to withdraw the loan facility under the terms of the investment and facility agreements. The Claimant then went on to state that he wished to vary the terms of that facility agreement because he had in his words "being crucified by the other minority shareholders for agreeing funding on those terms in the first place". The Claimant stated that he would be open to acceptance of a funding proposal if the facility agreement was changed so that RGL did not have the right to claim immediate repayment and also that they should commit to funding the full £3.5m without conditions. It was agreed that the matter would be put to a Board Meeting of RGL for consideration.

The Claimant's version of the meeting at paragraph 185 of his witness statement was that he said he would not even consider a proposal whereby he would step aside without confirmation that RGL would provide the funding in line with the 2016 shareholder agreement. However, by letter dated 07 August from the Claimant to Mr Priday, the Claimant said: -

> "I think today was a very positive meeting and provided you can find a way to get the detailed points agreed tomorrow at the RGL Board Meeting, I can see a clear way forward to working closing with you and Ryan."

96. The RGL Management Board met on the 08 August. The minutes of the meeting appear at page 755. It was reported that by then, RGL had invested £1.5m in capital and £250,000.00 in loan finance. It was anticipated that CRL required a further £500,000.00 to complete the project and fund its monthly running costs until the end of December 2017. It is recorded that both Campbells and Princes were interested in acquiring a Retort. The minutes record that, "given the track record of the business under DL's management, RGL could not justify providing further funding to the business

without a change in management. The Board agreed that any future funding would be under the existing terms of the facility agreement and there would be no commitment for future funding as it was not possible at this time to review the terms of any future orders or the commerciality of the further investments. It was agreed that a letter would be sent to DL to confirm RGL's position."

97. Whilst this RGL meeting was taking place, the Claimant sent an email dated the 08 August (timed at 09.44) which appears at page (759) in the bundle to which is attached a document headed "privileged external legal advice" which the Claimant had obtained from TT Law with regard to a minority shareholders claim under Section 994 of the Companies Act and a statutory derivative claim under Part 11 of the Companies Act. The minutes of the Reece Group Management Board Meeting record: -

"To the Board's dismay, JR and RL noted that they had received more emails from DL during the meeting today seeking legal action to have the remainder of the £250,000.00 repaid. CP noted his disappointment given the generally positive meeting with DL the previous day, where funding for significantly more than the £250,000.00 was discussed. The Directors concluded that they hope that DL would be open to the change with the best interests of the business in mind, particularly with CRL having exhausted all other options of funding, although given his track record and the tone of the email sent by DL during the meeting, they were not confident that he would be able to."

98. By letter dated the 09 August, Craig Priday on behalf of RGL wrote to the Claimant and set out the following: -

- RGL is willing to provide loan finance in excess of the £250,000.00 agreed in September/October 2016 in order to fund a project for the production of a demonstrator for Campbells, subject to the development of a satisfactory business plan.
- A specific amount of funding is not being set as this will be derived from the business plan. However, the proposal is based in principle on your recent assessment of the costs of a demonstrator project.
- The funding would be provided under the terms of the existing facility agreement dated the 17 October 2016. You asked in our meeting whether the terms of the FA could be amended, however RGL would only be willing to fund the business under the existing terms.
- The FA allows draw down of the loan in installments of £100,000.00.
- For the avoidance of doubt and in accordance with the terms of the FA, there will be no commitment at this stage by RGL or obligation on RGL to provide further funding for the working capital required to build a Retort for sale, as it is not possible to assess the terms of any orders or the commerciality of any future funding at this time. However, following the demonstration project, it is likely that RGL will have provided funding in excess of £2m to CRL and will be fully motivated to make CRL a success.
- The change in management structure set out in RGL's letter to you dated the 02 August 2017 remains a condition of the funding offer.
- The terms of the amendment and restatement agreement dated 17 October 2017 (ARA) specifically with regard to Schedule 9 Chapter 6 in relation to your role as "Manager" would not be affected by the acceptance

> of the conditions of the conditions of the funding offer as you would remain an employee and Director of the company. Furthermore, Clause 6.3.5 states that RGL should take such actions as RGL considers necessary to protect the business of CRL. The basis of RGL's funding offer clearly falls within the ambit of this clause".

Mr Priday sought a reply from the Claimant by 3pm on Thursday 10 August.

99. By email dated the 10 August at 9.46 the Claimant stated that because this was a proposal for the future funding of CRL from the majority shareholder, it would have to be approved by the Board of CRL and not by the Claimant in isolation.

100. Mr Lamb telephoned and spoke to the Claimant later on the 10 August to discuss the proposal. The Claimant stated that he was not willing to agree to the proposal, stating that £700,000.00 was derisory and he required the full £3.5m to be paid. The Claimant's version of this discussion appears at paragraph (189 – 191) of his witness statement. The Claimant says, "Mr Lamb told me I had no option other than to agree. I know Mr Lamb would not have threatened me like that without Mr Reece's full knowledge, consent and approval and I told him so. I have been told in terms by one of Mr Reece's mouthpieces that I would get sacked by Mr Reece at the next board meeting if I called it before first agreeing to step down."

101. By email dated 11 August, the Claimant wrote to John Reece and Ryan Lamb in the following terms: -

> "I am writing to you following my email of the 08 August calling for a board meeting and the telephone conversation I had with Ryan yesterday afternoon. Ryan has explained that you would not agree to a board meeting until and unless I confirm my acceptance of the terms set out in RGL's letter sent to the company and dated the 02 and 09 August 2017, namely that I step down as Managing Director of CRL. I told Ryan that the imposition of that precondition was not practicable as any decision regarding my employment within CRL is a matter for the CRL Board and not RGL. I note that you have not responded to the legal advice (attached to that email) that the company has been given regarding the return of the funds removed by you on the 15 March 2017. The combination of a lack of even an acknowledgment of the email and attachments and the refusal to allow a board meeting to take place to discuss their content, leaves the company with no option other than to investigate the possibilities of it taking action without your attendance at the board meeting that has been called."

At paragraph (201) of his statement, Mr Lamb denies the Claimant's version of what was said at the meeting. Mr Lamb specifically denies ever making the comment that a funding agreement would not be considered until David either stood down as MD or left the business altogether.

102. A CRL board meeting took place on the 15 August by conference call. The attendees were John Reece, David Lambert and Ryan Lamb. Craig Priday was recorded as absent. Peter Harding attended as an observer. The agenda for the meeting was: -

1. Appointment of Investor Directors

2. RGL funding proposal
3. Remaining £92,000.00 loan balance from RGL

Mr Reece reported that he had decided to appoint Ryan Lamb and Craig Priday as Investor Directors, which would help remove any animosity or personal conflict between John Reece and David Lambert. Mr Lambert asked if it was Mr Reece's intention to eventually step down as a Director of CRL. Mr Reece explained that in due course he intended to step down as a Director of CRL once the funding issue with RGL had been resolved.

103. Mr Reece went on to explain that RGL had placed a condition on continued funding, which required David Lambert to move to a new Technical Director role and allow a new Managing Director to be appointed. Ryan Lamb noted that there was a perceived conflict which would have to be authorised, in that the Investor Directors were Directors or employees of both RGL, whilst Mr Lambert is an employee of CRL. Mr Lamb asked for agreement that the perceived conflicts could be authorised and extended that to include Craig Priday who was not present, to save future authorisation. The Board agreed. Mr Reece then asked Mr Lambert to confirm if he was to propose to reject the conditions of RGL's offer of funding. Mr Lambert confirmed that he would do so. He confirmed that his reasons for doing so were set out in his Board paper sent on the 14 August. The Board paper prepared by the Claimant appears at pages (777-782) in the bundle and repeats a number of the allegations made by the Claimant with regard to RGL's alleged failure to comply with the terms of the facility agreement and maintains that the removal of the £250,000.00 cash in March 2017 was both a breach of the agreement and a breach of John Reece's duties as a Director of CRL. With regard to the new funding proposal dated 02 August 2017, the Claimant states: -

"RGL's letter of the 02 August 2017 sets out six newly contrived reasons why DL should resign as MD of CRL in return for funding the production of a demonstrator for Campbells, that can also be used to show the technology to Princes Food". Under the heading "Conclusion" the Claimant states: -

1. RGL has had a poor track record as a controlling influence in strategic direction of CRL since they invested in 2015.
2. The proposal hands even more control of CRL to RGL with slightly further negative outcomes.
3. CRL has identified that between £2.5 million and £2.75 million pounds of funding is required to enable the business to secure its first production Retort order, which is in line with the current funding package as proposed by RGL in 2015.
4. The proposal does not quantify what cash if any would be invested by RGL in CRL if a proposal is accepted, but as indicated verbally to different members that it will only provide between £240,000.00 and £450,000.00 which is nowhere near sufficient."

<u>"Recommendation"</u>

The Claimant states: -

"My reasoning as a Director of the Company and bearing in mind my duties owed to it, is that to agree new and uncalled-for changes in management at what is agreed

by all is a critical moment for the business would be folly. I must stress that these views and strictly those of a Director and have not in any way been coloured by the obvious impact it would have on me as an employee. Nevertheless, there is a clear conflict of interest here which I am formally bringing to the attention of the Board before the Board Meeting convenes tomorrow. Any semblance of trust between RGL and the company has been affectively destroyed over the past seven months since RGL instructed CRL to ditch all of its activities relating to the design and manufacture of Retorts and then two months later, stripped CRL of nearly all of its cash. My recommendation therefore is that the proposal should not be accepted in its current form and the company should continue to make all attempts to have RGL honour its original commitment to properly fund the business as set out in its letter of the 14 August 2017."

104. During the meeting on the 15 August, the minutes record: -

"JR explained that the condition attached to the RGL funding raises employment issues and therefore CRL as an employer should appoint an independent HR Consultant to assist in dealing with the necessary procedure objectively whilst the Directors consider the proposal further." Something of an impasse arose, with the Claimant insisting that consultation with an HR representative could not begin unless and until CRL had decided whether or not to accept the funding offer. Mr Lamb's position was that the HR consultant would assist in a consultation process about what CRL could and should do with the Claimant, due to CRL's rejection of RGL's offer.

105. Mr Lamb's evidence was that up to that point, RGL's dealings with the Claimant had been on the basis of him as a shareholder in CRL. RGL was well aware that it was not the Claimant's employer and that CRL would need to consider the employment law implications of the Claimant not agreeing to the conditions attached to the funding proposal put forward by RGL. Mr Lamb therefore proceeded to engage Miss Helen McDougall, an external HR consultant, to undertake a consultation process with the Claimant.

106. John Reece then prepared a paper in response to that written by Mr Lambert and dated the 15 August. Mr Reece's paper appears at page (783-787) in the bundle. It recites that the paper is written "on behalf of myself and RGL to answer certain allegations and to give an initial alternative view in relation to views expressed by David Lambert as facts. The relevant extracts from the paper are as follows: -

- DL has consistently misconstrued the terms of the facility agreement and has recently acknowledged to RGL that he has.
- Having misconstrued it, he then contacted a number of minority shareholders and agitated amongst them with a view that they would form the same negative and mistaken view as to RGL's obligations under the facility agreement and motivations towards CRL.
- In my view, DL is personally aggrieved because RGL as a majority shareholder and funder has (justifiably) lost confidence in him due to the poor track record of the business and has indicated that it will not trust him with any further funding. I believe this is borne out by the tone and language of the DL paper.

- Instead of engaging constructively in attempts RGL has made to manage the position (in him) sympathetically, he has a single-minded determination focused instead on building a legal case against RGL which, I have been categorically advised by a leading regional law firm, as no prospect of success. This correspondence has consistently in tone and language indicated that he is more interested in litigation than resolving legitimate commercial concerns raised by RGL

Mr Reece then sets out in detail his opinion of points raised by the Claimant, rejecting those in their entirety.

The paper was circulated before the CRL Board Meeting on the 15 August.

107. By email dated the 16 August addressed to Mr Lamb, the Claimant stated: -

"I am writing further to the CRL Board Meeting yesterday attended by you, Ryan, Peter and me at which I voted against the acceptance of the funding proposal and restructure tabled by you. The existing Investor Director and newly appointed Investor Directors abstained from voting pending the outcome of a consultation between an independent CIPD Qualified HR Practitioner of your choice and me. It was difficult to discern and understand the purpose of such consultation, but it apparently seemed to be to provide the newly appointed Director's feedback, such that they can decide to accept or not, the funding and restructure proposal which they and you proposed and which would result in an alternative MD being appointed at CRL Limited. You insisted that this was not an employment matter. However, I must advise you that I believe this crosses over Board Director and employment matters as it involves a potential to fundamentally vary terms of my service agreement unilaterally and it seems clear that your intentions are to remove me from my role as MD. Recent conversations with Ryan Lamb confirmed the outcome of a decision to reject the funding and restructure proposal on my part, will result in my removal from the business. In good faith and in the best interests of the business and all its shareholders I have made protected disclosures about wrongdoing as in fact I am required to do contractually. It is abundantly clear that any actual or constructive dismissal would be inexplicably linked to the protected disclosures I have made".

108. On the 17 August a further meeting took place between the Claimant, Ryan Lamb and Craig Priday and during that meeting the Claimant intimated that Campbells were unlikely to proceed with any further interest in the retort and that, in the Claimant's opinion, this was the fault of RGL, including because David had raised corporate government issues. Although he was not aware of it at the time, Mr Lamb has subsequently discovered that this was a false account given by the Claimant. Following the Claimant's departure from CRL, Robert Weick of CSC visited the CRL factory and explained that CRL had not lost the work due to any delay but because Campbells had independently decided to move forward the build of its factory and to use established technology so as to ensure that there were no production delays. Even if a CRL demonstrator model had been ready in August 2017, Campbells would not have been able to place an order as it would have required a research and development Retort for testing in the first instance. Campbells would not have waited nine months for that to be built, let alone tested in their own research and development facility.

109. During this meeting, Mr Lamb "reinforced to David that the CRL Board had not decided that he should be removed from the Managing Director role" and stressed that "this was subject to appropriate consultation and a proper process". The Claimant initially refused to accept that the HR Consultant was truly independent, in that he believed she was "company friendly". Mr Lamb invited the Claimant to propose a different consultant, but the Claimant was unwilling to do so. He insisted that he was not prepared by go through with the consultation process as he felt it was a waste of time and that a decision to remove him had already been made. The Claimant then proposed the possibility of a slightly different structure, with Craig Priday as Executive Chairman and with the Claimant remaining as Managing Director. Mr Lamb suggested to the Claimant that he raise this with the HR Consultant as part of the consultation process. The Claimant's response was that, "To get Ann and John Reece to see sense, he was going to resign instead". The Claimant said that if he was to stay, then he would require two parts to a deal with CRL: -

1. The Claimant stays as Managing Director with Craig Priday as Executive Chairman.

2. A variation of the facilities/investment agreement. Mr Lamb could not understand the Claimant's argument in this regard. He asked why the CRL Directors would reject funding from RGL to build a demonstrator if the Claimant were to maintain his role as Managing Director with Craig as Chairman. The Claimant insisted that he would only accept a two-part deal and without a legal change in the facility agreement/investment agreement, he would not be interested and would still resign.

110. The Claimant at this stage reminded Mr Lambert and Mr Priday that he had successfully brought two other claims of minority shareholder oppression in the past, in respect of different companies. He raised the "protected disclosure point" and was told that RGL's funding proposal reflected CRL's performance and that it had nothing to do with the Claimant's alleged protected disclosures.

The Claimant's version of this discussion was that he was told by Mr Lamb that he would either have the consultation with an appointed HR Consultant or "face the possibility of dismissal through failing to follow a reasonable instruction from CRL's Board." The Claimant interpreted this as him being "told that if I fail to agree to a sham consultation, I could be sacked for failing to carry out a reasonable instruction from CRL's Board". The Claimant goes on to state, "there was no reasonable justification for CRL's Board to insist that I attend a sham consultation, the request was wholly unreasonable."

111. In paragraph 207 of his written statement the Claimant states: -

"Over the weekend of 19-20 August 2017, I agonised over my decision. By Monday morning however it had become clear to me that it would be impossible to stay in the business, despite the personal success I was having with CRL's customers. I reached this conclusion because Mr Reece, Mr Priday and Mr Lamb were determined to remove me from my position as Managing Director. I had no option but to resign".

112. The Claimant's resignation letter dated 21 August 2017 appears at page (844-846) in the bundle. It is addressed to the Board of CRL Limited. It begins: -

> "I write to inform you of my decision to resign from my employment with CRL Limited (the Company or CRL) with immediate effect. In my email of the 01 April 2017 and letter of the 21 May 2017 I confirmed having raised since the 21 March 2017 very serious issues about the legality of the behaviour of certain Directors of CRL and the behaviour of its majority shareholder, the Reece Group Limited. I raised these issues in good faith in the best interests of the company and its shareholders and in compliance with the terms of my service agreement dated 14 April 2011. By doing so, I made protected disclosures as defined by the Employment Rights Act 1996. The wrongdoing I disclosed clearly affected the shareholders of the company and the company's employees and it was also clearly in the public interest".

The Claimant then lists eleven separate alleged protected disclosures from the 24 May 2017 to the 27 July 2017. He then lists five separate detriments from the 21 July 2017 to the 15 August 2017. The Claimant concludes: -

"The detriments I have been subjected to as a result of making protected disclosures amount to fundamental and serious breaches of the terms of my employment with CRL. Further the actions of CRL amount to fundamental and serious breaches of the express and implied terms of my service agreement. I accept these fundamental breaches of the service agreement and the terms of my employment with CRL and therefore resign with immediate effect."

113. A formal reply was sent by Ryan Lamb by letter dated the 22 August (page 848-850). Mr Lamb rejected the Claimant's assertions and validations, stating that the company would reply in detail in due course. Mr Lamb says at the end of his letter: -

"In short we will demonstrate that your reference to protected disclosures is just a device to characterise a fairly ordinary management disagreement as something else in order to inflate your claim and justify your resignation. In hindsight it appears clear that you have never intended to engage positively or in good faith with RGL as a funder or with your management/board colleagues in any discussion aimed at resolving CRL's funding situation. Instead and despite RGL twice now offering funding well in excess of the £250,000.00 loan to CRL, you have decided to pursue your assertions in an unreasonable manner and to the detriment of the company."

114. By the date of the Claimant's resignation, RGL had loaned to CRL the total sum of £199,500.00. That sum had gradually been reintroduced since its initial withdrawal in March 2017. Since the Claimant's resignation, the loan balance has increased and as at the 20 March 2018 amounted to £495,000.00. RGL continues to fund CRL on an ongoing and day-to-day basis.

115. In February 2018, the Claimant made a "without notice" application to the High Court for an Injunction/Order that RGL could not try to force the transfer of the

Claimant's shares in CRL and that CRL were not to register any such transfer. Mr Lamb's evidence to the Tribunal was that there had never been any intention within RGL or CRL to take any such steps and that,had the Claimant simply asked for written confirmation on the point, then both RGL and CRL would have confirmed in writing that there was never any such intention.

116. The Claimant presented his claim form to the Employment Tribunal on the 17 October 2017.

The Law

117. There are three sets of statutory provisions engaged by the claims brought by the Claimant. The first is in Sections 122 and 123 of the Insolvency Act 1986, the second is the constructive unfair dismissal provisions in Sections 95 and 98 of the Employment Rights Act 1996 and finally those relating to Protected Disclosures contained in Sections 43,47 and 103A of the Employment Rights Act 1996. The relevant extracts from those statutory provisions are set out below.

Insolvency Act 1986
Section 122 –
Circumstances in which a company may be wound up by the Court

(1) A company maybe wound up by the Court if –

(f) The company is unable to pay its debts.

Section 123 – Definition of inability to pay debts

(1) A company is deemed unable to pay its debts –

(e) If it is proved to the satisfaction of the Court that the Company is unable to pay its debts as they fall due.

(2) A company is also deemed unable to pay its debts if it is proved to the satisfaction of the Court that the value of the Company's assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities.

118. In **BNY Corporate Trustees Services Limited and Others -v- Eurosail – UK 2007** (**2013 UKSC28)** the Supreme Court provided clarification as to the proper meaning of Section 123(2) and its interaction with Section 123(1)(e). The Supreme Court accepted that "inability to pay debts must refer to debts absolutely due", so that a contingent or prospective creditor could not petition for the winding up of the Company. References were made to earlier legislation in the Companies (Consolidation) Act 1908 where Section 130 (iv) provided that the Company was deemed unable to pay its debts "if it is proved to the satisfaction of the Court that the Company is unable to pay its debts and in determining whether the Company is unable to pay its debts, the Court shall take into account the contingent and prospective liabilities of the Company". The Supreme

Court went on to find that the effect of the alterations to the Insolvency Test now found in Section 123 of the 1986 Act was to replace in the commercial solvency test now in Section 123(1)(D) one futurity requirement, namely to include contingent and prospective liabilities, with another more flexible and fact sensitive requirement encapsulated in the new phrase "as they fall due". The Supreme Court went on to recognise that whether or not the test of balance sheet insolvency is satisfied must depend upon the available evidence as to the circumstances of the particular case and also that the burden of establishing balance sheet insolvency rests on the party asserting it.

Lord Neuberger in the Court of Appeal in **Eurosail**, considered that in order to satisfy the "balance sheet" test of insolvency, it would be necessary for the Company to have reached the "point of no return". That approach was rejected by the Supreme Court, who instead affirmed the approach which requires the Court to reach a Judgment as to whether it has been established that, looking at the Company's assets and making proper allowance for its prospective and contingent liabilities, it cannot reasonably be expected to be able to meet those liabilities.

119**. Employment Rights Act 1996**

Section 95 – Circumstances which an Employee is dismissed.

(1) For the purposes of this part, an Employee is dismissed by his Employer if (and subject to Subsection (2) only if) –

(c) The Employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the Employers conduct.

120. In **Wright -v- North Ayrshire Council (UKEATS0017/3**) it was held that the basic principles necessary to uphold an allegation of unfair constructive dismissal are: -

i. A breach of contract by the Employer

ii. The breach is fundamental, or is, as it has been put recently, a breach which indicates that the Employer altogether abandons and refuses to perform its side of the contract.

iii. The Employee has resigned in response to the breach.

iv. Before doing so, the Employee has not acted so as to affirm the contract notwithstanding the breach.

121. In **Western Excavating (ECC) Limited -v- Sharp (1978IRLR27**), Lord Denning MR said: -

"If the Employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the Employer no longer intends to the bound by one or more of the essential terms of the contract, then the Employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the Employer's conduct. He is constructively dismissed. The Employee is entitled in those circumstances to leave at the instant

without giving any notice at all, or alternatively, he may give notice and say that he is leaving at the end of the notice. But the conduct must in either case be sufficiently serious to entitle him to leave at once. Moreover, he must make up his mind soon after the conduct of which he complains, for if he continues for any length of time without leaving, he will lose his rights to treat himself as discharged. He will be regarded as having elected to affirm the contract."

122. **In Woods -v- WM Car Sales Peterborough Limited (1981ICRPG670G-H)** the Court held: -

"It is clearly established that there is implied in a contract of employment a term that the Employer will not, without reasonable and proper cause, conduct themselves in a matter calculated or likely to destroy or seriously damage the relationship of confidence and trust between Employer and Employee. To constitute a breach of this implied term, it is not necessary to show that the Employer intended any repudiation of the contract. The Tribunal's function is to look at the Employer's conduct as a whole and determine whether it is such that its effect, judged reasonably and sensibly, is such that the Employee cannot be expected to put up with it. The conduct of the parties has to be looked at as a whole and its cumulative impact assessed".

123. That expression was cited and approved in **Lewis -v- Motor World Garages Limited (1986ICR)** when the Court of Appeal said: -

"A breach of this implied obligation of trust and confidence may consist of a series of actions on the part of the Employer which cumulatively amounts to a breach of the term, though each individual incident may not do so. In particular in such a case the last action of the Employer which leads to the Employee leaving, need not itself be a breach of contract –the question is, does the cumulative series of acts taken together amount to a breach of the implied term? This is the last straw situation."

As to the last straw, the Court of Appeal repeated in **London Borough of Waltham Forest -v- Omilaju (2005IRLR35):** -

"With regard to the last straw, its essential quality is that when taken in conjunction with the earlier acts on which the Employee relies, it amounts to a breach of the implied trust and confidence. It must contribute something to that breach, although what it adds may be relatively insignificant, so long as it is not utterly trivial. An entirely innocuous act on the part of the Employer cannot be a final straw, even if the Employee genuinely, but mistakenly interprets the Act as hurtful and destructive of his trust and confidence in the Employer. The test of whether the employee`s trust and confidence has been undermined is objective".

124. Lord Nicholls in the House of Lords said in **Malik -v- BCCI (1997ICR610-611)** : -

"Conduct must of course impinge on the relationship in the sense that looked at objectively, it is likely to destroy or seriously damage the degree of trust and confidence the employee is reasonably entitled to have in his employer. Proof of a subjective loss of confidence in the employer is not an essential element of the breach".

125. Where it is argued that the employee has accepted the breach and thereby affirmed the contract, her Honour Judge Eady QC in the Employment Appeal Tribunal

in **Asghar & Company Solicitors -v- Habib (UKEAT/0332/16/DM**) said that the Tribunal should examine: -

i. The actual period of any alleged delay

ii. Any explanation by the Claimant for such delay

iii. Any evidence the Claimant and the Respondent were treating the contract as subsisting.

Furthermore, in **Chindove -v- William Morrison Supermarkets PLC (UKEAT/0201/13)** The Employment Appeal Tribunal considered the proposition that the passage of time might itself be sufficient for the Employee to lose any right to resign: -

"The question might arise what length of time is sufficient. The principle is whether the Employee has demonstrated that he made the choice to remain. He will do so by conduct – generally by continuing to work in the job from which he need not, if he accepted the Employers repudiation as discharging him from his obligations, have had to do. He may affirm a continuation of the contract in other ways – by what he says, by what he does, by communications which show that he intends the contract to continue. But the issue is essentially one of conduct and not of time. An important part of the context is whether the employee was actually at work, so that it could be concluded that he was honouring his contract and continuing to do so in a way which was inconsistent with his deciding to go."

126. Part of the Claimant's case is that he resigned in response to what is described as an "anticipatory breach of contract", which covers the situation where it becomes apparent to one party to a contract, that the other contractual party has no intention of performing its contractual obligations, even though the time period for performance of the contract has yet to expire. In such cases, the innocent party may be able to treat the contract as repudiated on the grounds of anticipatory breach of contract. It is still necessary for there to be a repudiation of the contract, namely one which goes to the very core of the contract of employment and effectively deprives the innocent party of the substantial benefit of the contract. The innocent party must have a subjective belief that the other contractual party will breach the contract, to succeed in a claim based on anticipatory breach. There must have been a renunciation by the guilty party of its liabilities, whether by words or conduct. It is generally accepted that there are four key factors which will be taken into consideration in determining whether there has been a renunciation of a contract amounting to an anticipatory breach:-

i. Whether there has been a clear case of a refusal to perform contractual obligations, such that it goes to the root of the contract;

ii. The refusal to perform the contract must be absolute. The renunciation of the contract cannot be conditional on certain circumstances occurring or remaining;

iii. When deciding whether there has been a sufficient refusal to perform the contractual obligations, it must be judged according to whether a reasonable person in the position of the innocent party would regard the refusal as being clear and absolute;

iv. The words and/or conduct relied on for the renunciation must be considered as at the time when it is treated as terminating the contract – this means that the history of

the transaction must be evaluated. As was said in **Torvald Kalveness -v- Arni Maritime Corporation (1994IWLR);**

"It is not a mere refusal or omission of one of the contracting parties to do something which he ought to do, that would justify the other in repudiating a contract; there must be an absolute refusal to perform his side of the contract."

127. The renunciation must be "made quite plain". In particular where there is a genuine dispute as to the construction of the contract, the Courts may be unwilling to hold that an expression of an intention by one party to carry out the contract only in accordance with his own erroneous interpretation of it, amounts to a repudiation.

128**. Protected Disclosures (Employment Rights Act 1996)**

43A Meaning of "Protected Disclosure"

In this Act a "Protected Disclosure" means a Qualifying Disclosure (as defined by Section 43(B) which is made by a worker in accordance with any of the Sections 43(C) to 43(H).

43B Disclosures Qualifying for Protection

(1) In this part a "Qualifying Disclosure" means any disclosure of information which, in the reasonable belief of the worker making a disclosure, is made in the public interest and tends to show one or more of the following: -

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

43C Disclosure to Employer or other responsible person

(1) A Qualifying Disclosure is made in accordance with this Section, if the worker makes the disclosure –

(a) To his Employer

47(B) – Protected Disclosures

(1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his Employer, done on the ground that the worker has made a Protected Disclosure.

103(A) Protected Disclosure

Any Employee who is dismissed is regarded for the purposes of this part as unfairly dismissed if the reason (or if more than one the principle reason) for the dismissal is that the Employee made a Protected Disclosure.

129. The first requirement of a "Qualifying Disclosure" is that the worker must disclose information and not merely state an opinion or make an allegation. It is accepted that sometimes the provision of information and the making of an allegation are intertwined. Reference was made by both Mr Tinnion and Mr Sweeney to the decisions of the Employment Appeal Tribunal in **Cavendish Munroe Professional Risks Management Limited -v- Geduld (2010IRLR38)** and **Kilraine -v- London Borough of Wandsworth** (**2016UKEAT/0260/15/JOJ**) which was (after the conclusion of Mr Lambert's claim) upheld by the Court of Appeal under reference 2018AWCACIV1436) on the 21 June 2018. What constitutes disclosure of "information" by the worker is a crucial point in Mr Lambert's case. In **Cavendish Munroe** the Claimant stated: -

"Since the end of last term, there have been numerous incidents of inappropriate behaviour towards me including the repeated sidelining and all of which I have documented". The Employment Tribunal found that this was simply the making of an allegation and not the disclosure of any information". However, in the Employment Appeal Tribunal, Langstaff J said: -

"I would caution some care in the application of the principle arising out of Cavendish Munroe. The dichotomy between "information" and "allegation" is not one that is made by the statute itself. It would be a pity if Tribunals were too easily seduced into asking whether it was one or the other when reality and experience suggests that very often information and allegation are intertwined."

130. Mr Sweeney accepted that principle in his closing submissions. It will always be necessary to examine the nature of the information allegedly disclosed. As was said by the Court of Appeal in **Kilraine -v- London Borough of Wandsworth**: -

"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 which is capable of tending to show one of the matters listed in Subsection (1). Whether an identified statement or disclosure in any particular case doesn't meet that standard, will be a matter for an evaluative judgment by the Tribunal in the light of all of the facts of the case. It is a question that is likely to be closely aligned with the other requirements set out in Section 43B(1), namely that the worker making the disclosure should have the

reasonable belief that the information that he discloses does tend to show one of the listed matters. As explained by Underhill LJ in **Chesterton Global Limited -v- Nurmohame**d (see later) this has both a subjective and objective element. If the worker subjectively believes that the information that he disclosures does tend to show one of the listed matters and the statement or disclosure he makes has a sufficient 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."

131. Reference to **Chesterton Global Limited -v- Nurmohamed** goes to the point of whether or not any disclosures made by the Claimant were made "in the public interest". There is no definition of "public interest" in the Employment Rights Act 1996. No statutory or non-statutory guidance as to the meaning of the phrase has been published. Until recently, there were no cases which specifically defined what is meant by "public interest" or what is or is not in the public interest. In **British Steel Corporation -v- Granada Television 1981 AC1096** the House of Lords commented that "there is a wide difference between what is interesting to the public and what it is in the public interest to make known." Lord Denning said in **London Artists -v- Littler** (**19692QB375)** in the Court of Appeal that, "whenever a matter is such as to affect people at large, so that they may be legitimately interested in or concerned at what is going on, or what may happen to them or to others, then it is a matter of public interest on which everyone is entitled to make fair comments." With the Freedom of Information Act 2000, the Information Commissioners Office issued guidance on the meaning of the public interest in that context, stating: -

"The public interest can cover a wide range of values and principles relating to the public good, or what is in the best interests of society. Thus, for example there is a public interest in transparency and accountability, to promote public understanding and to safeguard democratic processes. There is a public interest in good decision-making by public bodies, in upholding standards of integrity, in ensuring justice and fair treatment for all, in securing the best use of public resources and in ensuring fair commercial competition in the mixed economy."

132. More up-to-date guidance of what is meant by "in the Public Interest" was handed down by the Court of Appeal in **Chesterton Global Limited -v- Nurmohamed** in July 2017. In that case, the Claimant was an estate agent employed by Chestertons, a large commercial firm. A new group of investors acquired a shareholding in Chesterton's, which is not a publicly quoted company. Their involvement prompted a review of the system of payment of commission to the sales staff. The new commission system was reduced at the beginning of 2013. The Claimant believed that the new system would have a serious adverse impact on his earnings. The Claimant monitored Chesterton's internal accounts and demonstrated a number of what he said were discrepancies in the monthly accounts, which appeared to show that the profitability of the Mayfair Office was being artificially suppressed so as to reduce the level of commission payable. The Claimant described this to his employer as "manipulating the accounts to the benefit of the shareholders". He said that the effect was that over 100 senior managers earnings were adversely affected as the Respondent was deliberately misstating between £2m and £3m of actual costs and liabilities. Chesterton's argued that Mr Nurmohamed was simply arguing about the impact on his own commission and therefore that alleged disclosures could not be said to be "in the public interest". The Employment Tribunal identified the two potential groups of people who might be affected as the one hundred senior managers, or anybody who relied on the accounts which had been incorrectly

stated to the benefit of shareholders. The Tribunal concluded that the disclosures were made in the belief that Mr Nurmohamed had at that time and that it was in the interest of the one hundred senior managers. The Tribunal concluded that this was a sufficient group of the public to amount to a matter in the public interest. The Tribunal concluded that Mr Nurmohamed's belief that it was in the public interest, was reasonable. The identified issue therefore was whether a disclosure which is in the private interests of the worker making it, becomes in the public interest simply because it serves the (private) interests of other workers as well. Lord Justice Underhill in the Court of Appeal said: -

"It is in my view clear that the question whether a disclosure is in the public interest depends on the character of the interest served by it rather than simply on the numbers of people sharing that interest. That is in my view the ordinary sense of the phrase "in the public interest", but if there was any doubt about the matter, the position is clear from the legislative history. The essence of the "**Parkins -v- Sodexo**" error is that a worker could take advantage of whistleblower protection where the interest involved was personal in character. Such an interest does not change its character simply because it is shared by another person. I am not prepared to rule out the possibility that the disclosure of a breach of the workers contract of the **Parkins -v- Sodexo** kind, may nevertheless be in the public interest, or reasonably be so regarded, if a sufficiently large number of other employees share the same interest. I would certainly expect Employment Tribunals to be cautious about reaching such a conclusion because the broad intent behind Section 43(B)(1) is that workers making disclosures in the context of private workplace disputes should not attract the enhanced statutory protection accorded to whistleblowers – even as I have held, where more than one worker was involved. But I am not prepared to say never. In fact, the question may not often arise in that stark form. The larger the number of persons whose interests are engaged by a breach of the contract of employment, the more likely it is that there will be other features of the situation which will engage the public interest. In my view, the correct approach is as follows. In a whistleblower case where the disclosure relates to a breach of the worker`s own contract of employment, (or some other matter under Section 43(B)(1) where the interest in question is personal in character) there may nevertheless be features of the case that make it reasonable to regard disclosure as being in the public interest, as well as in the personal interest of the worker. There may be many other types of case where it may reasonably be thought that such a disclosure was not in the public interest. The question falls to be answered by the Tribunal on a consideration of all of the circumstances of the particular case. The number of employees whose interests in the matter disclosed are affected, may be relevant, but that is subject to the strong note of caution above."

Lord Justice Underhill went on to acknowledge that the following factors would normally be relevant : -

a. The number in the group whose interests the disclosure served.

b. The nature of the interests affected and the extent of which they are affected by the wrongdoing disclosed. A disclosure of wrongdoing directly affecting a very important interest is more likely to be in the public interest than a disclosure of trivial wrongdoing affecting the same number of people, and all the more so if the effect is marginal or indirect.

c. The nature of the wrongdoing disclosed – disclosure of deliberate wrongdoing is more likely to be in the public interest than the disclosure of inadvertent wrongdoing affecting the same number of people.

d. The identity of the alleged wrongdoer – "the larger or more prominent the wrongdoer (in terms of the size of its relevant community – ie: staff suppliers and clients) the more obviously should a disclosure about its activities engage the public interest".

Submissions

133. The claimant brings complaints of unfair constructive dismissal, automatic unfair dismissal for making protected disclosures and being subjected to detriments because he had made protected disclosures. In his closing submissions, Mr Tinnion submitted that there were 7 separate protected disclosures, 5 separate detriments and 8 separate breaches of his contract of employment which formed the subject matter of those complaints.

a) **Protected Disclosures;**

1. The claimant's email of 1 April 2017 to John Reece.

2. The claimant`s views expressed to Mr Reece at the conclusion of the shareholders meeting on 3 May 2017

3. The claimant's email to Mr Lamb on 24 May 2017 attaching a copy of his letter of 21 May to Mr Reece.

4. The claimant's email to Mr Reece of 24 May attaching a copy of his letter of 21 May.

5. The claimant's email to Mr Reece on 30 May 2017.

6. The claimant's email to Mr Reece on 17 July 2017, attaching a copy of the TT Law advice.

7. The claimant's letter of 24 July 2017 to Mr Reece.

b) **Detriments;**

1. On 30 May 2017, the claimant being told that he was a "pariah".

2. On 21 July 2017 the claimant being pressurised to step down as MD and to stop making corporate governance complaints.

3. On 27 July 2017, Mr Lamb's phone call to the claimant, allegedly threatening to wind up CRL.

4. On 2 August 2017 in the letter from RGL to the claimant, offering funding to CRL conditional upon the claimant stepping down as MD.

5. On 17 August 2017 at the meeting between the claimant, Ryan Lamb and Craig Priday, when the claimant was allegedly pressurised into resigning as MD.

c) **Breaches of Contract;**

1. Requiring the claimant to obtain permission to incur expenditure in excess of £1000.

2. In Mr Reece's letter of 2 June 2017, stating that the claimant's position as MD was no longer tenable.

3. On 30 May 2017, being told that he was a "pariah".

4. At the meeting on 21 July 2017, being asked to step down as MD, to agree to Mr Priday being appointed as interim MD, being asked to be involved in recruiting his successor as MD and being told to stop writing things down.

5. On 27 July 2017 in a phone call from Mr Lamb during which he is alleged to have threatened to wind up CRL.

6. In the letter of 2 August 2018 in which RGL state that continued funding of CRL is conditional upon the claimant standing down as MD.

7. During a telephone call with Mr Lamb on 10 August 2017 when the claimant was again told that he would be required to stand down as MD

8. At the CRL board meeting on 15 August 2017, when the HR consultant was appointed to consult with the claimant.

Witness credibility

134 In this case there was an agreed bundle of documents comprising three A4 ring binders containing a total of 942 pages of documents. Those documents include all of the complex, commercial contracts and agreements between the relevant parties. There are numerous (and occasionally conflicting) notes of meetings and discussions and voluminous e-mail chains between various people. The Tribunal heard evidence from the claimant, but no one else on his behalf. On behalf of the respondent the Tribunal heard evidence from eight witnesses. The hearing was originally listed for four days, then a further three days were added and finally a further four day, making 11 days of hearing time in total. Having heard all of that evidence and considered all of the documents referred to, the Tribunal was required in closing submissions by Mr Tinnion on behalf of the claimant to consider the issue of witness credibility. In Mr Tinnion's submissions, "the issue of witness credibility in this case is crucial to the Employment Tribunal's finding". In particular, it is an important part of the claimant's case that he relies upon his version of what was said to him in various meetings and how it was said to him in those meetings. Mr Tinnion accepted that credibility would only be relevant where facts are in dispute and that credibility must in all cases be put in context as to what is actually in dispute.

135 Mr Tinnion submitted that in considering the credibility of any witness's evidence, the Tribunal should address its mind to that witness's honesty, reliability and consistency. Honesty includes not just telling the truth, but the whole truth and nothing but the truth. That includes making concessions and admissions when it is appropriate to do so and admitting mistakes when discovered. A witness's reliability includes not just his or her honesty but how good, or poor, was their

recollection of particular events. Finally, the witness whose evidence remains consistent throughout tends to indicate their evidence to be credible. Mr Tinnion then went on to deal with the credibility or otherwise of the claimant and the eight witnesses for the respondent.

136 Witness credibility is a factor which is engaged in the vast majority of cases which come before the Employment Tribunal. Witness "demeanour" is now generally accepted as being of less significance than had previously been the case, so that the following "tools" if fairly and properly used, may assist in the assessment of witness credibility:-

136.1 Comparison between the witness evidence and contemporaneous documents. For example, did the claimant raise a grievance or write a complaint at the time? If so, what did he say? Did the respondent reply, and if so in what terms?

136.2 Comparison with what was said by the witness in any later investigation of the incident.

136.3 Evidence from others about the parties' behaviour immediately after the alleged incident. Did they appear to be on good terms; did the claimant tell anyone about what had happened; did he seem angry or offended?

14.4 Evidence about the parties' behaviour on other occasions. For example, has the respondent behaved in a particular way towards anybody else in a manner which supports or contradicts the alleged treatment of the claimant?

136.5 Whether, if a witness is found to have been inaccurate or untruthful about a particular matter, that means that the witness is more likely to be inaccurate or untruthful about another matter. Does it matter whether there is a cumulation of points against the particular witness?

136.6 The inherent plausibility or implausibility of a witness's evidence. This more often comes into play where the Tribunal is asked to consider more complex scenarios. It may be suggested that our common sense and general experience of life tell us that the point about unusual events is that they do not happen very often and that the simplest explanation of a situation is often the best.

It must be recognised that these are only tools and all have their limitations. Human beings are inconsistent creatures and an individual with an otherwise impeccable record may inexplicably do something that seems out of character. None of the above factors should be given any more weight than the others and the Tribunal must always look at all the circumstances of the case in the round. When faced with competing accounts of events and little by way of corroboration to assist, the Tribunal must fall back and ask itself which version seems to be the more likely to be right, as a matter of common sense. Of course, unusual things do happen and the fact that something may initially look improbable does not of necessity mean that it could never have happened.

137 The Tribunal took all of these factors into account in undertaking the credibility assessment which Mr Tinnion asked us to perform.

138 All the witnesses had produced detailed, typed and signed witness statements which were taken "as read" by the Tribunal, subject to supplemental questions,

questions in cross-examination and questions from the Tribunal. Questions in cross-examination in particular were direct and probative. However, in no case could Mr Tinnion or Mr Sweeney land what Mr Tinnion described as a "killer blow", the effect of which was to totally undermine the credibility of that witness or his or her evidence. However, there were a number of matters which are dealt with above in the Employment Tribunal's findings of fact, which the Employment Tribunal found to be relevant to its assessment of the various witnesses' credibility;

138.1 Mr Lambert – There were a number of matters which adversely affected the Employment Tribunal's assessment of the claimant's credibility. Without doubt, he had a material interest in the outcome of these proceedings. He is now aged 65 and has invested his life savings to the tune of £364,000 in the development of the retort via CRL. He resigned his position in August 2017 and thus lost the intellectual property rights in the retort and its development and a major source of funding should he wish to attempt to develop the retort elsewhere. His description of the alleged meeting with Mr Reece in the corridor following the shareholders meeting on 3rd May 2017 was found by the Employment Tribunal to be completely inaccurate. His original insistence that RGL had withdrawn the loan of £260,000 to make up its cash shortfalls elsewhere, was completely implausible and subsequently retracted. His allegation that the withdrawal of the £260,000 made CRL "technically insolvent" and that as a result he and Mr Reece could be accused of "wrongful trading" were also totally implausible. His description of the respondent's proposals about a funding package amounting to "threats and ultimatums" was an exaggerated and distorted interpretation of the facts. Mr Lambert's interpretation of the loan agreement meaning that RGL was obliged to pay the entire £3.5 million on demand, was entirely wrong. His interpretation of CRL's negotiations with Campbells Soup amounting to an "order" by Campbells was totally unrealistic. His insistence that CRL had by the time of his resignation developed a 30 inch retort which was available for sale, was commercially unrealistic. Finally, the claimant's failure or refusal to call any of the other minority shareholders in CRL to support his position and in particular his version of certain meetings or discussions, was something which the Tribunal found adversely impacted upon his credibility. Two of those minority shareholders were present whilst the claimant gave his evidence and no explanation was ever given as to why they, nor any of the other minority shareholders, were not prepared to support the claimant's version of events, where those events were contradicted by the respondent.

138.2 These matters in particular contributed towards the Employment Tribunal's assessment of the claimant and his evidence, to the extent that where there was a difference between his versions of events and those of the respondent's witnesses, the Tribunal preferred the version of events given by the respondent's witnesses. Whilst not necessarily dishonest, the Tribunal found the claimant's evidence to be at least coloured and to a large extent tainted, by his obsession with the development of the retort and the true commercial reality of the situation at various times. As the claimant gradually realised that the future funding of the retort project to the tune of millions of pounds by RGL would attract conditions which he

found personally unpalatable, then his behaviour changed and reflected his desire to protect his own position (both financially and personally). That was reflected in the nature, quality and credibility of his evidence.

139 With regard to the respondent's witnesses, the Tribunal sets out below Mr Tinnion's brief assessment of their credibility, together with the Tribunal's own assessment.

139.1 Of the eight witnesses called by the respondent, Mr Tinnion readily accepted that the evidence of Mr Peter Imlah and that of Helen McDouglall were entirely credible in all respects. With regards to Anne Reece, Mr Tinnion submitted that her evidence was of little assistance to the Tribunal as she had little, if any, involvement with the claimant and was in effect "looking at the bigger picture" from RGL's point of view. Mr Tinnion suggested that because of this detachment, Ms Reece's version of certain events was less likely to be accurate or credible than that of the claimant. The Tribunal did not accept Mr Tinnion's assessment of Ms Reece's evidence. The Tribunal found Ms Reece to have given her evidence in a direct, straightforward and forthright manner and that her interpretation and construction of matters was honest and genuine.

139.2 Mr John Flynn retired as a solicitor in 2014 and has since 2015 been engaged as a non-practising legal consultant for RGL. Mr Tinnion described Mr Flynn as "not the person you would call on to advise on public interest disclosure matters, as he had no knowledge of public interest disclosure cases". Mr Tinnion described Mr Flynn as "strange" and that "an odd impression was given by him". Mr Tinnion referred to the initial discussion between Mr Flynn and Mr Reece on the golf course and his subsequent suggestion to the claimant that they discuss the claimant's concerns "down the pub". He referred to the claimant`s allegation that Mr Flynn required him to stop making written notes of their conversation, suggesting that Mr Flynn intended to prevent an accurate note being kept of what was actually being said. The Tribunal found Mr Flynn to be a less than impressive witness, in particular due to his rather shallow and arrogant approach to his discussions with the claimant. However, the Tribunal found that this attitude did not impact on the accuracy of Mr Flynn's recollection of what was actually said and done and that his opinion of the claimant`s actions and motives was genuinely held. Where there was a direct conflict between Mr Flynn's version of an incident and that of the claimant's, the Tribunal found that Mr Flynn's was more likely to be correct.

139.3 Mr Tinnion described Mr Craig Priday as "the most credible of the four engineering witnesses, but that his evidence was somewhat limited and of little use to the Tribunal." The Tribunal records that it found Mr Priday to be an entirely honest and credible witness whose recollections of events was likely to be extremely accurate and whose evidence was given in a straightforward, persuasive and honest manner.

139.4 Steven Lant is a partner in UNW LLP, an independent firm of chartered accountants who were engaged in January 2014 to prepare CRL's accounts. It was Mr Lant who made the introduction between CRL and RGL. Mr Tinnion suggested that the Tribunal should be wary of Mr Lant's evidence because it was given particularly "slowly and carefully – with a lot of thought". The Tribunal found that the was no mischief whatsoever in Mr Lamb giving his evidence in that manner. The Tribunal found Mr Lant to be a particularly impressive witness, whose recollection of events was particularly clear and accurate and which was given in a measured and considered manner. The Tribunal found Mr Lant to have been an entirely credible witness with regard to matters of fact and a persuasive witness as to his interpretation or opinion arising from those facts.

139.5 Mr Tinnion was fairly dismissive of the evidence given to the Tribunal by Mr John Reece. Mr Tinnion was critical of Mr Reece's recollection of the material events, particularly with regard to the dates of meetings. Mr Tinnion submitted that Mr Reece made it known to his subordinates that he considered the claimant`s position as MD of CRL to be "untenable", in the e-mail dated 1st June 2017 and thereafter expected that opinion to be implemented by his subordinates in the removal of the claimant as MD of CRL. The Tribunal`s assessment of Mr Reece as a witness was that he was undoubtedly irritated, frustrated and ultimately exasperated by the claimant`s behaviour. However, the Tribunal accepted Mr Reece's evidence about his intentions towards the claimant, particularly because that evidence was supported by the relevant documents and the evidence of the other witnesses. The Tribunal particularly accepted Mr Reece's evidence that he personally withdrew from negotiations with the claimant, so that his personal opinion of the claimant would not adversely affect the progress of those negotiations. The Tribunal accepted Mr Reece's evidence that RGL's involvement with CRL was a relatively small commercial arrangement when compared to the other projects pursued by the various members of the RGL group. Whilst there was an element of impatience bordering on arrogance in the way Mr Reece gave his evidence, the Tribunal found that he was an honest and credible witness.

139.6 The principal witness for the respondent was Mr Ryan Lamb. Mr Lamb has a first class honours degree in Physics, is qualified as a chartered accountant and has been engaged by RGL since January 2015, firstly as group financial controller and thereafter as head of finance. He has overall responsibility for the financial control of RGL. Mr Tinnion described Mr Lamb as a witness who could not be regarded as credible. Mr Tinnion again drew attention to the manner in which Mr Lamb answered questions in cross examination, particularly his insistence that many of his answers had be to be expanded so as to be "put in context". Mr Tinnion insisted that this meant Mr Lamb was trying to introduce matters which had no relevance to the questions put to him and that Mr Lamb was a effectively "trying too hard" in putting his evidence across. Again, the Tribunal did not accept Mr Tinnion's assessment of Mr Lamb's evidence, or the manner of its delivery. The Tribunal found Mr Lamb to have a clear, precise and accurate recollection of all of the major incidents and his insistence that some of his answers were developed to have to be "put in context" was no more than

compliance with his obligations to tell the whole truth. The Tribunal found Mr Lamb's evidence to be extremely helpful and found that where his version of events differed from that of the claimant, his version of events was more likely to be correct.

140. Mr Tinnion submitted that each of the alleged protected disclosures amounted to a qualifying disclosure, in that it contained information which showed that the respondent had failed to comply with a legal obligation. In each case, Mr Tinnion submitted that the disclosure was made in the public interest because they affected both RGL and CRL as limited companies, the claimant and John Reece as directors, the 7 minority shareholders of CRL, the creditors of CRL and the employees of CRL. Mr. Tinnion submitted that raising concerns about wrongful trading is of considerable importance to creditors and because it is an offence with a broad community interest involved, must be a matter of public interest. Mr Tinnion further submitted that there must be a genuine public interest in ensuring that UK insolvency law is complied with and that the Tribunal should examine the nature of the wrongdoing, whether it was intentional or deliberate and its impact on those interested parties.

142. With regard to the alleged breach of contract claims, Mr Tinnion submitted that each of the alleged breaches set out above amounted to either a breach of an express or implied term of the claimant's contract of employment, which in each case displayed an intention by the respondent not to remain bound by the essential terms of that contract. In support of that argument, Mr Tinnion submitted that a unilateral change to an employee`s specific terms and conditions of employment (i.e., a change made without the employee's consent or without a right to do so provided for in the contract) is a recognised category of repudiatory breach. Similarly, an anticipatory repudiation breach of contract arises where the employer by words or conduct evinces an intention not to be bound by the terms of the contract at some point in the future. In those circumstances, the right of the innocent party to treat himself has discharged depends upon whether the non-performance of the obligations amounts to a breach of a condition of the contract or deprives the innocent party substantially of the whole benefit which it was the intention of the parties that he obtained from those obligations.

143. Mr Tinnion acknowledged that there was an element of overlap, with some of the alleged detriments for making protected disclosures also being alleged to be a breach of the implied term of trust and confidence. Mr Tinnion invited the tribunal to make the appropriate findings of fact in favour of the claimant in respect of each incident and then to go on to interpret those findings as either detriments for making protected disclosures, breaches of the implied term of trust and confidence, or both.

144. Mr Sweeney for the respondent respectfully reminded the tribunal that there is a material difference between the claimant's relationship with CRL and his relationship with RGL. CRL was the claimant's employer, whilst RGL is an investor or potential investor in CRL. Mr. Sweeney invited the tribunal to carefully consider the difference in those relationships, as the claimant's case is that CRL as his employer subjected him to detriments and repudiated his contract of employment. The claimant has not brought, and could not bring, any claims against RGL. This difference in relationship is particularly relevant when considering the claimant's allegations that he was pressurised by his employer to resign as MD. Mr Sweeney pointed out that it was RGL who required the claimant to resign as MD of CRL as a condition of additional funding

being provided by RGL to CRL. In those circumstances, there could not possibly be any breach of any term (express or implied) of the claimant's contract of employment with CRL.

145. Mr Sweeney submitted that none of the alleged protected disclosures could qualify for protection under S.43B, as all the claimant did was make allegations, rather than disclose information. Furthermore, Mr Sweeney submitted that the claimant did not genuinely believe that the information tended to show a failure to comply with a legal obligation, or that any such belief was a reasonable belief. Mr Sweeney also submitted that the claimant did not genuinely believe that any disclosure was in the public interest and if he did, his was not a reasonable belief.

146. Mr Sweeney spent some time addressing the tribunal on the issue of "public interest". He submitted that everything about which the claimant complained was to do with his own personal interests, or the private interests of a small number of minority shareholders seeking to protect the economic value of their investments. Mr Sweeney specifically pointed out that nowhere in the claimant's evidence did he address the issue of whether his disclosures were made in the public interest and he had thereby avoided that issue altogether. Mr. Sweeney submitted that this omission could not be and should not be allowed to be, corrected by Mr Tinnion in closing submissions, without any evidence to support it. Mr Sweeney particularly drew the tribunal's attention to the fact that none of the other minority shareholders had ventured forward to give evidence on the claimant's behalf, despite Mr Harding and Mr Routledge having attended the Tribunal hearing during the claimant's evidence.

147. Mr Sweeney submitted that the claimant acknowledged throughout these proceedings that RGL was entitled to recall the loan of £250,000 at any time and that doing so did not amount to a breach of any contractual obligation. Mr Sweeney further submitted that the claimant either did not genuinely believe that CRL was insolvent, or that any such belief held by him was not reasonable. Mr Sweeney invited the tribunal to make a finding of fact on the evidence available to it as to whether or not CRL was at any time insolvent and in particular whether the withdrawal of the £250,000 meant that CRL was insolvent. Mr Sweeney reminded the tribunal that RGL had said consistently that it would continue to introduce funds to CRL to enable it to pay debts as and when they fell due, that no such debts had ever remained unpaid and that this situation continued up to the date of this Tribunal hearing. Mr Sweeney invited the tribunal to assess whether the claimant`s belief was genuine and/or reasonable, taking into account his position as a highly experienced businessman, well versed in dealing with complex financial matters and legal documentation. Mr Sweeney submitted that the claimant had embarked upon a course of conduct over a period of time, once it became apparent to him that he may lose control of CRL, designed to protect his own position with a series of carefully crafted letters to which reference could subsequently be made in any legal proceedings.

148. Mr Sweeney addressed what the claimant described as "detriments" and which the claimant alleged were because he had made protected disclosures. Whilst not accepting that any did amount to a qualifying disclosure, Mr Sweeney submitted that the response of Mr Rees and others was not in fact due to any disclosures made by the claimant, but due to the claimant's generally disruptive behaviour and the manner in which he addressed his colleagues, which they (and Mr Reece in particular) found to be irritating, frustrating and ultimately exasperating. Mr Sweeney accepted that it is

sufficient for the claimant to show that he made a protected disclosure, that there was a detriment and that the employer subjected the claimant to that detriment, whereupon the burden will shift to the employer to show that the employee was not subjected to that detriment on the ground that he had made the protected disclosure. The employer must show that the protected disclosure did not materially influence its decision to subject the claimant to that detriment.

DISCUSSION AND CONCLUSIONS

149. The Tribunal found that the transfer of CRL's HSBC bank account onto the RGL banking platform with HSBC did not amount to a breach of any of the provisions of the contractually binding legal documents into which the two companies entered in October 2015. The claimant did not produce any evidence to support his subsequent contention that the transfer required prior approval from the CRL board. The tribunal found that the transfer of the bank account did not amount to any kind of oppression on the minority shareholders, nor was it a breach of any fiduciary duty owed by any of the directors of RGL or CRL. The claimant was fully aware of the circumstances of the transfer, as he was copied into the email from Mr Lamb to the bank dated 27 November 2015. The claimant had continued to operate CRL's bank account under that system from then onwards. The claimant's protestations about the transfer of the bank account did not arise until after the withdrawal of the £260,000 in March 2017. The Tribunal found that those protestations were no more than expressions of frustration by the claimant at the removal of the funds without his prior knowledge or authority. The Tribunal found that the claimant did not genuinely believe that the transfer of the bank account amounted to any kind of oppression against the minority shareholders, or that it amounted to a breach of any kind of fiduciary duty owed by any of those responsible. Even if the claimant had genuinely held that belief, it was not reasonable for him to do so, bearing in mind his intimate knowledge of the operation of the banking system and his regular use of it over the relevant period of time.

150. The Tribunal found that CRL was at no stage during the relevant period, insolvent within the statutory definition in Sections 122 and 123 of the Insolvency Act 1986. At no stage was CRL unable to pay its debts as and when they fell due, nor could it properly and reasonably have been considered to be insolvent under the balance sheet test. All debts were paid as and when they fell due to be paid. The Tribunal accepted the evidence of the respondent's witnesses that at all times, if necessary, RGL would have ensured that all such debts were paid as and when they fell due. That position was made perfectly clear to the claimant on every occasion when he raised the point. It was confirmed to him verbally and, at his request, confirmed in writing. The Tribunal found that, looking at CRL's assets and making proper allowance for its prospective and contingent liabilities, it could always be expected to meet those liabilities and has in fact always done so. The Tribunal was not satisfied that the claimant had shown that he genuinely believed that CRL was insolvent at any time. His assertion in that regard is clearly contradicted by what he set out in the CRL shareholder update on 8 April 2017 referred to at paragraph 36 above and what he said in his email to Ann Reece on 2 April 2017 referred to at paragraph 40 above. Taking into account the claimant's many years of experience in dealing with complex funding arrangements, corporate finance and the day-to-day management of company, the Tribunal found that it was not reasonable for the claimant to have held any such belief in all the circumstances of this case. The Tribunal found that the claimant's assertions that the company was insolvent were not a genuinely held belief, held on reasonable grounds, but mere allegations designed to

pressurise RGL and CRL into allowing him to continue to manage and operate CRL in such manner as he thought appropriate.

151. The Tribunal found that the removal by RGL of the £260,000 from CRL's bank account did not amount to a breach of any of the provisions of the contractually binding legal documents entered into by the parties in October 2015. During this hearing, both the claimant and Mr Tinnion on his behalf have accepted that as the true legal position. The Tribunal also found that the removal of the funds did not amount to a breach of any fiduciary duty owed by any of the directors of either company, nor did it amount to any kind of oppression or prejudicial conduct against the minority shareholders in CRL. The Tribunal accepted that the decision to withdraw the funds was made for sound commercial reasons and was in not influenced by any alleged shortfall in funds available to RGL, allegedly due to its own poor trading performance. The Tribunal found that the claimant did not genuinely believe that the withdrawal of the funds amounted to a breach of any legal obligation, nor did he genuinely believe that it constituted a breach of any fiduciary duty or an act of oppression or prejudicial conduct against the minority shareholders. Even if that belief had been genuinely held, the Tribunal found that it would not have been reasonable for the claimant to hold that belief. There was simply no evidence to support it and none of the other minority shareholders was prepared to give evidence to support it.

152. Having found that CRL was never insolvent and not at risk of becoming insolvent, the Tribunal found that neither the claimant nor Mr John Reece were, or could have been reasonably accused of being, guilty of wrongful trading. Nothing was done which could reasonably have been interpreted as acts which constituted a preference to any particular creditor and there was no suggestion that the company continued to trade whilst knowing that it would be unable to pay its debts as and when they fell due. The Tribunal found that the claimant did not genuinely believe that either he or Mr Rees may be guilty of wrongful trading, as the facts available to him throughout the relevant period showed that this was clearly not the case. The Tribunal found that it would not have been reasonable for the claimant to have held that belief, for the same reasons.

153. The Tribunal found that none of the senior management within RGL conducted themselves in a manner that could reasonably have been interpreted as acting as a shadow director or de facto director of CRL. The claimant particularly alleged that Mr Lamb was a shadow director of CRL in his letter to Mr Reece of 24 July 2017 (page 712), although he does not specify how. Even in his personal letter to Mr Lamb of the same date (page 709) the claimant simply makes a bald assertion that "ultimately it will be for others to decide if you have acted as a shadow director." The legal documentation entitled RGL to appoint directors of CRL. That is what was done, and there was no need for anyone to behave as if they were a director. The claimant's allegations in this regard were without foundation.

154. The Tribunal found that, in their dealings with CRL and the claimant, the senior personnel from RGL acted at all times in the best interests of both CRL and RGL. It was entirely reasonable for RGL to seek to protect its substantial investment in CRL, provided this was done in accordance with the provisions of the legal documents into which both companies had willingly entered, in the full knowledge of their content, purpose and effect. That is what was done. Unfortunately from the claimant's point of view, one of those effects was that his ability to manage CRL as he had always done, became somewhat diluted.

155. The Tribunal found that none of the alleged protected disclosures made by the claimant were made in the public interest. Applying those guidelines identified by Lord Justice Underhill in **Chesterton**;

a) The number in the group whose interests the disclosures were said to have served was limited to the 8 minority shareholders in CRL. The Tribunal did not accept that any of the other persons identified in paragraph 140 above were in the mind of the claimant at the time the alleged disclosures were made. The tribunal found it more likely than not that the claimant was primarily trying to protect his own financial interests, whilst hoping that the other minority shareholders may support him. They did not do so. None have been prepared to give evidence to the Tribunal on his behalf and there is no evidence before the Tribunal to suggest that the claimant had their support.

b) The interests affected were said to be the investments in CRL by those minority shareholders. Whilst substantial sums were involved, the Tribunal found that the nature of those investments was not such that it was in the public interest for any of the claimant`s disclosures to have been made. The Tribunal found that the minority shareholders` investments were better protected in the hands of RGL, than in the hands of the claimant. The deterioration in the relationship between the claimant and RGL/CRL could not even properly be described as a shareholders' dispute, with one group of shareholders disagreeing with another. This was no more than the claimant disagreeing with management policies being implemented by those entitled to do so.

c) The nature of the wrongdoing disclosed by the claimant could not reasonably be described as deliberate wrongdoing, such as to bring it within the public interest. RGL implemented its contractual right to recall the £260,000 loan and to withdraw it from CRL's bank account. Those acts had no adverse impact on CRL or its minority shareholders. The allegations that those acts made CRL insolvent, or amounted to some kind of wrongful trading, were groundless and unsupported by any evidence.

d) The alleged wrongdoer was RGL and/or its senior managers/directors. RGL is a private limited company whose activities in this field could not fairly or reasonably be said to be matters of public interest.

156. Of the 6 alleged protected disclosures set out in paragraph 141 a) above, (excluding no. 2 which did not take place) the Tribunal found that each contained information with sufficient specificity to satisfy S 43B ERA 1996. However, for the reasons set out above, the Tribunal found that the claimant did not hold a reasonable belief that they were made in the public interest or that any tended to show that a person had failed, or was failing or was likely to fail to comply with any legal obligation to which he was subject. The Tribunal found that the claimant had not made any "qualifying disclosures" as required by S 43B. Accordingly, he could not have been subjected to any detriment because he had made protected disclosures, nor could he have been automatically unfairly dismissed because he had made protected disclosures. Those claims are accordingly dismissed.

157. The claimant's remaining claim is of ordinary unfair constructive dismissal. The claimant alleges eight potential breaches of his contract of employment, as Mr Tinnion set out in paragraph 141 c) above. Having regard to the findings of fact set out above, the tribunal's findings in respect of each of these allegations is as follows;

1) It is accepted that, following the meeting on 15 March 2017, the client was required to obtain permission from RGL before committing CRL to any particular item of expenditure which would cost more than £1000. Prior to this, the claimant and his wife had unlimited authority in terms of expenditure. The claimant alleges that this restriction "plainly impeded my ability to carry out my duties as MD of CRL and thereby breached clause 2.1 of my service contract." That provision states as follows;

"The Company will employ the Executive and the Executive will serve as Managing Director, or in any other comparable capacity reasonably required by the Company on the terms of this agreement. The Company reserves the right to change the Executive's job title to another title suitable for his position, skills seniority and experience provided that this does not impede the Executive's ability to carry out the duties of Managing Director of the Company."

Mr Lamb for the respondent denied that the imposition of this restriction impeded the claimant's ability to manage CRL as its managing director. Mr Lamb's position was that it was entirely necessary at that time to implement stringent controls upon CRL's expenditure due to the parlous financial situation which had arisen and for which Mr Lamb considered the claimant to be primarily responsible. The prime example of these differences was (at para 46 above), the claimant's insistence that he order the tanks for the retort, in direct contradiction of the instructions given to him. The claimant failed to appreciate that these restrictions on expenditure were imposed as part of the conditions under which further funding was provided by RGL to CRL. The restrictions were a small proportion of a larger package of financial controls designed to protect the viability of CRL and its trading position. Any restriction imposed upon the claimant's ability to carry out his duties as MD of CRL were not such as could fairly or reasonably be described as a refusal to perform a contractual obligation which went to the root of the claimant's contract of employment. It was not behaviour by the claimant's employer which could reasonably be described as calculated or likely to destroy the mutual relationship of trust and confidence. Furthermore, it could not fairly or reasonably be said to have been "without reasonable and proper cause." The Tribunal found that the imposition of the restriction at that time and in those circumstances, was entirely with reasonable and proper cause.

2) The contents of Mr Rees's letter of 2 June 2017 are admitted, particularly the part which refers to the claimant's position as MD of CRL as being "no longer tenable." The Tribunal found that this did not amount to a breach of any provision in the claimant's service agreement. It was not conduct by the claimant's employer, but an expression of opinion by a prospective investor of further funds. Mr Reece was expressing his own personal opinion and seeking that of his colleagues on a collegiate basis. It did not amount to an intention by the claimant's employer not to be bound by clause 2.1 of the service contract. It was neither an express breach of contract nor an anticipatory breach of contract. Furthermore, the claimant was entirely unaware of the contents of this letter until it was disclosed as part of the disclosure process in these Employment Tribunal proceedings and thus it could have played no part whatsoever in the claimant's decision to resign.

3) The Tribunal has found that the claimant was never told that he was a "pariah" and this allegation must fail.

4) – 7) Each of these allegations refers to requests/demands/pressure that the claimant should stand down as MD of CRL. The Tribunal found that any such requests put to the claimant were conditions attached to proposals made by RGL, whereby additional funding would be provided to CRL. The Tribunal found that in each case, the request or proposal for the claimant to stand down as MD of CRL was made for sound commercial reasons which were in the best interests of both RGL and CRL. It was not a breach by his employer of any of the terms in the claimant's service agreement. It was not an anticipatory breach of any such term. It was not conduct by the claimant's employer which was, without reasonable and proper cause, calculated or likely to destroy the mutual relationship of trust and confidence. Any "conduct" was by RGL's senior management acting in that capacity and not as the claimant's employer. Even if they had been acting in the capacity of the claimant's employer, the Tribunal found that attaching such conditions to the funding proposals was entirely with reasonable and proper cause, taking into account the parlous financial situation within CRL and the claimant's generally destructive behaviour.

8) At the CRL board meeting on 15 August 2017, a decision was taken to instruct an external HR consultant to begin a process of consultation with the claimant about RGL's requirement that he stand down as MD of CRL as a condition of any further funding being provided. The claimant's case is that any consultation process was or would be a sham, as the decision to remove him as MD had already been taken from the time when Mr Reece described his position as "no longer tenable". Mr Tinnion argued that requiring the claimant to partake in this sham consultation process was conduct without reasonable and proper cause, which was likely to destroy or seriously harm the mutual relationship of trust and confidence. The Tribunal did not accept that submission. The Tribunal found that the proposal to instruct an external HR consultant was entirely reasonable in all the circumstances at that time. The parties had reached something of an impasse as to the claimant's future role and there had been a breakdown in the working relationship between the claimant and the directors of both RGL and CRL. The Tribunal found that CRL certainly had reasonable and proper cause to instruct the HR consultant. It was not behaviour with any right-thinking person would consider to be likely to destroy or seriously harm the mutual relationship of trust and confidence.

1598. The Tribunal found that the claimant's resignation on 21st of August 2017 was not in response to any fundamental breach of his contract by his employer. There was no breach of any specific term of HIS service agreement and no breach of the implied term of trust and confidence. The claimant`s complaint of unfair constructive dismissal is therefore not well-founded and is dismissed.

EMPLOYMENT JUDGE JOHNSON

JUDGMENT SIGNED BY EMPLOYMENT JUDGE ON
19 September 2018