Case No: 2205572/2018

EMPLOYMENT TRIBUNALS

Claimant: Mr V Kapoor

Respondent: 1 Globalgrange Ltd
2 Mr H Matharu

Heard at: London Central **On:** 27, 28, 29 March, 1 & 2 April, 16, 17 & 21 May 2019

Before: Employment Judge H Grewal
Ms K Church & Mr J Carroll

Representation

Claimant: Ms L Bannerjee, Counsel

Respondent: Mr A MacPhail, Counsel

JUDGMENT

The unanimous judgment of the Tribunal is that:

1 The Tribunal does not have jurisdiction to consider the complaints of being subjected to detriments for having made protected disclosures in respect of acts or failures that occurred before 9 March 2018;

2 The complaints of being subjected to detriments for having made protected disclosures in respect of acts or failures that occurred on or after 9 March 2018 are not well-founded;

3 The complaint of unfair dismissal under section 103A of the Employment Rights Act is not well-founded;

4 The complaint of unfair dismissal under section 98 of the Employment Rights Act 1996 is well-founded and the Tribunal orders the First Respondent to pay the Claimant compensation in the sum of £3,070 (£1,956 basic award, £500 compensatory award and £614 uplift for failure to comply with the ACAS Code);

5 The First Respondent's breach of contract claim is dismissed upon withdrawal.

6 The First Respondent conceded the Claimant's breach of contract claim and is to pay the Claimant £464.87;

7 The First Respondent is to pay the Claimant's costs of £2,561.

REASONS

1 In a claim form presented on 7 August 2018 the Claimant complained of unfair dismissal, breach of contract and having been subjected to detriments for having made protected disclosures. The Respondent also claimed breach of contract. Early Conciliation ("EC") was commenced on 8 June 2018 and the EC certificate was granted on 8 July 2018. The First Respondent conceded at the outset that the Claimant was owed £464.87 for expenses and withdrew its breach of contract claim before the conclusion of the hearing.

The Issues

2 It was agreed that the issues that we had to determine were as follows.

Protected Disclosures

2.1 Whether the Claimant made protected disclosures within the meaning of section 43B(1)(a) or (b) of the Employment Rights Act 1996 ("ERA 1996):

(a) In his note of 23 January 2017 to Mr H Matharu (paragraph 16 of the Amended POC);

(b) At the meeting on 10 March 2017 (paragraphs 17 and 18 of the Amended POC);

(c) In his email of 12 May 2017 (paragraph 21 of the Amended POC);

(d) Orally on 12 May 2017 (paragraph 55 of the Amended POC); and/or

(e) In his email of 15 May 2017 (paragraph 21 of the Amended POC).

2.2 Whether the Respondents subjected the Claimant to a detriment by doing any of the acts set out at paragraph 55.1-55.14 of the Amended POC;

2.3 Whether the Claimant was subjected to any of those detriments because he had made protected disclosures.

2.4 Whether the Tribunal has jurisdiction to consider any complaints of having been subjected to detriments for having made protected disclosures in respect of acts that occurred before 9 March 2018;

Unfair Dismissal

2.5 Whether the Claimant was constructively dismissed on 9 March 2018;

2.6 If not, whether the Claimant was actually dismissed on 23 March 2018;

2.7 Whether the sole or principal reason for the dismissal was that the Claimant had made protected disclosures;

2.8 if not, what was the reason for the dismissal?

2.9 Whether the dismissal was fair.

The Law

3 Section 43B(1) of the Employment Rights Act 1996 ("ERA 1996") provides,

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

The word "likely" in section 43B(1)(a) and (b) requires more that more than a possibility, or a risk, that an employer or other person might commit a criminal offence or fail to comply with a legal obligation. The information disclosed should, in the reasonable belief of the worker at the time that it is disclosed, tend to show that it is probable or more probable than not that the employer will commit a criminal offence or fail to comply with a legal obligation (**Kraus v Penna plc [2004] IRLR 260).**

4 Section 47B(1) ERA 1996 provides that a worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure. On a complaint under that section, it is for the employer to show the ground on which any act, or deliberate failure to act, was done (section 48(2) ERA 1996). In **London Borough of Knight v Harrow [2003] IRLR 140** Recorder Underhill (as he then was stated),

> "*The authorities clearly establish that the question of the 'ground' on which an employer acted in victimisation cases requires an analysis of the mental processes (conscious or unconscious) which caused him to so act…*
> *It is thus necessary in a claim under section 47 to show that the fact that the protected disclosure had been made caused or influenced the employer to act (or not act) in the way complained of; merely to show that 'but for' the disclosure the act or omission would not have occurred is not enough … In our view the phrase 'related to' imports a different and much looser test that that required by the statute: it merely connotes some connection (not even necessarily causative) between the act done and the disclosure."*

In **Fecitt v NHS Manchester [2012] IRLR 64** Elias LJ stated,

> "*In my judgment, the better view is that section 47B will be infringed if the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer's treatment of the whistleblower."*

5 Section 48(3) ERA 1996 provides,

> "*An employment tribunal shall not consider a complaint under this section unless it is presented –*
>
> *(a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where the act or failure is part of a series of similar acts or failures the last of them,*
>
> *(b) within such further period of time as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months."*

Section 48(4) provides,

> "*For the purposes of subsection(3) –*
>
> *(a) where an act extends over a period, the "date of the act" means the last day of that period;*
>
> *(b) a deliberate failure to act shall be treated as done on the day when it was decided on;*
>
> *and, in the absence of evidence establishing the contrary, an employer … shall be taken to decide on a failure to act when he does an act inconsistent with doing the failed act or, if he has done so such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done."*

6 Section 103 ERA 1996 provides that an employee who is dismissed shall be regarded as unfairly dismissed if the reason or principal reason for the dismissal is that that the employee made a protected disclosure. An employee is dismissed by his employer if the contract under which he is employed is terminated by the employer (with or without notice) or 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 employer's conduct (section 95(1) ERA 1996).

7 In a complaint of unfair dismissal it is for the employer to show the reason or principal reason for the dismissal and that it is a potentially fair reason. A reason that relates to the conduct of the employee is a potentially fair reason (section 98(1) and (2) ERA 1996). Section 98(4) ERA 1996 provides,

> "*… the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –*
>
> *(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and*

(b) Shall be determined in accordance with equity and the substantial merits of the case."

The Evidence

8 The following witnesses gave evidence for the Claimant – the Claimant, Gergana Halatcheva (Senior Vice President, GHS), Helen Smith (PA to T Matharu), Cristelle Ateh (former Spa Manager) and Sartaj Deegan (Director of Sales). The following witnesses gave evidence for the Respondent – Harpal Matharu (Director), Manikandan Krishnasamy (Head of IT), Mira Gohill (Head of HR), Stephen Waldron (Financial Controller) and Bakhta Das (General Manager of a hotel). Having considered all the oral and documentary evidence, the Tribunal made the following findings of fact.

Findings of Fact

(In the Reasons the First Respondent is referred to as "the Respondent" and the Second Respondent is referred to by his name.)

9 The Respondent is a hotel operating company which at the material time owned and operated a number of hotels in central London under the trading name of Grange Hotels. The three Matharu brothers (Harpal (Harp"), Rajeshpal ("Raj") and Tejinder ("Tony") are, and were at all material times, shareholders and directors of the Respondent. Tony Matharu was primarily responsible for sales and marketing, Raj Matharu for financing and acquiring and developing new hotel sites and Harp Matharu for managing the day to day financial affairs of the Respondent and other companies linked to it.

10 Global Hospitality Services Ltd ("GHS") was set up by the Matharu brothers but none of them held any shares in it. The sole shareholder was a nominee company. The sole director of GHS was Edward Beale, except for a short period between June and October 2016 when Tony Matharu was a director. None of the brothers was employed by GHS. However, they ran the business and it was accepted by everyone that they were the beneficial owners of the company. Harp Matharu controlled the finances of GHS but Tony Matharu was more involved in the running of the business Mr Beale was regarded as being a nominee director who acted on the instructions of the Matharu brothers. Persons employed by the Respondent often also undertook work for GHS.

11 Harp Matharu was based at the Respondent's offices in Rochester Row. Tony Matharu and the sales and marketing team worked at 15 Monck St. GHS also operated from that address. Gergana Halatcheva, Senior Vice President of GHS from February 2015 to October 2017, was a consultant based in Bulgaria. She reported to Tony Matharu.

12 Global Management Services Private Ltd ("GMS") was a company set up in India by the Matharu brothers to develop, maintain and improve software for the Respondent and GHS. Its managers at the relevant time were Archana Sharma and Manish Misra. From about June 2009 until about July 2013 the Claimant was employed by GMS in India. BB Patel (Harp Matharu's accountant) and his wife and family were the shareholders and directors of GMS.

13 In 2012 GSM developed a customer relationship manager ("CRM") tool (software) called "Saleswizard" for the Respondent. It was a sales and marketing tool for hotels. It was intended that the Respondent's sales team would use it once it had been customised to their needs. The trademark for "Saleswizard" was registered by the Respondent in 2013. An agreement was drafted in 2013 to assign the intellectual property rights in Saleswizard from GMS to the Respondent but it was never executed. Originally GMS invoiced the Respondent for the work that it did. From 2014 onward GMS invoiced GHS for the work that it did for the Respondent and GHS, and GHS passed the invoices to the Respondent who paid them.

14 The Claimant commenced employment with the Respondent on 5 August 2013 as Systems Architect. The Respondent obtained a work visa for him to work for them when he transferred to UK. The terms of the visa meant that he could only remain in the UK while employed by the Respondent. After five years, he could apply for indefinite leave to remain in the UK and, once granted that, he could work for whomsoever he wanted. The Claimant reported to Tony Matharu and worked in the Monck St office. Like some of the other employees of the Respondent, he also did some work for GHS.

15 In January 2014 at its annual sales conference GHS announced that it planned to launch Saleswizard to its clients - hotels which were not in competition with the Respondent. Just before the conference the name was changed to "Beewizard" because the domain name 'saleswizard.com' was not available. By the end of 2014 GHS was licensing Beewizard to its clients and hotel partners. The clients logged on to Beewizard through their web browser. GHS hosted the underlying database for Beewizard at its servers in the Monck Street office. The Respondent logged on and used Beewizard in the same way as the other clients.

16 Towards the end of 2015 the three Matharu brothers were engaged in a bitter and acrimonious dispute, with Raj and Harp being on one side and Tony on the other. In a heated argument with Tony in November 2015 Harp Matharu threatened to destroy GHS and to close down the company in India.

17 In early December 2015 there was a conference call between Tony Matharu, Gergana Halatcheva and the Claimant. There was a discussion about how best to protect the interest of GHS if Harp Matharu carried out his threat to close down GMS. In providing services to its clients, GHS was heavily dependent on GMS because the staff working there were the people who created, updated, supported and developed Beewizard. They knew that Harp could easily carry out his threat because the payments to GMS were made by the Respondent and authorised by Harp Matharu. They decided to set up a new company in India that could employ the GMS staff to carry on the work that they were doing. It was agreed that the Claimant would be involved in setting up the new company because he was an Indian national and he knew a lot of the staff at GMS having worked there before. It was agreed that he would be a minority shareholder and director and that Archana Sharma, the Financial Controller of GMS, would be the other director and the majority shareholder.

18 In January 2016 the Claimant travelled to India and on 11 January 2016 Credofide Consulting Private Ltd ("Credofide") was incorporated in India. It had two directors - Archana Sharma and the Claimant.

19 In January or February 2016 Beewizard was rebranded as “Syncomate”

20 From April 2016 GMS employees began doing work for Credofide. They continued working in the same premises, using the same equipment and doing the same work, but they did it for Credofide rather than GMS. GMS continued to invoice GHS for the work that they did, and the Respondent continued to pay the invoices. At that stage the Respondent was paying GMS what it invoiced and there were no issues about payments not being made. By the end of April 2016 Credofide was operating as a business and former GMS employees were signing contracts as representatives of Credofide.

21 On 6 May 2016 lawyers in England applied on behalf of Credofide to register the trade mark for Syncomate. It was registered on 30 December 2016. The lawyers later said that their client in respect of that had been Tony Matharu.

22 Until the end of April 2016 GMS normally invoiced GHS for between £15,000 and £20,000 each month. The invoices for May, June and July were respectively for £28,940, £32,150 and £31,162. At the end of June the Claimant was asked to explain the items that appeared in the June invoice. He provided a written explanation which did not satisfy Harp and Raj Matharu. In respect of a number of matters they said that the work claimed to have been done had not been authorised or required and hence they would not pay for it. They also said that they were looking into whether there was any purpose in continuing with the services that were allegedly provided. It appears that the sums invoiced were ultimately paid in installments.

23 On 24 August 2016 Credofide granted a licence to use Syncomate to a hotel in Sweden. The agreement was signed on behalf of Credofide by one of the former GMS employees who was now working for Credofide.

24 On 6 December 2016 Mani Krishnasamy, Head of IT at the Respondent, sent the Claimant an email in which he asked him for various files and information in relation to Syncomate (Grange CRM), Grange Hotels CRM database, the Grange App and Channel Manager. On 13 December the Claimant sent him some information relating to the Android version of the Grange Hotel App. Of all the information requested, this was the least important.

25 In December 2016 Tony Matharu recommended that the Claimant be paid a bonus of £10,000. Any bonus payment had to be approved by two directors. The Claimant was not paid a bonus.

26 By 3 January 2017 Mr Krishnasamy had still not received the information requested by him, nor had the Claimant provided any explanation for not having provided it. He chased the Claimant for the outstanding information on 3 January 2017. On 9 January the Claimant responded and attributed the delay to the fact that that uploading the code and database took time, they did not have the best internet connection in the Delhi office and that he had lost several good people in the Delhi office due to the challenges that they had been facing. He said that he would send the next lot of codes and information later that day or the following day. Mr Krishnasamy told him to provide the Grange CRM information first and said that the Grange CRM database backup was their first priority. The Respondent wanted to ensure that it had access to its own software rather than it being controlled by the Claimant and GMS.

27 By 23 January the Respondent had still not removed any more files or information from the Claimant. On 23 January Harp Matharu wrote to the Claimant and warned him that his failure to provide it was unacceptable and could lead to disciplinary action. He said that the delay had meant that they had not been able to give the Grange sales team access to the Grange CRM.

28 In his response to Harp Matharu on the same day the Claimant said that Mr Krishnasamy had never told him in the earlier emails that the Grange CRM data was his priority. The response was over three pages long and the Claimant made many points. One of the things he said was,

> "*I also need to mention here that Syncomate CRM is a GHS product. It is not a Grange Hotels application. Grange hotels bought a license* [sic] *for it. So technically if GHS gives you the updated database then it will be illegal as it will contain information that has been retrieved from other GHS clients."*

29 On 1 February 2017 the Claimant signed letters stating that the employees who had moved to Credofide were returning to GMS. In the letters he said that the two companies were "*similar entities having same management, projects and location"* and, therefore, their employment in the two companies should be treated as continuous service.

30 By February lawyers engaged by the Matharu brothers were trying to resolve the issues between them. They reached an agreement about certain steps that would be taken. One of the steps was that Tony Matharu would tell the Claimant to provide the relevant information to Mr Krishnasamy. On 21 February 2017 Tony Matharu sent the Claimant an email in which he said that he understood that Mr Krishnasamy had asked for all relevant IT items to be transferred and accessible. He said that it was important that that should be resolved as soon as was practicable and that if there were any issues as to what should be transferred he should raise it with him.

31 It was decided at the beginning of March that there would be a meeting with lawyers from both sides, the Claimant and Mr Kirshnasamy to discuss the transfer of the relevant IT data and information. Prior to the meeting the Claimant and Mr Krishnasamy set out their respective positions. The Claimant said that "Syncomate (Grange CRM)" had been developed by the Delhi unit for GHS and was owned by GHS and that the Respondent had bought an annual licence for it. He said that he would bring the Grange Hotels CRM database with him when he returned to London in two weeks' time. He said that Channel Manager had also been developed in Delhi and was owned by GHS who had licensed the software to the Respondent. He said that all the Respondent's general managers had access to it and arrangements could be made to provide access to others. He said that most of the information requested in respect of the Grange App had been provided.

32 Mr Krishnasamy said that the CRM product had been developed for the Respondent and that he did not have access to it after the name was changed to Syncomate in January 2016. They had been waiting for over three months for the Grange database backup and there was no reason why it could not have been given a long time ago. He disputed that most of the information requested in respect of the Grange App had been provided. In respect of Channel Manager, he said that they

had not asked for access to it but for certain agreed items to be provided. Mr Krishnasamy added at the end of his document items related to GHS which had not been requested in his email of 6 December 2016.

33 On 9 March 2017 the Claimant instructed Ms Sharma to close Credofide with immediate effect.

34 On 10 March 2017 there was a telephone conference call involving Tony and Harp Matharu's lawyers, Mr Krishnasamy and the Claimant to discuss the transfer of the IT information requested in the email of 6 December 2016 (referred to as "the IT schedule"). At the meeting the Claimant agreed that he would give Mr Krishnasamy access to Syncomate. He also agreed that the Grange database had been kept separate form the GHS database (which held data for other hotels that used Syncomate) and that he would give that to Mr Krishnasamy. Mr Krishnsamy was very clear that the Respondent was not interested in the database for other hotels and that all it wanted was the whole database for Grange Hotels. When the Claimant was asked how soon he could do that, he said that it would be difficult because the employees in Delhi were not working because they had not been paid. Mr Krishnasamy then said that if he was given remote access to it he could he could do the backup. The Claimant then said that he did not have access to it and that he would need to get it from the Project Manager in Delhi. That would take about one week. He also agreed that he would send the development files and source code for that. Towards the end of the meeting there was a brief discussion about GHS Domain Website logins and passwords and GHS email admin log in and passwords. The Claimant queried whether they could discuss those issues as no one from GHS was present on the call. It was decided to park those matters and to focus on the items that had been requested in the email of 6 December 2016.

35 Following the call, there were emails between the lawyers about how matters were being progressed. There was a brief discussion about GHS IT items which had not been requested in the 6 December 2016 email. Harp Matharu's lawyer said that their position was that the Claimant should provide that as Mr Beale, in his capacity as Director of GHS, had requested them numerous times. Tony Matharu's lawyer responded that when these items had been raised during the call the Claimant had queried whether he was permitted to provide that information and that it had been agreed that at that stage they would focus on the items requested in the email.

36 By 21 March the Claimant had still not provided the Grange Hotels CRM database. On 21 March he informed the lawyers that the landlord in Delhi had asked the company there to vacate the office and had locked it. He said that he was not going to be involved any longer and said that Mr Krishnasamy should contact Manish Misra in the Delhi office for the handover of the items that he had requested.

37 On 29 March Mr Krishnasamy sent Manish Misra an email and requested the handover of the items that had been requested in the email of 6 December and which the Claimant had agreed to provide during the telephone meeting on 10 March. In addition, he asked for other information related to GHS. The Claimant responded that it had been agreed during the call on 10 March and subsequently that they were to avoid matters concerning GHS or any other technology or database that did not related to Grange Hotels. He said that he hoped that the request was an error and not an attempt to get them into "*any legal tangle"*. He said that he was not prepared to do anything illegal. Mr Misra responded that most of the employees had left due to

the non-payment of their salaries and that he did not think that they would return. He asked him to get the salaries paid for that month so that he could deal with his request.

38 On 4 May 2017 the Claimant sent an email to Teddy Conjamalay, the Group HR Director. He said that he wanted to raise a formal grievance against Harp and Raj Matharu. He said that his position was becoming untenable as he was subjected to sustained bullying and harassment and had been threatened by them in the past. He said that they were working on an agenda to force him out of the company. He was under a lot of stress and if anything happened to him, they would be responsible for it. There was no response to that. It was not clear to us whether Mr Conjamaly was still in that role at that time.

39 By the beginning of May the Respondent had still not received the Grange Hotel CRM database and the Channel Manager information relating to it. On 12 May 2017 Harp and Raj Matharu, accompanied by some other employees, entered the offices at Monck Street and removed the servers which were located there. They were then placed in the office in Rochester Row. The Claimant was not in the office on that day.

40 Following the move of the servers, there were problems with Channel Manager and one of the Respondent's employees raised it with the Claimant and Tony Matharu. The Claimant's response was copied to Mr Krishnasamy. In that email he asked Mr Krishnasamy,

> "*Any particular reason why this sudden step was taken which has caused immense damage to the productivity and performance of the teams in Monck street.*
> *Why no advance notice was given. Also the servers which you have taken away, the data that is on them who will be responsible for its safekeeping?"*

Mr Krishnasamy forwarded that email to Harp Matharu. Tony Matharu's primary concern was the damage that the failure of Channel Manager would cause to the business and he instructed the Claimant to do all that he could to restore it. There were further exchanges of email between the Claimant, Mr Misra in Delhi and Mr Krishnasamy about what was functioning and what was not and who could access what. In one of them on 15 May the Claimant told Mr Krishnasamy that neither he nor anyone from his team should access the Syncomate database on the server as it was a confidential database which included the data of clients of GHS.

41 Prior to 12 May 2017 Harp Matharu had instructed solicitors to draft a letter suspending the Claimant. He asked Mira Gohill, the Respondent's newly appointed Head of HR, to sign the letter dated 12 May on that day and she did so. It appears that the original intention was to suspend the Claimant on that day. However, the Claimant was not suspended on that day (possible because he was not in the office that day). A further copy of the letter dated 15 May was produced and signed by Ms Gohill. It stated in the letter that the Claimant was being suspended immediately on full pay pending a full investigation into his activities that might result in disciplinary action being taken against him.

42 On 15 May at about 10.20 in the morning Harp Matharu attended the office at Monck Street. He was accompanied by Ms Gohill and Marius, a security officer in plain clothes. The Claimant was working in an open plan office on the ground floor

alongside other employees of the Respondent and GHS. Mr Matharu handed the Claimant the suspension letter and told him that he was being suspended. He asked the Claimant to hand over his laptop. The Claimant said that it was his personal property and refused to hand it over. Mr Matharu instructed Marius to get the laptop from the Claimant and Marius put his arms around the Claimant and tried to remove the laptop from him. There ensued a physical struggle between them as Marius tried to wrench the laptop away from him. At no stage did Ms Gohill intervene and object to what was going on. After a few minutes, another employee intervened and said that what was going on was not right and suggested that the discussion continue in a private room. He confirmed that the laptop in question was the Claimant's personal laptop. They went to a private room and the Claimant asked why he was being suspended. Ms Gohill read the suspension letter to him. The Claimant was then asked to leave the premises. He was allowed to take the laptop with him.

43 A number of employees were upset about the way in which the Claimant had been suspended. Helen Smith, Tony Matharu's PA, advised them to write statements about it which she said she would pass on to Mr Matharu. Ms Gohill found out about this and invited Ms Smith to a meeting. She reminded her that she had no HR or investigative role and warned her to refrain from obtaining statements from employees in such circumstances. Ms Gohill had statements from a number of employees who were present and one of them told her that she had taken a video of the incident.

44 On 13 June 2017 the Claimant raised a formal grievance about his suspension and the manner in which it had been conducted. He described what had happened and said that being suspended in front of everyone in the office had been "*very humiliating, unreasonable and unwarranted"* and he was in complete shock and distress after the incident. Since then he had not been contacted by anyone and nor had any investigation started. He had not been given any reason for his suspension which was unjustified as he had not committed any kind of disciplinary offence. Ms Gohill acknowledged receipt of his grievance on 22 June. The Claimant objected to Ms Gohill dealing with his grievance as she had been involved in the suspension about which he had complained. On 27 June she advised him that she was proposing to postpone the grievance investigation (whether by her or someone else) as she had become aware that the Claimant had filed a complaint with the police that Harp Matharu and Marius had assaulted him. She postponed the grievance investigation pending the conclusion of the police investigation.

45 Sometime after the Claimant's suspension Harp and Raj Matharu found out about the existence of Credofide. In June 2017 Vishal Patil from the Respondent's IT department visited the GMS office in Delhi. The office had closed down. He found some papers in the office which he brought back with him. These included agreements between Credofide and hotels relating to the use of Booker360.com which was described as a brand of Credofide and a User Subscription Services agreement between a swiss hotel and Credofide relating to the use of Syncomate. GMS had developed Booker360.com for the Respondent and had invoiced the Respondent for it. Harp Matharu made further inquiries and discovered that Credofide had been registered as the proprietor of the "Syncomate" trademark in the UK pursuant to an application made on 6 May 2016. At the end of June 2017 Mr Matharu instructed solicitors to try to obtain the file relating to it from the solicitors who had applied for the trademark. Their response was that that they could only release that file if instructed to do so by their client in the matter, Tony Matharu.

46 Between June and September 2017 employees of GMS in India made complaints in courts about the directors of GMS and they in turn made complaints about the employees to the police.

47 By November 2017 the police investigation into the Claimant's complaints to the police was concluded. The police decided not to take any action on the complaints.

48 On 8 December 2017 Bakhta Das, General Manager of one of the Respondent's hotels, informed the Claimant that he had been asked by Ms Gohill to investigate his grievance. He said that he was going to start by interviewing Harp Matharu, Marius and Ms Gohill and any other witnesses if necessary. He would then invite the Claimant to a hearing to discuss his grievance. Ms Gohill did not give Mr Das any of the statements that she had, nor did she tell him that one of the employees had taken a video of it.

49 On the same day Ms Gohill wrote to the Claimant inviting him to a disciplinary hearing on 14 December 2017. In that letter she explained that both the grievance and the disciplinary process had been put on hold pending the conclusion of the police investigation. There were four allegations of misconduct/gross misconduct against him. Unfortunately, the copy of the letter sent to the Claimant was missing the second page where the bulk of the first allegation was set out. The four allegations were as follows:

a. His contract of employment provided that he was not to "*engage, whether directly or indirectly, in any business or employment outside of his employment with the Company without prior written consent".* In December 2015/early 2016 Credofide had been set up in India and he was one of its directors. From April 2017 Credofide had entered into various agreements with hotels under which it had provided on line hotel reservations services via Booker360.com or licensed the hotel to use the Syncomate database. Credofide, under the direction of the Claimant as director, had been trading in competition with the Respondent/GHS and had used intellectual property belonging to the Respondent/GHS in order to do so and had made a secret profit as a result. It was pointed out that that could potentially amount to gross misconduct.
b. Although the Claimant had been instructed not to undertake any work during his suspension, he had been a speaker at a conference on 6 June 2017.
c. Although he had been instructed not to log on to any GHS email account he had done so and had sent an email in September.
d. He had not supplied his log in details as he had been requested to do in his letter of suspension.

Ms Gohill advised him that if he wished to call any witnesses he should give her their names no later than 24 hours before the hearing and that he should supply any documents on which he wished to rely as soon as possible. She advised him of his right to be accompanied and warned him that if he was found guilty of gross misconduct he could be dismissed without notice. She told him that she would be conducting the hearing. The following documents were attached to the letter – a contract of employment for the Claimant, the suspension letter, documents showing that the Claimant was billed as a guest speaker at a conference on 6 June 2017 and

a Syncomate screenshot showing that a message had been created by the Claimant on 18 September 2017.

50 On 12 December the Claimant's trade union representative asked for the hearing to be postponed due to her unavailability and for someone else to hear it as Ms Gohill was not sufficiently independent. She also said that the Claimant did not feel safe on Grange Hotel premises and asked for the hearing to be held elsewhere. The hearing was postponed to 22 December and Stephen Waldron, the Respondent's Financial Controller, was appointed to hear it. The Claimant consented to it being held on Grange property if Harp Matharu was not in the vicinity.

51 On 20 Dec 2017 Ms Gohill sent the Claimant the missing page from the disciplinary invite letter and three additional documents – a document relating to the incorporation of Credofide which showed the Claimant as its director, the document relating to Credofide registering of the trademark for Syncomate and the User Subscription Services Agreement under which Credofide licensed a hotel to use the Syncomate database.

52 The Claimant's trade union representative objected to Mr Waldron on the grounds that he was not independent. She said that he was line managed by Harp Matharu and was very close to him. She also said that the Claimant needed more time to prepare because of the new documents that had been provided. She also sought further evidence from any investigation that the Respondent had conducted. Ms Gohill did not agree that Mr Waldron was not independent and she refused to adjourn the hearing. There was further communication between her and the trade union representative. There was a discussion about whether the copy of his contract of employment that had been sent to the Claimant was the correct one. The Claimant's representative asked for the hearing on 22 December to be converted to an investigatory interview rather than a disciplinary hearing as no investigatory interview had taken place. Ms Gohill refused that request. She said that she felt that there was a case to answer in respect of each of the allegations and if the Claimant had a full answer to the allegation and Mr Waldron accepted it, that would be the end of the matter.

5**3** On 21 December the Claimant's representative sent Ms Gohill an email which confirmed that the Claimant had not attended the conference on 6 June.

54 On 22 December the Claimant's representative applied for the hearing to be adjourned on the grounds that the Claimant had become so ill with anxiety and depression that he was not in a fit state to attend the meeting. In a later email on the same day she said,

> "*Varun believes these allegations are inherently linked to his whistleblowing disclosure that Harp Matharu was trying to steal data and IP from GHS by forcing him to transfer data and codes etc from GHS to Grange. He refused and as a result is now being victimised. Grange hotels does not, as far as he understands, own the IP to Syncomate and the clients* [sic] *data. Grange should speak to Tony Matharu to have further clarity on that."*

The Claimant also sent an email to Mr Waldron and his trade union representative on that day. He corrected what she had said in respect of the first allegation. He said that it was not Tony Matharu who had instructed him but both Harp and Tony

Matharu "*who were aware of it right from the beginning as it was necessary to safeguard the interest of GHS and its clients including Grange Hotels."* He said that he wanted the following witnesses to attend the investigation hearing – Tony Matharu, Mira Gohill, Gergana Halatcheva, Teddy Conjamalay, Sartaj Deegan and Mr Vigneswaran.

55 Mr Waldron postponed the hearing. He said that it had been implied that the Claimant could clear up the allegations in full. He invited him to respond fully in writing to him in advance of any adjourned hearing so that he could consider whether any of the allegations could be removed from the hearing. He asked the Claimant to provide him with documentary evidence to support his assertion that he had been instructed by Tony Matharu to set up Credofide.

56 On 5 January Mr Waldron informed the Claimant's representative that the hearing had been adjourned to 12 January and that, in light of the evidence provided by her, the second allegation had been dropped. In respect of the first allegation, he repeated again his request for the Claimant to provide documentary evidence which showed that he had been given that instruction by Harp and/or Tony Matharu. He also said that, with the exception of Tony Matharu, he did not see what relevant evidence the other witnesses could give and asked him to explain what evidence they would give and how it was relevant to the disciplinary allegations.

57 GHS was in administration from 13 October 2017 to 8 February 2018 when it commenced the process of creditors' voluntary liquidation. On 9 November 2017 GHS Global Hospitality Ltd was incorporated. Tony Matharu and Gergana Halatcheva were directors of the company. On 9 January 2018 the Claimant applied for the role of Vice President – IT Strategy with GHS Global Hospitality Ltd.

58 On 10 January the Claimant sent a long email to Mr Waldron. He repeated that he was being subjected to disciplinary action because he had made protected disclosures and said that it was inappropriate to deal with the disciplinary hearing before dealing with his grievance. He repeated that he did not consider Mr Waldron to be sufficiently independent to conduct the disciplinary hearing. He reiterated his request for the same witnesses whom he had named before to attend the hearing. He also pointed out that he had not received any documents relating to agreements that Credofide entered into with Booking.com or hotels, and asked for these to be provided.

59 On 11 January the Claimant sent an email to Tony Matharu asking him whether he would be attending the disciplinary hearing the following day. He said that he had told Mr Waldron that he required Mr Matharu's attendance. Mr Matharu responded that Mr Waldron had not asked him to attend the disciplinary hearing. He had meetings all day and would not be able to attend the hearing. He copied his response to Mr Waldron.

60 On 11 January at 9.51 pm the Claimant sent Mr Waldron an email in which he complained about Mr Waldron not having asked Tony Matharu to attend the hearing although the Claimant had requested his attendance as early as 22 December and Mr Waldron had agreed that he was a relevant witness. He also complained about not having been provided with the documentary evidence in support of the allegations against him. In the circumstances, he feared that he would not be afforded a fair and impartial hearing. He sent him a copy of his email of 10 January.

61 On 12 January Mr Waldron sent the Claimant an email. He said that he had not received the Claimant's email of 10 January. He said that the hearing that morning would go ahead. He wanted to get the Claimant's full response to the allegations and after that he would adjourn the hearing and make such further investigations as he considered necessary. That would include contacting witnesses whose evidence was relevant to the allegations. He would do that before he made any decision and, if he considered it necessary, he would reconvene the hearing to hear evidence from any of the witnesses or further evidence from the Claimant. He asked the Claimant to confirm whether his position was that he admitted the first allegation but that his defence was that he had ben acting on the instructions of Tony and/or Harp Matharu.

62 Neither the Claimant nor his trade union representative attended the disciplinary hearing. On 12 January Mr Waldron wrote to the Claimant and asked him to provide his response in writing to the remaining three allegations and any documents in support by 5 pm on 17 January 2018. Once he had a response he would undertake whatever further investigation he considered necessary in light of the response. He would share those with the Claimant and give him an opportunity to comment of them before making any decision. If he did not receive anything from the Claimant, he would proceed on the basis of the information before him.

63 On 16 January solicitors acting for the Claimant wrote to Mr Waldron. They raised concerns again about Mr Waldron's independence and his suitability to conduct the disciplinary hearing. They stated that the Claimant was entitled to a disciplinary hearing with the witnesses that he had requested being allowed to attend and that it was not right for the matter to be dealt with on paper. If the Respondent did not make arrangements for the witnesses to attend, the Claimant would invite them to the hearing. They said that the Claimant did not admit the first allegation and that Tony Matharu needed to attend the hearing as he was best placed to explain the reasons for Credofide coming into existence. They also asked for all the documentary evidence in support of the allegations to be made available to the Claimant. They attached evidence to show that the Claimant had not sent an email from his GHS account in September 2017.

64 Mr Waldron responded that he would reconvene the disciplinary hearing on 23 January and that the purpose of the hearing would be solely to hear the Claimant's response to the allegations. After that he would adjourn the hearing to consider what additional evidence was required and which witnesses needed to attend. In those circumstances, he would not ask any witnesses to attend that hearing, nor would he hear their evidence if the Claimant asked them to attend.

65 On 23 January the Claimant attended the hotel where the hearing was to be held with Mr Deegan. He met Mr Waldron in the foyer of the hotel. He said that Mr Deegan was attending as the person accompanying him and his witness. Mr Waldron said that Mr Deegan could not be on the company's premises as he had been suspended and repeated that he would not be hearing from any witnesses and that they could not be present at the hearing with the Claimant. While he was talking to the Claimant, Tony Matharu arrived and the Claimant said that he too was there as a witness. Mr Waldron repeated that he was not going to be hearing from any of the witnesses at that stage. The Claimant was not prepared to attend a hearing if his witnesses could not attend and give evidence. He produced a written statement which he read out loud.

66 He said that the failure to hear his witnesses made the process fundamentally unfair. He referred to the evidence that had already been provided to show that he had not attended the conference on 6 June and that he had not sent the email from the GHS account in September 2017. He said that Mr Deegan could confirm that he had given his password to Mira Gohill on the day when he had been suspended. As far as Credofide was concerned, he said that all the directors (including Harp and Raj Matharu) had been aware of it since its inception. The only reason that he had been involved was that it was necessary to have an Indian national on the registration papers. It had been set up to provide some protection to the business of GHS, which was almost at the point where it was unable to provide its services to its clients, including Grange Hotels, because Harp Matharu was not paying the invoices of GHS's developers in India. He knew nothing about the activities of Credofide and despite asking for evidence of those matters none had been provided.

67 On 24 January 2018 Mr Waldron informed the Claimant's solicitors that the hearing would take place on 30 January and that the same conditions as before would apply. He said that if the Claimant's position was that he had done whatever he did in respect of Credofide on instructions of one or more of the directors of the Respondent, he should provide in advance of the hearing any documents evidencing such instructions.

68 On 24 January 2018 the Claimant was offered the role of Vice President – IT Strategy with GHS Global Hospitality Ltd.

69 On 29 January the Claimant's solicitors wrote to Mr Waldron. They raised again criticisms about there not having been a proper investigation of the matters before inviting the Claimant to a disciplinary hearing. They said that in respect of the first allegation the Claimant had provided sufficient detail for a further proper investigation to be undertaken, not least of all an interview with Tony Matharu. They also informed the Respondent that the Claimant was going to be on annual leave from 24 January to 20 February 2018. Tony Matharu had approved his annual leave.

70 On 22 February 2018 the Claimant's work visa was transferred to GHS Global Hospitality Ltd.

71 On 26 February Mr Waldron informed the Claimant's solicitors that the hearing would take place on 1 March 2018. The same process that he had outlined for the earlier hearing would be followed.

72 On 26 February the Claimant responded that he could not attend any hearing on 1 or 2 March as his wife had a hospital appointment the following day as a result of an urgent referral and that she might have follow up appointments on 1 or 2 March. Mr Waldron did not receive that email.

73 The Claimant did not attend the hearing on 1 March 2018.

74 On 7 March Mr Waldron wrote to Tony Matharu. He said that Mr Matharu was aware of the disciplinary action against the Claimant, and that the Claimant had not attended the hearing on 1 March. He was going to decide the matter on the basis of the evidence before him but he needed Mr Matharu's input in respect of one of the allegations. He continued,

> "*It relates to the issue of Credofide Consulting Private Ltd ("Credofide"), an Indian company which Mr Kapoor is director and shareholder of. The company is the registered proprietor of the trademark Syncomate in the UK and has been entering into contracts with customers under which it agreed to licence* [sic] *the Syncomate/Sales wizard software to them in return for payment.*
>
> *Mr Kapoor in essence accepts the factual accuracy of the Credofide allegation but asserts that his actions were undertaken with the full knowledge and authority of the directors of Globalgrange.*
>
> *I have spoken with Harp and Raj who both categorically denied any knowledge of his actions in relation to Credofide or authorizing Mr Kapoor to set up Credofide and use it to licence Globalgrange or GHS software to third parties.*
>
> *I would like your comments on what Mr Kapoor is saying before I make my decision. In particular I would like to know if you authorised and/or sanctioned him to set up Credofide and to use it to licence third parties software belonging to Globagrange/GHS."*

75 Raj and Harp Matharu signed a statement on 7 March 2018 in which they categorically denied any prior knowledge of the Claimant's actions in relation to Credofide and authorising him to set up Credofide and to use it to license software to third parties.

76 Tony Matharu responded to Mr Waldron's email on 8 March. The greater part of his email comprised complaints about the conduct of Mr Waldron vis-vis him. Towards the end of the email he said,

> "*Your letter incorrectly attributes knowledge to me which I do not have and I question your reasons for so doing and the basis for your statements. I trust that you will explain that to me if or when we meet.*
>
> *On the particular matter of an Indian company I, together with my brothers and Co directors, was aware of the new company in India, which was to protect the interests of GHS and its preferred partner, Grange Hotels.*
>
> *I am willing to meet with you, subject to other demands on my time, to discuss the contents of your letter further, if appropriate."*

77 The Claimant has produced an email which shows it being sent on 9 March to Mr Waldron and Mira Gohill. They have both denied that they ever received it. Although the Claimant had solicitors acting for him at that stage that email was not copied to his solicitors. In that email he said that he had not heard from Mr Waldron following on from his email of 26 February. He said that it was clear to him that the process being undertaken was so fundamentally flawed and unfair that he had no chance of satisfying Mr Waldron that he had not done anything wrong. He had not been allowed to attend with his witnesses and he had not been provided with the evidence to support the allegations. He had spoken up when Harp Matharu and others had tried to take GHS data and software as a result of which he had been assaulted on the

instructions of Harp Matharu, unreasonably suspended and put through spurious disciplinary proceedings. His grievance had still not been dealt with. The company's actions amounted to a fundamental breach of its obligations to an employee and a complete destruction of any trust. He said that he was resigning and that it was a constructive dismissal because of whistleblowing.

78 On 20 March Mr Waldron sent Tony Matharu an email about the reference to an "Indian company" in his email to Mr Waldron. He said that Harp and Raj had said that the only company that was set up to protect the interests of GHS and Grange Hotels was Grange Management Services Ltd (GMS). He asked him to confirm whether that was the company to which he was referring.

79 On 23 March 2018 Mr Waldron wrote to the Claimant. He said that as the Claimant had not attended the disciplinary hearing on 1 March 2018 he had decided to proceed with the matter on the basis of the evidence before him. The allegation relating to him attending the conference while suspended had already been withdrawn. In light of his responses to the allegations about sending an email from his GHS account while suspended and not supplying his log in details, those allegations were not upheld. That left the allegations in relation to Credofide. He said that clause 19 of his contract of employment forbade him from undertaking any other duties during his hours of work for the Respondent and from engaging in any other business or employment outside his hours of work without the prior written consent of the Respondent. In addition, he was also under an implied duty of good faith to the Respondent which included an obligation to avoid a conflict of interest between his personal interests and the best interests of the company. On the basis of the evidence before him, he concluded that the Claimant had set up Credofide and traded it using software that that belonged to GHS/Grange Hotels. He could not see how that had provided protection to the business of GHS as claimed by the Claimant, or how the failure to pay invoices to GMS could warrant the setting up of a company that that used GHS/Grange software to make a profit and then not account to GHS/Grange for those profits. Harp and Raj Matharu had confirmed that they had not been aware of Credofide, nor had they given any sanction or written consent to the Claimant to set it up. Tony Matharu had not provided any explanation about it and neither he nor the Claimant had provided any written authorisation for the Claimant to engage in it as required by his contract. He concluded that the Claimant's actions amounted to gross misconduct and his employment was terminated with effect from that day.

80 The Claimant's solicitors wrote to Mr Waldron on 3 April. They pointed out that he had disregarded the Claimant's resignation of 9 March 2018. They also noted that he had not stated whether Tony Matharu had confirmed or denied that that he had been aware of and supported the Claimant's involvement with Credofide. That suggested to them that either he had chosen to ignore what Tony Matharu had said or had never asked him. They also pointed out again that, despite asking for it numerous times, the Claimant had not been provided with the evidence in support of the allegations. They said that the Claimant would reimburse them his salary for the period 9 to 23 March.

81 On 4 April Tony Matharu wrote to Mr Waldron that he found his email of 20 March to be disingenuous. He said that he had been present at the Claimant's disciplinary hearing on 23 January and at that time it had been made very clear to all present which companies had been the subject of his discussions and investigations. He

thought that it was implausible for Mr Waldron to be making the "assumptions" that he apparently wished to make in his email of 20 March.

82 On 4 April Mr Waldron responded to the letter from the Claimant's solicitors. He said that neither he nor Ms Gohill had received the Claimant's emails of 26 February or 9 March. He said that he had approached Tony Matharu but he had not confirmed that he had been aware of or had approved the Claimant's actions in relation to Credofide. The Respondent's position was that the Claimant had been dismissed for gross misconduct on 23 March 2018 and his resignation by email of 9 March 2018 was not valid because it had never been received by the company.

83 Mr Das, who was supposed to be investigating the Claimant's grievance interviewed Ms Gohill and Vishal Patil on 15 January 2018, Mr Rajgopal on 12 February 2018 and Harp Matharu on 16 March 2018. He was then told that the Claimant had been dismissed and that he did not need to conclude his investigation.

84 On 26 March 2018 the Claimant commenced employment with the GHS Global Hospitality Ltd at a higher salary than he was paid by the Respondent.

Conclusions

Protected Disclosures

85 We considered first whether the Claimant's statement on 23 January 2017 that, if GHS gave Harp Matharu the updated database for Syncomate it would be illegal as it contained information about GHS clients, amounted to a "qualifying disclosure". The issue was whether by saying that the Claimant was disclosing information which he reasonably believed was in the public interest and tended to show that a criminal offence was likely to be committed or that a person was likely to fail to comply with any legal obligation to which he was subject. When the Claimant said that he believed that providing data relating to other companies which GHS held to the Respondent would be in breach of data protection laws and/or data theft. He genuinely believed that and it was a reasonable belief. The Respondent, however, was not asking the Claimant at that stage to provide the Syncomate database; it was asking the Claimant to provide the Grange Hotels CRM database backup on Syncomate which was kept separate from the data on other hotels. That is clear from Mr Krishnasamy's email of 9 January 2017 and from what he said on 10 March 2017. We concluded that if a worker tells an employer that what the employer is asking him to do is illegal (even if he has misunderstood what is being asked of him) because that is his reasonable belief, that amounts to a "qualifying disclosure". The Claimant was in essence telling Mr Matharu that what he was being asked to do was illegal. We concluded that that statement amounted to protected disclosure.

86 The Claimant did not say anything on the telephone conversation of 10 March that amounted to a qualifying disclosure. He did not give any information or make any assertion that tended to show that criminal offences had been, were being or were likely to be committed or that someone had been in breach or was likely to be in breach of legal obligations. He agreed to provide all the items that had been requested in the email of 6 December 2016. He questioned whether additional information relating to GHS could be discussed when no one from GHS was on the telephone call. A careful reading of the long transcript of that discussion makes it clear that the Claimant did not make any protected disclosure on that call.

87 We concluded that asking the question who would be responsible for the safekeeping of the data on the servers removed from Monck Street did not amount to a qualified disclosure. It was simply that – a question. The Claimant did not in that sentence in that email give any information, let alone information that tended to show that that a criminal offence had been or was likely to be committed or that someone had been in breach or was likely to be in breach of some legal obligation. The primary focus of the email and those that followed it was the disruption and damage caused to the work of the teams at Monck St. There was no reference to the action having been illegal.

88 We have not found as a fact that the Claimant expressed to Tony Matharu concerns that the taking of the servers meant that people's data would be at risk. If he did, it is clear from Tony Matharu's email that it was not Mr Matharu's primary concern at the time. Furthermore, there was no evidence that Mr Matharu conveyed that information to Harp or Raj Matharu, or to anyone else connected to them. Even if it was said and if it amounted to a protected disclosure, there was no evidence that those who are alleged to have subjected the Claimant to detriments were aware of it.

89 We finally considered whether the Claimant telling Mr Krishnasamy at the end of his email on 15 May 2017 that neither he nor anyone from his team should access the Syncomate database on the server as it was a confidential database which included the data of clients of GHS was a protected disclosure. We have already concluded that at that time Claimant genuinely and reasonably believed that providing data relating to other companies which GHS held to the Respondent would be in breach of data protection laws and/or data theft. At the time he made the statement in the email of 15 May he believed that it was likely that employees of the Respondent would access the Syncomate database and by saying what he did, he was informing them that if they did that, it would be illegal. He did not use the words "illegal" or "against the law" but that was the clear implication of what he said. We concluded that by making that statement he was giving the Respondent information that their accessing Syncomate, which he believed was likely to occur, would be illegal. We concluded that that amounted to a qualifying disclosure.

Detriments

90 Unless we conclude that complaints about acts or failures that occurred before 9 March 2018 are part of a series of similar acts/failures the last of which occurred after that date or are part an act extending over a period of time that continued beyond that date, we could only consider them if we were satisfied that it was not reasonably practicable for the Claimant to have presented them in time. The Claimant has not put forward any reasons or explanations as to why he could not have presented those claims earlier. In those circumstances, we are not satisfied that it was not reasonably practicable for the Claimant to have presented those complaints in time. Our conclusion, therefore, would be that we do not have jurisdiction to consider those complaints.

The suspension (detriments 1, 2 and 3)

91 These complaints relate to acts that took place on 15 May 2017. Unless they are part of a series of similar acts/failures, the last of which took place after 9 March 2018, the Tribunal does not have jurisdiction to consider them.

92 The decision to suspend the Claimant was made by Harp Matharu shortly before 12 May 2017. We have found that the Claimant had made one protected disclosure before that on 23 January 2017. It was contained in short paragraph the middle of a note that ran into over three pages. It related to giving the Respondent access to the Syncomate database that contained data relating to other hotels.

93 We have also found that since 6 December 2016 the Respondent had been asking the Claimant for information and data relating to Grange Hotels. A very small and the least important part of the information was provided. On 10 January the Claimant gave a number of excuses as to why there had been a delay in providing the data requested. It was also made clear to him on that day that Grange CRM database backup was the priority. There was no basis for saying that it would be illegal to supply this data to the Respondent and the Claimant never said that. By 23 January he had still not provided it and at that stage Harpal Matharu threatened him with disciplinary action. That was before the Claimant made any protected disclosure. The threat of disciplinary action had nothing to do with the Claimant saying that it would be illegal for him to supply GHS data but was because of his failure to supply Grange with its own data. During the telephone call on 10 March 2017 the Claimant agreed to provide all the data and information that had been requested in the email of 6 December 2016. He accepted at that meeting that the Grange database had been kept separate from the GHS database and that it could be provided. However, he never provided it and on 21 March he said that he was not going to be involved in the process any more. The Claimant continued being an employee of the Respondent and working for the Respondent after this date and he could have provided the Grange database but he did not.

94 We found that Harp Matharu decided to suspend the Claimant in early May because the Claimant had been unco-operative and obstructive and had failed to follow reasonable management instructions to provide to the Respondent information about and access to its data and IT systems. Harp Matharu hoped that if the Claimant was out of the workplace, it might be easier for the Respondent to gain access to its data and systems. In the dispute between Tony Matharu, GHS and GMS on the one side and Harp and Raj Matharu and Grange Hotels on the other side, the Claimant's loyalties lay with the former and he wanted to do whatever he could to protect their position. But he was an employee of Grange Hotels, and if Grange Hotels wanted access to its data and systems and to be independent of GHS and GMS, in his role he should have facilitated that and not obstructed it. The decision to suspend the Claimant had nothing to do with a single statement made in the middle of a note that it would be illegal for GHS to give the Respondent the updated database for Syncomate with data relating to other hotels. The Claimant's case is that the Respondent had been continually asking him for GHS data and he had persistently refused to give it and had explained that he would not because it was illegal. We have not found that to have been the case.

95 It is not in dispute that the Claimant's suspension took place in an open plan office in front of his colleagues, that Mr Matharu attended with a security officer and that he instructed him to forcibly take the Claimant's lap top from him when the Claimant refused to hand it over and that the security officer used force in his attempts to get the laptop. Mr Matharu believed that it was a company laptop and/or that it contained company data and the information which the company had been requesting for some time but the Claimant had not supplied although he had agreed to do so. The manner in which the suspension was carried out was totally unacceptable. The Respondent behaved in a high-handed way; it resorted to using physical force, publicly humiliated the Claimant and distressed his fellow-employees. We found that there were a number of reasons why Mr Matharu behaved as he did. It was partly attributable to his personality and management style; he is a domineering personality and authoritarian manager. He is someone who dictated to his Head of HR what had to be done rather than seek or act upon her advice. Secondly, the suspension took place in context of a bitter and acrimonious family and commercial dispute where, unfortunately, the employees were perceived as belonging to one camp or the other. Finally, Mr Matharu was clearly frustrated by the Claimant's obstruction and prevarication over a six month period in not providing the Respondent access to its data. None of that justifies his behaviour, it explains why he behaved as he did.

96 What was clear to us that it had nothing to do with the either of the two protected disclosures that the Claimant had made by then. There was no evidence that by the time of the suspension the Claimant's email of the same date had been seen by Mr Krishnasamy or brought to Mr Matharu's attention. The fact that even on the Claimant's case Mr Matharu took no action against him after the protected disclosure on 23 January in the weeks that followed, and the time lapse between that disclosure and the suspension, indicates to us that there was no link between the two. The Claimant was subjected to a detriment by being suspended in that way, but he was not subjected to that detriment because he had made the two protected disclosures.

<u>Delay in acknowledging and failure to investigate the Claimant's grievance (detriments 4 and 6)</u>

97 Ms Gohill acknowledged the Claimant's grievance on 22 June 2017, nine days after he raised it. That is not a significant delay and there was no evidence to indicate that it was linked to the protected disclosures of 23 January or 15 May 2017. Mr Matharu then decided that investigation of the grievance should be postponed until the police had concluded its investigation of the Claimant's complaints. As there was a considerable overlap between the subject-matter of the grievance and the police complaint, it is not surprising that the Respondent adopted that course. The investigation of the grievance re-commenced once the police investigation had concluded. In light of Harp Matharu's personality and management style and Mr Das's position vis-à-vis him, there was no likelihood of him reaching a conclusion that was in any way going to be critical of Harp Matharu. As the grievance was against the director and Head of HR, someone independent from outside should have been brought in to investigate it. Mr Das did not investigate it properly. He never spoke to the Claimant or the security officer involved in the suspension. It took him over three months to conduct four short interviews. By that stage the Claimant had been

dismissed and the investigation stopped. We accept that that the grievance was not investigated by someone who was independent, there were unjustifiable delays from 8 December 2017 to 26 March 2018 and the investigation was not concluded. The failure to conclude the investigation continued until the Claimant's dismissal and, therefore, that complaint was presented in time.

98 The reluctance to investigate the Claimant's grievance fairly and quickly had nothing to do with the fact that the Claimant had on two occasions suggested that it would be illegal for the Respondent to have access to GHS data which contained data relating to other hotels. The reason that the Respondent did not want to investigate the grievance was that it had no interest in dealing with complaints made by the Claimant, whom it regarded as obstructive and unco-operative, against Harp Matharu and the Head of HR and because those individuals recognised that they had not handled the suspension well. Any impartial investigation would have been critical of they way that they had dealt with the suspension.

Delay in providing any explanation for the suspension, failure to investigate any disciplinary allegations and delay in commencing disciplinary action (detriments 5 and 7)

99 The Claimant was not told at the time of his suspension or at any time thereafter which of his activities the Respondent was going to investigate. The reason for the suspension is as set out at paragraph 94 (above). The Respondent did not at any stage between 15 May and 8 December 2017 conduct any disciplinary investigation into either the matters that had led it to suspend the Claimant or matters that came to light after the suspension. It did not provide the Claimant with any explanation for the ongoing suspension. By not telling the Claimant the reasons for his suspension and leaving him "in limbo" thereafter for nearly seven months, the Respondent subjected him to a detriment. The complaint is about acts or failures to act that occurred between 15 May and 8 December 2017 and, therefore, any complaint about them was not presented in time.

100 By May 2017 Harp Matharu had decided that the Claimant was obstructive, unco-operative and aligned in the dispute with Tony Matharu, GHS and GMS, and he wanted him out of the way. Those views were based on the Claimant's behaviour over the preceding six months in connection with his not providing the Respondent access to its data. It was not based on two comments made by the Claimant about the data relating to other hotels on the GHS database. After his suspension further evidence came to light in respect of Credofide which confirmed his views about where the Claimant's loyalties lay. Harp Matharu had no interest in following a fair and impartial process to determine whether he should be dismissed. He had decided that the Claimant had to go. He controlled and ran the Respondent and made decisions on important matters. He was wary about taking any action while the police investigation was proceeding, but once it was concluded the Claimant was invited to a disciplinary hearing. We were satisfied that the Claimant was not subjected to these detriments because of the two protected disclosures that we have found he made.

Inclusion of post-suspension allegations and efforts to obtain false testimony (detriment 8)

101 The invitation to a disciplinary hearing contained allegations that post-dated the suspension. There is nothing wrong in inviting an employee to a disciplinary hearing in respect of misconduct that occurred after a suspension. Those allegations were not used to justify the suspension. We have not made any findings about efforts to obtain false testimony from witnesses in India. We have not heard any direct evidence about what took place in India, and we could not on the basis of the evidence before us find that Harp Matharu or anyone else at the Respondent had tried to obtain false testimony against the Claimant.

The false, unreasonable or unfounded nature of the allegations made against the Claimant (detriment 9)

102 This act occurred on 8 December 2017 and the complaint in respect of it was not presented in time. We did not accept that the allegations against the Claimant, particularly in relation to Credofide, were false or unfounded. We accept that they were not properly investigated. However, there was evidence that the Claimant was a director and shareholder of Credofide, that it had registered the trademark for "Syncomate" which belonged to GHS or the Respondent and that it was engaging is business using and licensing that software. We would not have concluded that the Claimant was subjected to this detriment.

The conduct of the disciplinary hearing (detriments 10 to 14)

103 We have considered these detriments together because they all relate to the conduct of the disciplinary process. The Claimant alleged that he was subjected to the following detriments – the Respondent failed to provide the Claimant with investigations notes, evidence to support the allegations, and clarification from Tony Matharu, refused to hear from the Claimant's witnesses, refused to allow the Claimant to be accompanied by a companion of his choice, and insisted that the hearing be conducted by Mr Waldron who was not independent or impartial.

104 The Respondent did not provide the Claimant with any investigation notes because it did not have any notes because it had not conducted an investigation. Some of the evidence in support of the allegations was sent to the Claimant. Most of the evidence relating to the activities of Credofide was not provided to the Claimant. The User Subscription Services Agreement was provided but the copy provided was of poor quality and illegible. The documents relating to Booker360.Com and Booking.Com were not provided. The clarification sought from Tony Matharu and his response were not disclosed to the Claimant. The reason for that was that it was supportive of the Claimant and clear evidence of Mr Waldron being disingenuous in the way he chose to interpret it. The Claimant's witnesses were not allowed to give evidence at the disciplinary hearing. Mr Waldron's position was that he wanted to hear from the Claimant first and he would then decide whether to interview any witnesses. However, he refused to convert the disciplinary hearing into an investigatory hearing. Either the Respondent should have converted it to an investigatory hearing and conducted a proper investigation or, if it insisted on

proceeding with a disciplinary hearing, the Claimant should have been permitted to call witnesses. Tony Matharu and Gergana Hatchaleva were clearly relevant witnesses in relation to Credofide. There were significant flaws in the way the process was conducted and they are a clear indication that Mr Waldron was not independent or impartial. We have already found that Harpal Matharu was domineering and authoritarian and that he made the important decisions and that he had decided that he wanted the Claimant removed. We concluded that the Claimant was subjected to the detriments alleged by him and they continued until his dismissal.

105 The reasons for him being subjected to those detriments are the same as the reasons for him being subjected to detriments 5 and 7 (see paragraph 100 above). He was not subjected to those detriments because of the two protected disclosures.

Unfair Dismissal

106 The first issue we considered was how and when the Claimant's employment was terminated. We accepted the evidence of Harp Matharu and Mira Gohill that they did not receive the Claimant's email of 9 March 2018. We had some doubts as to whether it had been sent on 9 March. It seemed surprising in circumstances where the Claimant had solicitors acting for him that he had not copied it to them. The Claimant did not commence employment with GHS Global Hospitality Ltd until 26 March 2018 (after his dismissal on 23 March). Even if it was sent, we accepted that it was not received and, therefore, did not terminate the Claimant's employment. We concluded that the Claimant was dismissed on 23 March 2018.

107 We then considered what the reason for the dismissal was. We do not accept that the decision to dismiss was made by Mr Waldron at the conclusion of the disciplinary process. It is clear from our conclusions above that we concluded that the decision to dismiss was made by Harpal Matharu and it was made before the start of the disciplinary process. The reasons for the dismissal are as set out at paragraph 100 (above). It follows from that that our conclusion is that the Claimant was not dismissed because he had said twice that it would be illegal for the Respondent to access the Syncomate database which contained data relating to other hotels. He was not dismissed because he had made those two protected disclosures. We concluded that the reasons for his dismissal were related to his conduct.

108 The Respondent did not conduct any investigation into the conduct for which it dismissed the Claimant. The suspension letter said that he suspended so that a full investigation could be carried out. No such investigation was carried out. The Respondent did not investigate either the matters that had arisen before the suspension of the Claimant or those that come to light after his suspension. The allegations in respect of Credofide were based purely on the fact that the Claimant was a director and shareholder of that company. No investigation was carried out into the Claimant's assertion that he had done that on the instruction of and with the knowledge of Tony Matharu, his line manager and a shareholder and director of the Respondent, and that it had been done to safeguard the interests of GHS and its clients, which included the Respondent. A limited inquiry was made of Tony Matharu very late in the process and his response, which supported the Claimant, was

deliberately misinterpreted. There was no investigation of what the Claimant had known of Credofide's activities or to what extent he had been involved in those activities. The Claimant was not presented with any evidence from the investigation because there had been no investigation. The Claimant was never told what the allegations against him were in relation to not providing the Respondent with access to its data and was not given the opportunity to put forward his defence to those allegations. He was not presented with most of the evidence relating to the activities of Credofide. At the time the Respondent decided to dismiss the Claimant, it had not carried out as much investigation as was reasonable in all the circumstances. The Claimant was not permitted to call witnesses in his in his defence at the disciplinary hearing. The whole process was fundamentally flawed and unfair. In the circumstances, the Respondent did not act reasonably in dismissing the Claimant for what it believed to have been misconduct on his part.

Remedy

109 The Claimant seeks a basic award of £1,956 and a compensatory award of £500 for loss of statutory rights. We cannot on the basis of the evidence before us say that had the Respondent investigated matters and acted fairly, there was still a likelihood that the Claimant would have been dismissed. In circumstances where the Claimant's alleged misconduct was not investigated and he was not given the opportunity to defend himself, it is very difficult for us to conclude that his conduct contributed in any way to the dismissal. In any event, on the facts of this case, we would not have considered it just and equitable to reduce either the basic or compensatory award.

110 The ACAS Code of Disciplinary and Grievance Procedures 2015 applied in this case. There were breaches of the following paragraphs of the Code – paragraph 5 (It is important to carry out necessary investigations of potential disciplinary matters without unreasonable delay to establish the facts of the case), paragraph 8 (the period of suspension should be as brief as possible and should be kept under review), paragraph 9 (it would normally be appropriate to provide copies of any written evidence with the notification of the hearing), paragraph 12 (at the hearing the employee should be given a reasonable opportunity to ask questions, present evidence and call relevant witnesses) and paragraph 13 (the worker has the right to be accompanied by a companion). We concluded that those failures were unreasonable and that it would be just and equitable to increase the award we made by 25% (£614).

Costs

111 The Claimant applied for the costs of defending the Respondent's breach of contract claim on the grounds that it had no reasonable prospect of success. We accepted that it had no reasonable prospect of success. The Respondent had no evidence to support its contention that it had been agreed with the Claimant that he would have to repay the money that the Respondent expended on obtaining and his work permit/visa. The Claimant defended it on the basis that there was no such agreement. Notwithstanding that, the Respondent continued to pursue that claim until the conclusion of the evidence in this case. It was a claim that should never have been brought or continued. The Claimant incurred costs of £2,561 in defending that

claim. We considered that it was appropriate to order the Respondent to pay the Claimant costs in that sum.

Employment Judge Grewal

Date 9 September 2019

JUDGMENT & REASONS SENT TO THE PARTIES ON

9 September 2019

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FOR THE TRIBUNAL OFFICE