EMPLOYMENT TRIBUNALS

Claimant: Mr M Locke

Respondents:
1. Begbies Traynor
2. Begbies Traynor Limited
3. John Humphrey
4. John Robinson
5. Paul Stanley

Heard at: Manchester **On:** 14-21 June 2021, 22 and 24 June 2021 (in Chambers)

Before: Employment Judge Feeney
Mr G Barker
Ms A Berkeley-Hill

REPRESENTATION:

Claimant: Mr J Mitchell, Counsel
Respondents: Mr J Searle, Counsel

JUDGMENT

The judgment of the Tribunal is that:

1. The claimant's claim of automatic unfair dismissal under section 103A of the Employment Rights Act 1996 is not well-founded and is dismissed.

2. The claimant's claims that he suffered detriments as a result of making protected disclosures under section 47B Employment Rights Act 1996 is not well founded and is dismissed

3. The claimant's claim of unfair dismissal fails and is dismissed.

REASONS

1. The claimant brings a claim of whistleblowing detriment, automatic unfair dismissal due to whistleblowing and constructive unfair dismissal.

Claimant's Submissions

2. The claimant submitted that he made four disclosures and that various detriments arose in respect of each and cumulatively, that he resigned following the last detriment, and the detriments arose from one or other or collectively from his whistleblowing disclosures. He resigned because of those detriments and submits singly and collectively they were a fundamental breach of contract.

Respondents' Submissions

3. The respondents submit that the claimant was seeking to leave work in any event before any of the alleged disclosures took place. The respondents do not accept that the disclosures the claimant relied on, particularly that of the 11 October 2017, disclosure took place, but that otherwise they do not meet the definition of a protected disclosure.

4. In any event the claimant did not suffer any detriments. There was a reasonable and proper cause for each of the matters he relies on as detriments, and there was no connection with those events he relies on as detriments and any alleged whistleblowing. Accordingly, they say the claimant's claim should fail.

The Issues

5. The issues are as follows:

Qualifying Disclosures

(1) Did the claimant disclose information pursuant to section 34B(1) of the Employment Rights Act 1996 on:

(a) 11 October 2017 to Paul Howarth, of bribery and blackmail?

(i) If so, did this tend to show that a criminal offence had been committed?

(ii) Did the claimant have a reasonable belief that a criminal offence had been committed? Was that in the public interest?

(iii) Did it have a tendency to show a breach of a legal obligation under the Proceeds of Crime Act or failure to report the crime of Bribery to SOCA/NCA?

(iv) Did the claimant have a reasonable belief in the same and was it in the public interest?

(b) 23 October 2017 to John Robinson and Paul Stanley, of oral blackmail and bribery?

(i) Did this information tend to show that a criminal offence had been committed or that there was a breach of a legal obligation, as above, and in addition the respondent undertaking a sham redundancy?

(c) 27 June 2018 to John Humphreys: written evidence of bribery, blackmail, fraud and sham redundancy.

(i) Did this tend to show that a criminal offence had been committed?

(ii) Did the claimant have a reasonable belief that a criminal offence had been committed, and was it in the public interest?

(iii) Was there a breach of a legal obligation?

(iv) Did the claimant have a reasonable belief in that was in the public interest, in relation to the same breaches as referred to above?

(d) 13 July 2018 to John Humphrey:

(i) Written, of bribery, blackmail fraud and sham redundancy;

(ii) That a criminal offence had been committed, the claimant had a reasonable belief in that, and it was in the public interest;

(iii) That there had been a breach of a legal obligation as described above, and the claimant had a reasonable belief in the same, and it was in the public interest.

Detriment

(2) Was the claimant subjected to the following acts/failure to act by the respondent, and if so was it a detriment for the purposes of section 47B(1) Employment Rights Act 1996 purposes?

(i) The claimant placed at risk of redundancy;

(ii) Despite assurances the claimant remained at risk of redundancy until 25 January 2018;

(iii) The claimant not provided with a contract properly reflecting terms and conditions;

(iv) Failing to respond to the claimant's concerns about draft contracts applied to him;

(v) Refusing to provide a copy of the full transcript of the 23 October 2017 meeting;

(vi) Misleading the claimant as to why it could not provide a full transcript, saying it was deleted, then not to have provided it as it did not satisfy GDPR;

(vii) Mr Humphrey dismissing the claimant's concerns and/or failure to respond reasonably between 27 June 2018 and 13 July 2018;

(viii) Paul Stanley being altered to the claimant's emails between 27 June and 13 July 2018 to Mr Humphrey, leading to Mr Stanley emailing the Press Office on 13 July 2018. This was then amended to relying solely on the 27 June disclosures and adding a detriment of Mr Humphrey failing to stop that email being sent out;

(ix) Failing to investigate/report on the claimant's allegations made on 23 October 2017;

(x) Loss of trust and confidence caused by the above, resulting in the claimant's resignation;

(xi) The claimant suspended from work after handing in his notice; and

(xii) The claimant's decision if not covered by (x) above.

(3) Insofar as the claimant was subjected to a detriment identified above, was it on the ground of his having made one or more protected disclosures?

(a) Has the claimant shown that the ground or reason for detrimental treatment to which he was subjected is a protected disclosure?

(b) Has the relevant respondent established the ground upon which they acted/failed to act? And/or

(c) Was the act/failure to act by the respondent influenced more than trivially by a protected disclosure?

(d) What inferences can be drawn from the facts found?

<u>Automatic Unfair Dismissal</u>

(4) Was the reason or principal reason for the claimant's constructive dismissal that he had made on or more protected disclosures?

<u>Constructive Dismissal</u>

(5) The claimant relies on the conduct set out above as being the conduct that destroyed the trust and confidence between the claimant and the first respondent.

(6) Did the claimant resign because of those breaches?

(7) Did the claimant delay and thereby affirm the contract?

Evidence and Witnesses

6. For the claimant, the claimant gave evidence and John Fairweather (ex Director) and Michael Wright (ex Director) gave evidence.

7. For the respondent Mr Paul Howarth (Head of Compliance), Paul Stanley (Director, Insolvency), John Robinson (HR Director), John Humphrey (Head of Legal and in-house counsel) all gave evidence.

8. Regarding credibility we do not find that any witness was deliberately misleading but that memories have faded, the factual matrix was complicated and its is inevitable that the claimant will remember some matters more sharply than the respondent's witnesses. The claimant will have also had heightened sensitivity to issues an example is his belief that the 13 July email was a direct response to his disclosures of the same day when in fact it was drafted earlier.

9. There was an agreed bundle to which one document was added, which was a draft of an email which Mr Stanley eventually sent but which was drafted by Mr Humphrey.

Findings of Fact

10. The Tribunal's findings of fact are as follows:

11. The first respondent is a large nationwide firm of insolvency practitioners. The claimant began working for the first respondent as a Trainee Insolvency Administrator in 1995 and moved into the Personal Insolvency Department working on Lloyds names bankruptcies. This was high profile work.

12. The claimant had problems with one of the directors in Preston where he worked and therefore he decided to look for alternative employment and he advised his line manager and subsequently friend, Steven Williams, that he was going to seek separate employment. He said that he did this so that the respondent could begin the process of replacing him, and he eventually found another role at Grant Thornton in London and left the firm in 2000 to work in London.

13. However, the claimant decided for family reasons to move back to the north of England, and after a conversation with Rick Traynor, one of the founding partners, he decided to move back. He agreed to do so on a lower salary than that of Grant Thornton of £30,000. It was agreed there would be no bonus cap which there had been at Grant Thornton. The claimant said it was agreed that he would be paid an "introducer bonus" when a matter he was introduced on actually billed, however he believed that sometimes money recovered was not billed immediately and therefore that there were some matters outstanding for which he should have received a

bonus . However, this is not raised in the claimant's emails when he was put forward hi position to HR later and it is not clear if the claimant is confusing bonus with commission here. There was certainly a commission agreement and bonus depended on the performance of the firm. The claimant said there was one occasion when a case billed in excess of £1.3million and he received a bonus of £130,000. He was content with this as the case had been sent to the London office even though it had been referred by one of his contacts but he had still been paid the bonus accruing to it.

14. The claimant never received any written terms of employment in either period of employment, but he was always paid in accordance with what believed the arrangements were until problems arose regarding the bonus when the firm's performance dipped.

15. The claimant dealt with quite specialised work which was personal insolvencies often without disclosed assets, which relied heavily on vetting which cases to take as there was no guaranteed recovery like in corporate insolvencies, and the firm would not get paid save that if they managed to recover any money. The types of cases he dealt with were always contentious as assets were hidden and therefore it would require investigation, allegations of perjury, etc. Few practices actually engage in this type of work without a fee indemnity.

16. One matter the claimant got involved with in 2007 was the matter of "the bankrupt". The claimant had dealt with this person's original bankruptcy in 1998 and was aware he was a difficult individual. In between the two bankruptcies his residence had been subjected to an armed robbery and his son had been injured attempting to stop the getaway vehicle. Following this the bankrupt suffered PTSD, it was not necessary for us to go into his medical records, although they were disclosed in court proceedings the claimant was involved in. Although there were no disclosed assets the claimant, between 1998 and 2006, recovered monies exceeding £1million. The solicitors, Irwin Mitchell, were the petitioning creditor for the second bankruptcy.

17. At some point in 2009 a process investigator DS from a private investigation business associated with the Manchester office contacted Steve Williams (SW) with a view to helping them in relation to the bankrupt. Steven Williams and the claimant were sceptical and advised him that they did not need his help. From Mr Wright's (who until 2012 had been a manager there) (MW) evidence it appears that the investigator was trying to build up his role within the business, which is why he had contacted Preston. Due to his persistence they met with him and it was agreed that they had nothing he could do for them. The claimant and Mr Williams discussed the bankrupt's case with DS on the basis that he was part of a company used by the firm and at the time they had no idea that he already knew the bankrupt.

18. Subsequently, it was alleged that the investigator had visited the bankrupt's premises and that he knew the bankrupt, and he admitted to this. However, he said his purpose in attending was to try and obtain some useful information to persuade the Preston office he could be of use. The claimant believed subsequently that DS had advised the bankrupt of the respondent's strategy in respect of recovering hidden assets of raiding his property (however the claimant says there was never any intention to do this is was just a reference to the fact that they could do this) and

that the matter made its way into Private Eye. However, it was never confirmed that DS was responsible for this although in a witness statement for another matter concerning the bankrupt he agreed he had attended his premises in June 2009.

19. SW asked DS's line manager MW to look into this and MW assured him that DS was utterly trustworthy and he could not be the source of the 'leak'. SW remonstrated with MW who said he had not spoken to DS as he had said but had pretended he had done so. However, in his statement on behalf of the claimant MW said SW said DS had told the bankrupt that SW and the claimant had asked him to break into the property and obtain evidence of his assets. He said he did speak to DS and DS said that the claimant had said something like this to him and he had told the bankrupt. DS could not really explain why he had done this according to MW but it was part of trying to get information for SW and the claimant. MW said he had pleaded DS's case and it was agreed he would be given a second chance. We accepted MW's evidence in respect of the fact he spoke to him but that the issue was the 'raid' rather than breaking in.

20. The claimant and SW were particularly concerned due to a new trial coming up regarding the bankrupt. The trial eventually settled for a £500,000 payment to the trustee from the bankrupt's wife, so the matter never resurfaced.

21. In 2013 the bankrupt contacted the respondent wishing to obtain discharge from his bankruptcy, and the claimant was suspicious that there were other hidden assets which was why he was seeking a discharge. The claimant and Mr Williams interviewed the bankrupt. This was a recorded examination to clarify matters in relation to any outstanding assets. He attended with his carer for his PTSD condition, Angie Ward ("AW"). It is not fully clear what their relationship was as she is also called his general manager, but an allegation appears to have been made, or the claimant understood an allegation to have been made by AW, that DS when he had visited in 2009 had asked for money in order to make sure the respondent did not raid the bankrupt's property. It was alleged that AW had withdrawn £300 from her own funds to give to the investigator to prevent this, as it was not possible for the bankrupt to pay this.

22. The actual transcript meeting is extremely lengthy and somewhat rambling, and it is difficult to draw conclusions from it, however that was certainly the claimant's understanding. The claimant described the alleged £300 incident as money laundering and also as a bribe. It would appear to fit the definition of a bribe if true.

23. The claimant understood that Steve Williams was going to raise this matter with the management of the firm. Mr Williams and the claimant both made clear to the bankrupt and his carer that they had not authorised the investigator to attend the premises nor was there any planned raid. AW also confirmed that the bankrupt's son had recorded the visit, and the claimant stated he had discussed this with the son prior to his death in 2016 but he never obtained the recording.

24. The claimant took no further action because he thought that Steve Williams was reporting it to the Money Laundering Officer. The claimant believed that was Paul Howarth at the time, but it was actually John Humphrey. However, we now know that John Humphrey had no report regarding money laundering in 2013.

25. Subsequent to the meeting AW contacted the respondent and provided them with information which led to them recovering a further £245,000 from the bankrupt. She had stopped working for him after the meeting as she formed the view he was not telling BT the truth. The claimant attended her house with Irwin Mitchell to take a recorded interview. The claimant relies on this as support for his contention that the £300 allegation was believable, why would the respondent use someone as a witness whom they believed was lying in respect of the £300 matter?

26. The respondent believed that this allegation had been investigated by Michael Wright and another colleague JRE however it appears that the respondent was referring to the 2009 issue of DS visiting the premises per se and not the further detail provided in 2013 as MW left in 2012 so could not have been party to an investigation of the 2013 issue. Mr Wright's evidence was that he knew nothing about the £300 issue but had questioned DS about matters SW had raised with Rick Traynor (the head of the respondent business) in 2009 about the visit to the bankrupt's home. However the matters which JW said he investigated again were different from that described by the claimant, MW believed DS had told the bankrupt that the claimant had asked him to break into the claimant's home and steal useful information. Therefore it appears that the 2013 issue was not reported by Steve Williams to John Humphries and there was no investigation. Steve Williams was not a witness in these proceedings.

27. The claimant stated that when Steve Williams indicated he was leaving in March 2016 he had a meeting with Steve Williams and Paul Stanley where the £300 bribe as the claimant describes it was discussed. However, Mr Stanley states that he was unaware of such detail as the bankrupt daily bombarded the respondent with unmeritorious allegations, including many issues of bribery and blackmail. If it was mentioned, he did not register it as there were so many allegations being made. Indeed he was asked in cross examination if he had not now been contacted by the police about the £300 matter and he said, "no, he had £30 million frauds and he could not get the police interested…". We found Mr Stanley a candid and forthright witness and we accept his evidence.

28. In the course of voluminous correspondence the bankrupt referred to the DS incident in a letter of 27 June 2016 saying that " the facts are clear you sent DS to my home, he is your staff member and he gleaned all the relevant information on PL for your firm.DS then borrowed money from an undischarged bankrupt under your influence and employ. I note his statement is unsigned and he makes no reference to the PL discussion or the "good drink" I was promised in return for the information provided. Has Begbie Traynor's "GOOD DRINK" and the money DS loaned been repaid to my estate?" He continued to describe the claimant as dishonest and referred to a number of other complaints in this letter. The reference to a 'good drink' would later become an important part of the claimant's case and the loan is assumed to be a reference to the £300 but without detailed knowledge it would not be clear what was being referred to.

29. On 30 June 2016 a draft witness statement from the bankrupt was sent to the claimant he commented that "it's all nonsense but the stuff about DS has been half corroborated by a third party". So clearly the claimant was offering his opinion on the DS matter at this juncture. Although he says 'half corroborated' – which he will later firm up. However, this 'statement' did not include the £300 issue overtly, it refers to

DS 'borrowing money from me' although this was the main matter the claimant would say was corroborated by AW. It also additionally alleges against the claimant that he had bribed AW to give evidence against him. This email from the claimant went to SW, PS and PH.

30. When a number of partners of the respondent including SW resigned in February 2016 to join a competitor, PS was appointed the claimant's trustee in bankruptcy in July 2016 as SW was as he described it on garden leave.

31. There was an attempt to refer matters to the regulator by the bankrupt but the regulator declined as there were on going court proceedings. The respondent did report the fact there was a complaint to the regulator to their insurers.

32. On 16 July the bankrupt emailed " I was duped by BT and it is your client who committed the criminal actions of borrowing money from a bankrupt and breaching their promise to pay a substantial sum of money into my estate in return for information regarding PL" . He was also complaining that his bankruptcy was unlawful as service had not been implemented correctly – he thought the identity of the process server i.e. DS was significant and asked why he had not received an affidavit from him (presumably to confirm service) again this issue would remerge later.

33. In an email of 10 August 2016 to PS the claimant referred to the £300 allegation: "the bankrupt and AW say that DS claimed we were going to raid SR's home but with a cash payment he could stop them. They said they paid him £300 in cash and he promised to do his best. Elsewhere they describe this as a loan so DS could buy his wife tickets to watch 'Take That'.

34. A further complaint was made to different regulator the IPA of which the DS allegations were part. This letter was copied to the SW PS the claimant and Paul Haworth. PS emailed the claimant on 12 August regarding these and said, "I have spoken to DS and he says they are nonsense."

35. In August a reply to the bankrupt's allegation was drafted by a compliance lawyer which said " DS was not instructed to visit you at your former home to borrow money or identify assets…R has no knowledge of you loaning money to DS…in the event that you did so it was in a private capacity**"** which was eventually sent in November**.**

2017

36. There was an annulment hearing in early 2017 and a statement was taken from DS in respect of that by Irwin Mitchell. It concerned whether DS was unable to effect personal service on the bankrupt and that consequent to this the firm obtained an order for substituted service. The bankrupt's case being they were not entitled to substituted service as DS was lying when he had said he had tried to effect personal service.

37. The bankrupt continued to send emails to the respondent alleging various matters including perjury. The bankrupt also raised that the gates to his property had been destroyed in the 4 August 2006 robbery as had his intercom. This did not seem relevant at the time but was arguably proved to be later. He also sent

photographs of a birthday party to show DS and his parents' attendance and support his claim that DS was a family friend.

38. The claimant attended the annulment hearing and looked through a spare bundle he said that there was a statement from DS dated 2/2/17 but misdated 2016 where DS referred to attempting to serve documents on the bankrupt but couldn't enter the property because of the gates and had had to use the intercom. The date of this incident was 7 November 2006. The point being that the August robbery had damaged the intercom and the gates, neither of which worked properly. Of course they could have been repaired by then, but the claimant's belief was that DS was lying.

39. The claimant believes that the bankrupt raised the robbery issue to show that DS statement was untrue. In fact the court hearing in February 2017 ws to consider this in detail and the judge decided that DS's affidavit were not a 'pack of lies' ,and that even if service had been defective he would use his powers to remedy the defect and allow the substituted service order (obtained when DS said he could not personally serve the papers) to stand. The judge also took into account that the bankrupt would have been aware of this information in 2006 when the substituted service had been effected and he did not accept that the ten year gap in raising it was due to the bankrupts lack of mental capacity following his PTSD consequent on the August robbery..

Bonus Package

40. At the beginning of August the claimant had queried his bonus package to the Finance Director (NT) who had replied to him on 3 August that his bonus was based on billings this year of £29,391 and it had been paid through payroll, and he set out the calculation. He stated there was a further £10,000 discretionary award which would be processed in the next payroll. This brought his bonus for the last financial year to £39,391 compared to £43,488 the previous year.

> "This is in the context of bankruptcy billings reducing this year to £241k from £685k. I understand from Paul there were a number of cases which we will anticipate will complete and bill in the new financial year which will be reflected in your bonus going forward."

41. The claimant queried it again, writing to NT on 16 August, saying:

> "I'm not sure how you think I could possibly have understood your email that was in relation to schedules and dates I've never seen. No-one has ever suggested to me that I should calculate this from anything other than the papers I hold, and in several months I have been speaking Rick/Paul and no-one ever suggested a basis of discussion separate to my payslips. Irrespective of this I've only got my P60 to go off. One shows I would be paid £40,000 less last year than the year before. If you think that I should only be paid £10,000 to compensate me for that then this justifies why I'm looking for another job at the moment because no other person I spoke to about this, inside or outside insolvency, can believe I am being treated in this manner. If there is anyone at director level in Begbie who has had to cope with the attempted elimination of their entire office (including me sitting through a meeting with John Robinson that would have amounted to constructive

> dismissal) stuck with the practice to see an almost 30% reduction in income, please introduce me to them so that we can discuss our mutual experience. If indeed there is anyone involved in similar to what we had in Preston last year that didn't see their salary remain steady (or a large pay rise) let me speak to that person as well. I seem to have been singled out despite being the person who contributed the most to be the person penalise the most when all others have been rewarded for less effort and achievement. I suspect you have next to no knowledge of what went on in this office last year, but if you ask DW or IM they will be able to tell you what was faced and how I stepped in.
>
> As my remuneration relies heavily on a bonus I was fully aware of the impact that last year's problems would have on my figures if I did not keep my head down on my own cases. For the greater good I dealt with more pressing and larger issues which will never be shown in a fee note but were fundamental to the continued existence of this office. I spoke to Paul Stanley partway through the year about my focus on preserving the office from attack and he told me it was recognised and would not be thrown back in my face, in the way I predicted it would. I wish I had both my P60s at the time of that conversation.
>
> As it is I have now been on the job market for weeks and this has fed back to my work sources by other competing IPs such that people who provide me with leads have asked me to clarify my position. I spoke to Paul Stanley last week about this problem and to agree how he wants me to deal with my departure. All the important points are now agreed but he still wants me to seek new appointments from people who wouldn't want the cases dealt with by anyone but me. The problem is that my work sources are not prepared to do this, knowing that I intend to resign as soon as I have an agreement with another firm.
>
> The manner in which this has been dealt with will eventually have a large impact that people will only fully appreciate years after I left. When people understand the difference I have made here in 20 years of loyal service they should look back at the way I've been treated these past few months to understand that none of what is about to happen is my fault and I've been forced out of a role I've worked hard in."

42. It is a notable email, as it fully expresses the claimant's dissatisfaction with his pay and resentment that his work in Preston did not seem to have been recognised. He felt he had helped hold the Preston office together after the group of partners had left in early march 2017. Further, that he acknowledges that he was looking for a job and the impact this was having on his situation, and that he had challenged Paul Stanley over Paul Stanley asking him to carry on bringing in work, as he felt this was not practical. Further, it also shows the claimant cognisant with the idea of a constructive unfair dismissal, and the claimant also considering that he was being forced out, in this case by not being paid proper remuneration.

43. It also refers to the fact he had been "on the job market for weeks". PS's evidence was he did not want to lose the claimant as he himself was extremely busy.

44. On 12 August PS asked him if he had resigned because of something he had heard the claimant said no but "I'm not going to deceive people who I will still deal with in the future" and also "people want me to confirm to them I will be around to handle cases they are offering me and I won't lie". The point being that if he was telling them he was planning to leave his stream of work was likely to be affected.

45. Later in August PS asked the claimant to write an article for a magazine which would be promoting the firm but he suggested that he thought PS would want it with his name on and his content. PS said ok and then "it depends on if you can reconcile your position with Rick I guess".

46. Mr Stanley also made it clear to the claimant in an email that he wanted him to still be bringing in new work as reflected in the email of 16 August.

47. On 17 August the claimant emailed and said: "I have said everything I can to him. I don't want to leave but I don't have anything left unsaid. I feel physically sick from the way I've been treated and just can't stay. No offence to you, Dean, etc. As such it feels wrong for me to promote myself and do PD (i.e. Practice Development) when I'm looking to leave as quickly as I can."

48. An issue arose in September where a contact asked the claimant to take on a piece of work. The claimant asked PS if it was ok to take given he was looking to leave. PS replied on 15 December that "your leaving is not relevant to accepting work. The show will go on albeit without the pantomime dame!"

49. Also in September the claimants largest provider of work indicated they may have to withdraw from instructing the respondent due to a particular issue which had arisen, however PS was not aware of this.

50. On 11 October 2017 Paul Howarth rang the claimant. Mr Howarth says he rang the claimant solely to discuss the subject access request the bankrupt had made which was coming up to a deadline and given how difficult the bankrupt was Mr Howarth did not want to file the subject access request response late. The content of this conversation is contentious. The claimant says Paul Howarth asked him about matters in the bankrupt's latest emails, including what "a big or good drink" meant. The claimant explained that this was an allegation that DS had offered money to the bankrupt if he would provide evidence regarding another individual the respondent was interested in.

51. The claimant then says that Mr Howarth asked him about the bankrupt's reference to £300 throughout his email, and that the claimant explained it referred to the "bribe paid in 2013 after the investigator blackmailed him pretending that his home was going to be raided by Begbie and he said he could make the issue go away for £300, with the nurse then paying the bribe".

52. The claimant said that Paul Howarth knew nothing about this and that he was shocked and aghast about this, and as a result of Paul Howarth not knowing about it the claimant then began to realise the matter had not been reported, however this was partly because he thought Paul Howarth was the money laundering officer when he was not, although in any event it was not reported to Mr Humphrey either. The claimant said there was quite an involved conversation with Paul Howarth saying, "Well, you couldn't believe what the bankrupt said", and the claimant stating that

"they'd relied on AW's evidence to recover assets". He said he also mentioned about the bankrupt's son recording the meeting. Therefore advising PH there was corroborative evidence regarding this allegation. The claimant also says in this conversation that he stated the matter could not have been reported if PH did not know about it and that was a further disclosure. We do not accept this as the claimants later correspondence does not support that he made this disclosure only that he realised afterwards that he had not been reported as if it had PH would know about it (albeit this was wrong as JH was the relevant authority).

53. Mr Howarth stated to the Tribunal that he recalled the "big drink" issue but that he did not believe that they had discussed the other matters. However, the claimant's account to some extent is corroborated in other documentation when he writes to the respondent in the subsequent period, and therefore we believe that there was some discussion regarding this matter but we accept that Mr Howarth was rather obsessed with the SARS response at this stage, that these matters went over his head, and that his focus was getting the claimant to help him with the SARS response. In respect of that, the claimant stated that he could not really help because it would mean him going through every document, and there was no point in him doing that as well as Mr Howarth.

54. The claimant therefore relied on that discussion as his first protected disclosure. We accept the claimant's version of this meeting and believe PH's memory has not accurately recalled all the detail the claimant has remembered.

55. On 12 October after PS had thanked the claimant for providing some information and added that he (PS) was "stupidly busy" the claimant commented "I have pretty much nothing to do anymore now no-one sends me work – is there anything I can do to help?".

56. On 13 October Paul Stanley emailed John Robinson Group HR advisor stating:

> "Michael appears to have told everyone internally and externally he's leaving, which is causing an unsettled staff mood in the Preston office. He is now saying his contacts aren't sending work because he's leaving. He hasn't handed in his notice. I have no requirement for a non-work winning, non-appointment taking director, and I'm happy if his game is to bill out his existing work, collect a 10% commission while he sets up a new business in the background."

57. Paul Stanley forwarded the email exchange with the claimant from earlier that day where the claimant said he had no work to do.PS and JR decided they needed to consider making the claimant redundant if he had no work coming in.

58. The claimant in cross examination said that he was not getting any new work because someone had stopped leads being passed to him and had not been raised before. **T**he clear impression from the emails is that the claimant is advising Paul Stanley that people are no longer sending him work. The claimant himself said this in his 16 August email to the finance director. Mr Stanley says this is what prompted him to refer the matter to HR.

59. Mr Robinson acted quickly at this juncture and sent the claimant a letter on 13 October inviting him to a meeting on 19 October 2017. This said:

> "Dear Michael
>
> It would appear from information that you have recently shared with Paul Stanley and on which he has subsequently investigated the company is in the regrettable position of having to consider implementing a redundancy programme due to the lack of work you are currently engaged on and manage to self-generate for the company.
>
> As a consequence of this it is likely we may have to consider whether your role and the cost of your employment is something we can sustain going forward.
>
> This being the case, please be advised that we plan to start a consultation process as we believe your role is at risk of redundancy. We wish to fully explore with you whether there are options available other than redundancy in order to fulfil the company's business needs, and therefore I would be grateful if you could arrange to meet with Paul Stanley and me in the Manchester office on Thursday 19 October 2017 to discuss the issues facing the company and the impact this may have on your role…."

60. There was then some email traffic regarding the claimant attendance at the meeting, with the claimant citing various things including that he had to meet his plumber at home, that he needed to take legal advice and that he was taking his daughter to school on one of the proposed mornings, and also had to interview a bankrupt in Preston on one of the days. The meeting was finally rearranged for 23 October 2017

61. It was the respondent's evidence that PS and JR had formed the impression that because everyone knew the claimant was looking for other work the work to Begbies for him had stopped coming in and now they were paying him while he took time to find an alternative job which was obviously not a profitable situation for the respondent..

62. During this email correspondence with Mr Robinson the claimant asked for his contract of employment, which he reasonably wanted before the redundancy meeting. However, the claimant would have been aware that he did not have a contract in writing. It is strange that Mr Robinson did nothing to address this when he had an earlier discussion with the claimant about how his commission was calculated in March 2016. The claimant said this was 5% on Lloyds cases and 10% for the work he brought in and 2.5% for work the respondent gave him. His base salary was £90,000.

63. The claimant properly pointed out on 19 October 2017 that he had never been issued any terms or had any incorporated into his oral contract of employment. By this time Mr Robinson had passed a general contract to the claimant. It appears that one of the issues which perturbed the claimant looking at this contract was a clause requiring the employee to not work for anybody else, as the claimant mentioned that he had worked in his father's business at weekends without salary for some time. However, this would be a normal clause to have in a professional contract.

64. The claimant wanted to bring a lawyer with him to the redundancy meeting to advise and make a record of what he had said, and that the respondent would waive any conflict if he used a lawyer familiar to them. Mr Robinson said the claimant could bring a colleague or trade union official, and at the meeting it was agreed that he could record it.

65. The claimant took a lot of evidence to the meeting about his current caseload and billing requirements. Mr Stanley and Mr Robinson agreed that they did not really look at this because they were concerned about work going forward, not work that was already in the pipeline. Mr Robinson had said that he would bring a suitable recording device. As it happened Mr Robinson had to borrow a recording device from Mr Humphrey. The respondent uses the same system as the Tribunal and therefore there was some knowledge of the way in which Olympus works amongst the panel. An issue would arise later regarding the fact that the respondent's device did not fully record the meeting, however the claimant himself fully recorded the meeting**.**

66. The redundancy meeting on 23 October 2017 lasted for 3½ hours, and at one point over an hour into the meeting the claimant said:

> "I've got to wonder about this because Paul Howarth rang me up on the Wednesday before you sent the letter, and Paul Howarth asked me very, very clear questions about something, and when I told him next thing all of a sudden there's this pretend redundancy thing."
>
> This was the claimant referring to the bribe and his intention with this remark was to insinuate that it was discussion of this which had led to the respondent deciding to get rid of him via a sham redundancy
>
> This was the claimant's second alleged protected disclosure

67. Both Mr Robinson and Mr Stanley said, "It's not pretend, you've said..." and Mr Stanley continued to explain that if he left his position would not be filled. Paul Stanley says on numerous occasions, "You've told me the work has dried up and staff are concerned, and think that everything's gonna close down". He also explained that he did not think the claimant was really going to go and that he had offered to fix anything that was not money related. The claimant was fixated on some alleged incident with Paul Stanley where Paul Stanley had apparently told him that he and DW were laughing at the low amount of bonus the claimant had accepted. Paul Stanley vehemently denied this in this meeting and said there had been no reference to laughing, and if there had on another occasion been reference to laughing it certainly was not about the claimant's salary. The claimant returned to this over and over again and said how humiliating it was.

68. There was also considerable discussion about the claimant's bonus and how the claimant had thought it was going to be £35,000 to make up for his losses and not £10,000. Mr Stanley said that it was clear that is not what had been said.

69. Later on, the claimant said:

> "To me there was one thing that's changed since me and you spoke in July and I'm going to look. There's one thing that's changed. When Paul Howarth

> spoke to me on Wednesday before the letter he said, 'what's the truth about this?' I said, 'the truth is the investigator has gone and visited one of my bankrupts and blackmailed him into paying a £300 bribe. The reason we know it's true is because Angie Ward……"

70. The claimant stopped there. Mr Robinson said this was not part of it. The claimant continued, "…because all of a sudden I'm redundant when I've told Paul Howarth the truth. I'm not going to lie to him though".

71. Mr Stanley said, "It's nothing to do with Paul. He's not even involved in this discussion". The claimant pointed out how coincidental it was.

72. Both Mr Stanley and Mr Robinson were asked why they did not ask about that remark. Mr Robinson said he just blanked it out, it was nothing to do with what they were there to talk about. Mr Stanley said it was one of many allegations the bankrupt had made, at various times calling it bribery and at other times calling it a loan. There had been many, many allegations of fraud. It was nothing to do with why they had called the meeting. Again, he went back to the "laughing" matter.

73. The claimant explained his comment about having no work was to do with being stuck at home with the plumber. He could not make phone calls because of the drilling, and he had no more work to do that day. Mr Stanley said that is not what he understood. The claimant did not mention any of that at all. He said the claimant said, "I've got nothing to do". Mr Stanley went on to say:

> "Now you're saying that it's a personal thing, that you think that you're some sort of figure of ridicule, which you're not. You're not a figure of ridicule. I hold you in high regard. I respect what you do. You know it. I'll support you more than anyone else."

74. The claimant agreed that was true.

75. The meeting continued with the same issues being discussed, and there was some laughing where they made jokes to each other, and they went back to the plumber thing again. Mr Robinson said, "Third parties are telling us you're leaving. Being told that by a third party does have an impact on how staff feel".

76. The Freeths issue was discussed, which was something they did not know about before this meeting, which was that due to some issue Freeths (who normally sent the claimant a lot work) was not doing, but clearly that was not a matter that was factored into the decision to call the redundancy meeting as PS and JR did not know about it

77. Also in the meeting the claimant said it was Paul Stanley who had told staff that he was leaving. However, Paul Stanley explained that he had said to Sarah (Martin), "You know, has Michael had a word with you?" and she knew straightaway what I was talking about", and he said to her "I just want to put your mind at rest, you know. Irrespective of what Michael does you will still be here", and "Paul Barber had a conversation in the last week for the same reason because they are concerned because they are saying, 'oh, we're hearing rumours that you're gonna close us down, you're gonna move to Manchester. I've got to reassure them".

78. There was some discussion about the claimant's allegation that John Robinson had created a constructive dismissal situation, which he said he was pretty upset about. At one point the claimant said:

> "I just can't cope with what's happened to me and I'm going to look for another job. That's…it's like a human right. I can look for another job, there's no law against it."

79. The claimant said he had not asked for anything when John Robinson said, "It feels like there's a gun against the company's head".

80. Towards the end of the meeting the claimant also mentions the sham redundancy. He says, "If you let me do my job I'll keep bringing this work in, I'll have more work on the shelves, the team will be managed and you and Paul Barber can get on with your own jobs". The claimant also said again about "it's a coincidence after I spoke to Paul Howarth", and Mr Robinson said, "I don't know where you keep getting that from". Mr Stanley said, "I can tell you, it's got nothing to do with Paul". The claimant said, "Well. What's triggered it after four months?". Mr Stanley said, "It's been in the background. I didn't think you were serious, and it's hearing from other people 'I believe Michael's leaving', and there's been ongoing discussions about how to manage it" since the claimant first raised that he was going to leave.

81. Mr Robinson than said, "Well, you're saying something different now". The claimant said, "I'm looking round but until then I'm having to carry on working and bringing work in, and that's different from somebody who says categorically 'I'm leaving'".

82. There was a discussion that Grant Thornton knew the claimant was in the job market.

83. After Mr Robinson left, Mr Stanley carried on talking to the claimant and said to him that if he would put his efforts 100% behind the company, tell his contacts that he was not leaving and continue with Practice Development then the redundancy process could finish. These were the three things the claimant had to do for the redundancy process to be withdrawn.

84. Both Mr Robinson and Mr Stanley stated that there had been no contact between them and Paul Howarth after the conversation on 11 October, and he explained that when the claimant mentioned Paul Howarth, Mr Stanley thought that he must have told Paul Howarth he was leaving and that was the issue. We accept their evidence on this. There was email traffic supporting the position that the claimant had a reduced workload and that PS sent one email demonstrating this to JR to justify taking action. Its plausible JR would not have known what the reference was and we have accepted PS as a credible witness.

85. There was then a discussion following the meeting about the claimant's written contract which the respondent was not aware that he did not have, and they wanted this to be part of the agreement leading to the end of the redundancy process. Mr Stanley left Mr Robinson to deal with the contractual point.

86. In relation to the recording, which ultimately proved to be incomplete, Mr Humphrey's and Mr Robinson's evidence different slightly in that Mr Humphrey said

that John Robinson told him when he brought him up the machine that it seemed to have stopped recording. Mr Robinson did not refer to this in his statement but said that this did not become evident until the company drew up a transcript.

87. Mr Humphrey gave evidence that once his secretary had downloaded the recording he deleted it, and whilst there was some cross examination about this at the Tribunal, it is clear it is possible to delete a recording from a handset: it can then be retained in the secretary's virtual space or even elsewhere as well, and retained there for future reference. Users will delete matters from the handset as the handset may get full, but also it takes a significant time to download if recordings no longer needed are retained on the handset as all the other recordings will be downloaded as well. As to why the Olympus stopped recording after 50 minutes, this has not been explained and was beyond the comprehension of Mr Robinson, who did not understand at all how the recording device worked.

88. The claimant subsequently believed that the respondent had deliberately truncated the recording in order to make sure none of his protected disclosures would be revealed, and indeed they denied it at first that any such disclosures had been made. Reading the transcript, this is understandable. Mr Robinson had no knowledge of the bankrupt. Mr Stanley had some knowledge, but he had knowledge of numerous allegations which were unsubstantiated. It was not surprising to us that neither of them fully grasped what the claimant was saying at this stage. They were more focussed on all the other issues the claimant was raising, and in fact the claimant spent a lot more time on the issue about Mr Stanley and DW laughing at him than he did on the PH issue.

89. It was suggested to Mr Robinson that there was 52 minutes between when he left the meeting and when he gave Mr Humphrey the recording. However, to truncate a recording to the point where any reference to any possible protected disclosures were removed would require listening to a 3½ hour tape in order to ascertain the point at which you need to cut the tape off, and it seems entirely implausible to us that anybody would have done this this at the time, particularly as we accept neither of the participants in the meeting realised what the claimant was saying. Even if the intention was to cut the tape off before the PH reference at just after 1 hour, that could not have been achieved in 52 minutes plus travelling to JH's office.

90. As part of the agreement to withdraw the redundancy threat it was agreed the claimant would confirm that he was not leaving to various clients

91. There was subsequently an argument between the claimant and John Robinson, regarding his contract. JR had given the claimant quite a short deadline to come back with his comments or agreement to the draft contract and the other terms. On 8 November 2017 the claimant wrote to Mr Stanley as follows:

> "Why is this continuing like this? You yourself must know all this is unlawful. I wrote the email that you dictated to Pearl and now I'm being asked to do it stood on one leg whilst patting my head and rubbing my stomach. What after that: juggling flaming axes on a unicycle? Begbie's failed to give me written contract terms in 20 years and I get seven days to deal with this, otherwise I'm going to be made redundant, despite you constantly telling me that I am

> not going to be made redundant? When Steve was here we all knew exactly what HR was going to do because they do what they're asked to, whether it was a sham consultancy because they'd decided to make Linda and Laura redundant or to get rid of KN over illness. Why as ROP do you not tell him to give me time to sort this out? After ten days out of the office and the need to cover Simon's work for the next ten days, why am I being asked to take holidays to get this sorted? I haven't even sorted the leads from Freeths yet. You know everything about this is wrong and it is entirely in your hands to stop it. I am confused as to why, when you know you have such a burden on me at the minute, you are not intervening. I can only think it's your choice, and the other stuff you say to me about wishing me to stay here is insincere. There is nothing here which needs changing before 17 November."

92. Mr Stanley replied on 9 November 2017:

> "Michael, the problem is you won't listen. The matter is being dealt with by HR. I had a lengthy meeting with HR yesterday. This is not a personal battle between HR and ML where I'm the referee. It's a situation caused by your actions and statements and it needs resolving. We need the staff and clients to know you are staying and that needs to come from you, and HR will dictate how they want that doing. I don't think it's unreasonable to ask you to do as they ask, nor if the timeframe requested unreasonable. It's more important to me to resolve this issue so we can move forward than have a couple of cases slip for a few hours. There's nothing unlawful going on."

93. The claimant replied to Mr Robinson on 15 November 2017. He explained that when he recommenced employment with Begbie in 2001 his job title was that of manager not director, and as he helped out in his family business a lot in 2001 he would never have agreed to any term saying he could not have any other employment without Begbie's consent. He went on to say he would never agree to it, and it would have to be some sort of default implied term, but believed they would not be able to do that if they had not given him notice of that or getting his agreement to it. He said he did not have the pdf copy of the contract which Mr Robinson had sent him purporting to be the terms he should have had in 2010, and which he said were standard. The claimant then stated that the document itself was created on 17 October and revised six times over the course of three hours and 42 minutes. The claimant thought this meant that it was not a standard contract and lots of additions had been added.

94. The claimant then went on to comment on various paragraphs. He said that as he had joined as manager and not director he considered himself bound by managers' terms not directors' terms, and he believed that Paul Stanley had told him he was in a similar position when he became a partner. The claimant then raised issues regarding time in lieu and said that was not part of the contractual agreement and that he was able to take time off in recognition of time worked at weekends. He raised Working Time Regulations. He thought salary review was March but then it had drifted. He was annoyed that Mr Robinson had confused the Lloyds of London bankruptcies with Lloyds Bank, and he was absolutely clear he would never have agreed to a suggestion that the bonus would not be due if he left. He could understand how it might be a common term in a director's contract for a discretionary bonus, "but I was a manager at the time, accepting a fixed percentage of fees due in

lieu of salary, which is why I agreed to leave Grant Thornton on a reduced basic salary".

95. The claimant stated his bonus was not discretionary and that he felt like the company was failing to bill money as that would then increase his bonus, and that was a large part of his salary and part of the agreement when he re-joined in 2001. The claimant stated his holiday entitlement had been different from time to time, but he believed that he had an agreement with Paul Stanley to come and go as he pleased. Neither had he ever had to advise Mr Stanley of any illness, but he was not dissenting from agreeing that. The claimant then queried the clause regarding recovering sick pay through a personal injuries claim, and he was not clear what this meant. He was unaware that was a common term. He then queried what the pension contributions were, and he said he was happy for 5% to be paid in. There was no salary sacrifice in 2001.

96. Regarding life insurance, the claimant did not believe that it was anything less than four times his salary. He said they vary it upwards but he would not agree to them varying it downwards. The claimant queried the medical cover as well. He acknowledged that the company car scheme was added post 2001. There was a query about three months' notice pay and he would agree to restricting what he could and could not do during his period of notice. The claimant then queried the deductions from salary due to negligence, because he felt it was so widely drafted it could be abused. The terms had never been notified and he did not consider it incorporated into his contract, but he believed that the respondent had a statutory right of set-off in this situation in any event, and anyway he would not have agreed that term in 2001.

97. He repeated the matter of not having outside interests, but he recognised that he had common law duties not to make a secret profit from his employment. The claimant requested various documents and he said the document was inappropriate after 16 years of employment, and he would not agree to a contract where the respondent could unilaterally vary his contract and would not have agreed to that in 2001.

98. Mr Robinson then worked on a different contract largely based on a director's contract, and which would include restrictive covenants, for example.

99. On 20 November 2017 Mr Robinson sought to check that the claimant had contacted his contacts and worked on some wording to publicise to confirm that he was not seeking to leave. He ended up by saying:

> "Can this be completed by close of business this Wednesday so we can move forward and I can then work on issuing you with a draft director's contract for discussion and hopefully agreement?"

100. Mr Robinson also gave the claimant assurances that the redundancy process would end once he had complied with the conditions, and on 27 November 2017 the claimant confirmed he had spoken to five lawyers and insolvency practitioners to confirm that he had not resigned and he was not leaving, and that he was concentrating on his work.

101. On 23 November 2017 Mr Robinson had written to the claimant, saying:

> "I understand from Paul you are now fully engaged and focussed on your role, which is good to hear. Given that I understand why emailing your contacts now would seem rather odd, albeit this is something we'd requested you do. Can you provide us with a list of those people/contacts who you've spoken to including the company they work for?"

102. Mr Robinson said he would start to prepare the new draft contract for the claimant's review and agreement.

103. On 16 January 2018 Mr Stanley did communicate with Mr Robinson, stating he thought the claimant believed there was an impasse regarding the negligence clause in his contract, and Mr Stanley confirmed he wanted to cover the event of wilful malicious negligence but obviously honest mistakes would be covered by the PR insurance. Mr Stanley explained that he had come across a case which the claimant had pursued where the advice was that they would not recover any money and it had cost them £10,000 in counsel's fees, and he felt this was a really significant mistake and he wanted to cover situations like that.

104. On 25 January 2018 the claimant had also, prior to the new contract being sent out, queried with Mr Robinson and Mr Stanley that he had not received confirmation that he was not going to be made redundant. Accordingly, Mr Robinson confirmed on 25 January 2018 that the claimant was no longer at risk of redundancy, and also suggested that he discuss with Paul Stanley changes to the contract.

105. On 25 January 2018 Mr Robinson sent a politely worded email to the claimant, including a director's contract saying he felt that was more appropriate given the matters the claimant had raised. The claimant got back to Mr Robinson on 7 February 2018, saying that he still felt they were far away from being acceptable as there were a lot more things which would be ridiculous for him to enter into. In particular, the claimant did now highlight that:

> "Why do you think I would agree for unpaid disbursements in other cases to be set against my bonus?"
>
> And:
>
> "Why do you think I would volunteer to be frozen out of my career for 12 months when you can terminate my employment on 12 months' notice? I think anyone stupid enough to agree to this contract, hostile as it is, it would be in their interests could not be relied upon to represent the company's own interests. As is you appear to have wasted your time entirely in producing it and perhaps it makes sense to abandon trying to move on into agreeing a new contract if you're going to insult my intelligence in such a manner. Please revert back to correcting my previous contract to reflect the position that my employment currently is at instead of trying to move it forward as you've demonstrated this to be beyond you by producing a contract twice as punitive as the other, which I am never going to agree to enter into and which you cannot impose on me unilaterally."

106. The claimant asked Mr Robinson to reply to the points raised in the 15 November email. Whilst Mr Robinson had described previous correspondence as vitriolic, certainly this email was bordering on that.

107. Mr Robinson replied to the claimant on 7 March, stating:

> "I can assure you that your emails of 7 February and 2 March are not being ignored, although given the adversarial tone contained within them and the apparent lack of any respect for my position perhaps they should have been. I am pleased to see we are in agreement at least that a formal written contract between you and the company should be in place and given your in depth legal knowledge I am surprised it took you over ten years to realise you never had one.
>
> As you will recall, I issued you with a draft contract on 9 November based on what we believe you may/should have had since you joined the company. From memory you took great delight and exception over a 2/3 page email in advising me this was totally incorrect and unacceptable. Following that you agreed it made more sense to issue you an appropriate director's contract rather than trying to recreate the terms of any previous agreement. This was issued on 25 January 2018 as a draft based on the standard terms for directors…The new director's draft was also unacceptable to you so the impasse continues.
>
> I will be on annual leave from today until March 18th, however when I return I will discuss it with Paul and the Board how they wish to proceed to resolve this issue which, as a continued impasse, is unacceptable and unsustainable."

108. Mr Robinson's tone in this letter reflects that he was offended by the claimant's correspondence.

109. On 7 March 2018 the claimant responded:

> "Thanks for replying, John. I have **always** known that I have not been issued with written terms of my contract because I have a degree in law and studied employment law as an element of my degree. It is your breach of the law not mine, and not my job to sort out the functions of the HR department. I have always been prompt and accurate whenever I have tried to help you to do your job properly. I have always trusted the people I work with and hence never sought to have you comply with the law and producing terms until your sham redundancy attempt, where the terms of my employment would be critical. I was very surprised when Steven Williams left to find you didn't even know what my remuneration was.
>
> I am not sure about the 9 November contract. Are you confusing it with the one we discussed on 23 October issued on 17 October? I agree that you not providing me with terms showing how I am employed is unacceptable and unlawful, but the points I made last November are all very simple and easily remedied. You are the person who has pretended that I am liable for negligence and sought to have me enter into a new contract setting disbursements against my income. It is a simple choice as to whether my true terms here are going to be produced or not.

> I am not sure why you being on holiday makes any difference to this being progressed, because all aspects of it exceed your authority. Can you just not put me in direct liaison with whoever needs to take the decision? If people are going to refuse to provide me with terms then the law is very simple on this point as any external competent lawyers could confirm."

110. Mr Robinson was then on holiday until the end of March 2018. He acknowledged receipt on 27 March, presumably on return from his holiday.

111. Nothing further happened until 10 April 2018 when a firm of solicitors wrote to the respondent, the claimant having engaged them. They wrote to Mr Robinson and stated:

> "We have been requested to act on behalf of Michael Locke further to correspondence we have seen between yourselves regarding his contract of employment with his employer. We understand Mr Locke first began working for you in 1997. He left for a short period in 2001 but returned the same year to be employed by the company.
>
> Mr Locke has consulted us regarding your unlawful failure to provide him with copy terms of his contract and we would be grateful if you would reply to this letter within seven days of the date confirming such terms in order that we may advise him accordingly.
>
> Whilst replying please also provide copies of both letters sent by yourself to the police regarding Mr Locke's employment status 2010/11 together with a transcript of the 23 October 2017 consultation held with him regarding him being made redundant."

112. Mr Humphrey then took over the correspondence and replied on 13 April, stating that:

> "Terms and conditions had been supplied on 17 October 2017 and a revised version was sent on 25 January 2018 which reflected the terms and conditions of your client's employment. It follows that your allegation to the contrary is rejected and denied."

113. Mr Humphrey was not sure of the relevance of the 2010 correspondence but he enclosed a copy. In respect of the request for a transcript, they were unsure of the relevance particularly given that "it was subsequently confirmed your client that he was no longer at risk of redundancy" and that their client has his own recording of the meeting. He said they needed this to be resolved by the end of the year end (financial year) and hoped they would receive a signed copy within 14 days. If they needed a further copy he would send them one.

114. A reply followed on 17 April 2018, saying that they were only proposed terms and they were a variation of current existing terms and were never accepted. The corrections Mr Humphrey had suggested had never been answered. In respect of the redundancy meeting, the claimant had stated that Mr Robinson walked out after 3½ hours and no notes were taken during the meeting, acting in reliance of Mr Robinson confirming the recording would be transcribed by "the girls upstairs". They wished to review the transcript in order to advise the claimant further:

> "Our client can of course make a data subject access request to obtain this transcript if it is not provided with your next response."

115. On 26 April 2021 Mr Humphrey replied, stating:

> "It was your allegation that the business had not supplied a copy of your client's terms of employment to him. The business has done so on two occasions. The issue is that your client does not agree to the terms which have been supplied. In view of this your client has been given a period within which to agree and sign the terms supplied."

116. He enclosed a transcript of the meeting up to the point where "the tape ran out", but obviously his client also recorded the meeting. The transcript finished after 50 minutes, and it is correct that accordingly it did not include the references the claimant made to Mr Howarth. Reference to the tape of course is not quite accurate as tape recordings were no longer in use but digital recordings. We find this was simply a colloquial expression.

117. The next reply was on 14 June 2018, reiterating that the terms were not agreed and that it was not accepted that they reflected the true terms of the claimant's employment, and they repeated their request for terms of engagement according with his fundamental rights as an employee. In respect of the tape, it was stated that no tape based recording device was used. It was the same device as he himself had, which creates a "wma" file, therefore he is unsure how he had been told that any' tape' had run out, (we can only assume the solicitors were being facetious at this point). They also communicated that the claimant believed that the LED light was on throughout the meeting and therefore it could not have run out of battery or anything else. He wanted to review the data file to see whether there was any evidence of tampering, and this was a subject access request. They also said that the claimant did not own a Windows PC in order to play the recording he had.

118. Mr Humphrey replied again on 21 June 2018 asking them to confirm the email of 15 November and identifying the areas of disagreement regarding the contract.

119. Regarding the recording, it was agreed they were taken on a digital Olympus DS2300 voice recorder. It was explained that the device records into electronic digital files which are downloaded for typing and then deleted from the device and its SD card, and from the dictation software on the PC onto which the recording is downloaded to be typed. Each electronic file has a maximum length of two hours 34 minutes and 29 seconds. The meeting lasted considerably longer than this. It is this digital file that ran out, not the batteries on the machine as was suggested. The original recording which had been downloaded from the handset had now been deleted following the transcription. Mr Humphrey offered to arrange for the transcription of Mr Locke's recording of the meeting, and said he wanted to move matters forward, and would they reply to the points regarding the contract within 14 days as they were keen to finalise the matter.

120. The situation regarding digital recordings is that it is good practice to delete a recording from the handset once it has been downloaded. The secretary/typist can then keep it on their digital space until the transcription is finished, and then they can delete it. Many people would do this due the volume of digital recordings they

receive, to preserve the 'space' on their device and so that they know they have completed their work in relation to each one. In respect of the contract.

Facebook Posts

121. On 29 June 2018 the claimant had emailed John Humphrey, Paul Stanley, Paul Barber, Sarah Marsden and Michaela Tymon and copied to two lawyers, an email regarding the bankrupt. This stated:

> "I am not on Facebook. My colleague Mickey sent me the attached extracts given my own name is mentioned in them in a defamatory way. The bankrupt has also put out a couple of drawings here. I am not saying there is any connection between the two things but at the weekend a large shotgun was fired just outside my house shortly after midnight. As I live in the middle of nowhere my girlfriend was terrified about this, asking me to go outside and check things. (We live next to a big forest which I refuse to enter given I don't own a gun myself). My girlfriend is talking about us moving house because of the strain of this.
>
> Can someone please let me know what is happening regarding the bankrupt's harassment and abuse of staff in general. I've previously laughed this off but the shotgun thing has made my domestic life a little odd this week. (I've not reported this to the police for obvious reasons)."

122. The claimant also advised in evidence that he had had to attend his daughter's school on one occasion when the bankrupt was threatening to put his face on the side of cars and to go around the locality stating that he was a criminal and a fraudster.

123. On 4 July 2018 there was further communication from the claimant's solicitors where they indicated that they did not object to Mr Humphrey copying him into letters sent to them, and that the claimant could make representations on his own behalf to the respondent. Regarding the contract, they wanted confirmation if the October draft is to be revised with the corrections "such that we may consider it", and they requested an explanation why 2½ hours of the meeting was not transcribed. They quoted their client saying that the model used would hold an XD card not an SD card and would be readable only by the data from it being transferred by USB cable to a PC, and that given the respondent's virtual computing system together with Mimecast backup software, that data should be available on Mimecast and remain in existence from the date it was typed despite deletions, and they were surprised such data had been destroyed and asked them to look through their Mimecast files.

124. A screenshot was provided to the claimant's solicitors which showed that it had been downloaded on 23 October and was transcribed on 25 April to be provided to the claimant's then solicitors as requested by them.

125. Meanwhile, in respect of the Facebook matter Mr Howarth emailed Sarah Marsden on 10 July as she had raised with him that staff were concerned that the bankrupt was trying to contact them via Facebook, and there was a clear email trail where this was raised. Paul Barber had been told to tell staff to be vigilant on Facebook and to ensure they did not become part of bankrupt's contacts. Mr Howarth said that in relation that:

> "In relation to the other matter you raise, I agree that it is sensible to reiterate to the members of the team that in order to avoid the risk of them featuring in the list of contacts that Facebook suggest to the bankrupt that he may wish to connect with they do not view his Facebook page/posts whilst they are logged into Facebook in their personal capacity. As I said, my understanding is that the bankrupt is not able to see who is viewing his page or posts generally, but there is a potential risk outlined above. The bankrupt's social media activity had been monitored by Head Office."

126. The claimant in evidence maintained that as all his staff were "millennials" they would be fully aware of how to avoid the situation Mr Howarth was referring to.

127. On 27 June the claimant wrote a very long email to Mr Humphrey with a Mimecast (Mimecast being used for very large attachments). One of those attachments was the transcript of the meeting with the bankrupt and AW in 2013. The claimant regards this as his third disclosure. He explained that he had not discussed in detail matters in this email as he did not wish to cause trouble for the PLC "by putting what I am about to write outside you as MLRO for the continued lies you have been told me as I can think of no other way to deal with this then to write to you directly".

128. The claimant believed that Mr Humphrey could not have seen the emails between the claimant and John Robinson (this would be in relation to Mr Humphrey alleging that the claimant had received his terms and conditions). Accordingly, the claimant believed that John Robinson had been hiding things from Mr Humphrey. The claimant believed that his adviser would be answering the questions in his letter, but he would address those as well. He went on to say, "I have a very off story to tell". He said:

> "This may have already come to your attention via Steve Williams, Paul Stanley and Paul Howarth with whom I discussed it but I have to wonder."

129. Briefly, the claimant said that the investigator attended the home of one of his bankrupt in 2009 and blackmailed him into paying a bribe based on fraudulent mistruths:

> "When I first heard this I found it hard to believe but I eventually got independent evince of it from a witness whose money was used to pay the bribe. We do not doubt that witness because we relied on her evidence to obtain an injunction and recover £245,000."

130. The claimant explained there had been a report in Private Eye whereby "the bankrupt had accidentally sent his facts to our office instead of Private Eye" (one might be sceptical of that). The claimant alleged, "It was clear to us [i.e. Steve Williams and himself] that the detailed information could only have come from the investigator", so Mr Williams contacted the Head of the investigator's department at the time to demand an explanation (JRe). JRe denied it but said that MW would be doing an internal autopsy about it. He reassured Steve Williams that the investigator was not the source of the information and vouched for him as a family friend. The claimant said he believed that MW had been lied to. They believed at the time that he had mouthed off in a bar and been overheard. However, they then obtained further detail from the bankrupt and realised that could not have been the case, so

Steve Williams went to MW again. MW actually said that, according to the claimant, he had lied when he said that he had spoken to the investigator. The claimant said that he and Steve Williams were very worried at that point about a trial during February 2010, and that the solicitors had demanded that the investigator be examined in a recorded interview in case any of these matters would support an impact at trial. However, at the trial they got a £500,000 deal and the issue vanished. The claimant then said:

> "The matter vanished as an issue until a few years after when the bankrupt said he wanted to be discharged and attended a meeting with me and Steve Williams together with his nurse."

131. So a careful reading of the claimant's letter to date would suggest there was a lapse of a few years.

132. In this meeting the bankrupt asked the claimant and Steve Williams why they had sent the investigator round to his house to demand a bribe, and the claimant and Steve Williams said they had never sent him. They said that the investigator had told them the full details of the confidential internal meeting they had, therefore the bankrupt's legal team knew what their plans were. They then alleged that the investigator had also told them that they were going to send men to break into his house. The claimant then mentioned this was the worse things to say to the bankrupt given his son was run over by a car by burglars at his house as he watched them escape, and the claimant then referred to all the medical information they had about this. The claimant went on to say that the investigator had told the bankrupt the men breaking in could be stopped by a cash payment direct to the investigator. However, the bankrupt pointed out all his assets were injuncted so he could not, and in the end the "nurse/AW" agreed to get what money she could but the limit on her ATM card was £300. She got that and paid it to the investigator, believing they had successfully bribed their way out of a raid, albeit this was never going to happen. The claimant went on to say:

> "You may find this as amazing as the rest of us did and I would not have believed it if it was just from the bankrupt himself , and I didn't even believe it when his son told he had been there and recorded it, to be honest. The son is now dead although the bankrupt says he's got his son's recording."

133. The claimant went on to say:

> "Later on the bankrupt fell out with his nurse/AW and she told us of some secret funds put through the Isle of Man paid in gold coins and used in a further fraud. This enabled the company to secure a further £245,000 payment into the estate this year after injunctive proceedings were settled.
>
> During her providing me with the documents and all the details leading us to this she asked if she might get her £300 back that she had paid to the investigator."

134. The claimant then went on to say:

> "No-one doubts her evidence especially after we got £245,000 from it.

> Steve Williams left the practice and Paul; Stanley took over the file. We explained the very delicate background to it, but Paul dealt with the bankrupt in a very unorthodox way…"

135. The claimant then said he believed that is when the bankrupt started writing copious emails detailing what had happened, until the emails were blocked centrally.

136. The claimant alleged that the bankrupt would detail the bribery and blackmail allegations in emails, but as these "unhinged and as the emails don't make much sense to third parties reading them…"

137. The claimant then went on to say that:

> "Paul Howarth had become involved with the case due to DPA demands and started to ask me about the Reid emails, given a lot of the things Reid says are lies or just references to things a long time ago. I specifically remember Paul ringing me up on my mobile on 11 October (I had to work from home as I had a plumber in that day) and Paul asked me to explain the constant references in the emails to a good drink and £300 being repaid. I explained the good drink…I also explained the £300 blackmail bribe to Paul. He was as shocked as I suspect you are and reasoned with me that I couldn't trust the bankrupt, be referred to the corroborative evidence he had."

138. The claimant said he was surprised Paul Howarth had not heard it before as he had always understood Steve Williams to have dealt with this matter being reported internally under POCA. He said after 20 years employed by the company it was therefore the biggest shock in his life to receive notice of redundancy two days later after informing Paul. He went on to say:

> "I sought counsel from people close to me who all agreed that this would be unfair dismissal and so I made the relevant enquiries to prepare for being forced out unfairly i.e. requesting a copy of my contract. I never foresaw the difficulty John Robinson would have in providing me with something that is a very basic lawful right I have.
>
> If you read the chain of emails between me and John Robinson you will be clear that there is a nailed on case for unfair dismissal."

He then went on to say:

> "The whistleblowing was discussed in the recording on the 23 October meeting and this is why I wish you to have read a transcript of that internally rather than me provide it through my lawyer. The stories you will have received about the tape running out, files being limited, are very simply lies that you will be able to uncover via Mimecast should you wish. The data from the recording will have automatically been stored in Mimecast whilst on the system and if you wish IT will easily be able to trace the date it was entered in the system and was backed up. Given I can email you the data anyway I guess the deceit you have suffered about the tape recorder/limited data memory does not ultimately make a difference now. I am happy to sort this directly for you with IT if you give me the authority to do so."

139. The claimant also stated that around Christmas a member of staff told him to keep his head down because "Paul Howarth, John Robinson and you all wanted him forced out of the firm", despite the volume of work that he brought in and the profits produced. He stated that:

> "JP had announced to Yorkshire lawyers ideally that I would be definitely going (which I am advised is a very clear act for constructive dismissal). There is a very simple story here of a person who has told the truth about bribery and blackmail and has been persecuted unlawfully for it. No court is going to look at the 20 years' service and not connect two days after whistleblowing a botched sham redundancy attempt."

140. The claimant was obviously unaware that the Olympus machine was actually Mr Humphrey's and he had deleted the tape off his handset, and that Mr Humphrey would tell us at Tribunal that John Robinson had told him when handing him back the recording device that in fact it had stopped recording. He went on to say:

> "My own belief is because the people have told you this i.e. about the tape running out, etc., I recognise that the statements they made during the meeting were unlawful, and when I confronted them about the fact just over 48 hours after blowing the whistle to Paul Howarth about the investigator conspiracy they have chosen to pretend to you that the file has been destroyed. This in itself is a very serious disciplinary matter and you should probably look into the custody of recording chain of representation to see where the misfeasance lies. The typist will be able to confirm to you how the data was transported into the software to allow her to type it up and IT will help you get back the original file that you have been told has been destroyed to see just whether you have been lied to."

141. He stated that he was attempting to attach the transcript of the redundancy meeting to the email and he might want to listen to it at 1.02.40 and 1.21.50 to hear the whistleblowing addressed. He said the only way he can force the company to act lawfully if it ignores its duties under employment law is to resign and put this in court.

142. On 6 July Mr Humphrey replied to the claimant. As the claimant complains about this letter now as a detriment, we quote it in full:

> "(1) Your request for a copy of your employment contract – I am corresponding with your solicitor regarding this given that you have chosen to instruct him to act on your behalf. I will resend the contract of employment that you have already received on 25 January to your solicitor so that he can clarify any terms you are disputing with a view to settling a contract with you. I note in your solicitor's recent letter (4 July) he is happy for you to make representations direct to me on these points but frankly I feel this will only confuse matters. You either have a solicitor instructed who is representing your interests on this or not, and you make your representations through him. Note that this is completely separate to the redundancy consultations held with you in the autumn 2017 which was concluded with the outcome being that you remain employed.

(2) Your request for a recording of your meeting with John Robinson and Paul Stanley – Again this is a matter which has been raised by your solicitor acting on your behalf. I will respond to his latest letter of 4 July accordingly.

(3) Purported issue with John Robinson's witness statement to the CPS (…).

(4) Reporting to me as MLRO v whistleblowing v grievance disciplinary. You seem to be confused on this point. You are either making:

(i) a whistleblowing disclosure to me;

(ii) alleging or have a suspicion that some form of crime is being committed and you are reporting it to me as MLRO; or

(iii) raising a grievance.

If you are reporting the matter to me as MLRO then I would assess, based on the level of suspicion and purported facts underpinning the suspicion, whether the disclosure should be made to the National Crime Agency.

- MLRO – if this is a genuine suspicion I am surprised it was not reported to the MLRO at the time back in 2000/10 by either you or Steve Williams. It's my understanding that the bankrupt has already reported multiple allegations to the Lancashire Constabulary, including the comments regarding the investigator, that you are replaying. The police have taken no further action.

- Whistleblowing – you claim to have already reported your intimations concerning the investigator to Paul Howarth on 11 October 2017, and that you consider yourself to be a whistle-blower on this basis. This does not accord with the group's whistleblowing policy. Also, having checked with PH his recollection is that the discussion you referred to concerned the response he was preparing to the bankrupt's subject access request and specifically the interaction of the bankrupt's current bankruptcy and his former bankruptcy. PH's recollection is that it was absolutely not a whistleblowing disclosure. You can of course raise a whistleblowing disclosure through the relevant processes to your line manager but what I would say is the allegations you appear to bring to my attention appear to have already been considered back in 2009/10 by the investigator's line manager and involved Steve Williams and you.

- Grievance/disciplinary – In relation to the investigator, the matter was raised with his then line manager and the Head of Department and no further action was taken.

You need to clarify precisely what you are asking/reporting on this.

(5) Questions above bribery – I assume the reference to this is similar to the point about reporting the matter to the MLRO as above. You state that the alleged incident occurred in 2009 before the implementation of the Group's Bribery Act procedures and processes.

(6) Your email of 29 June re Facebook posts. I note this email and your reference to an alleged incident outside your home. I am unsure why you felt it necessary to copy this to the specific individuals at Irwin Mitchell and other members of staff, despite this reference in your email to not having reported the matter to the police for obvious reasons. It's unclear why you did not do so. If you felt threatened then the correct and natural thing to do would have been to have report the matter to the police. In terms of the Facebook posts and the firm's response to these, you are aware that the bankrupt is a complicated character who has made multiple allegations to multiple parties to multiple people including regulatory bodies, the Insolvency Service, the police, Members of Parliament etc. It's the Group's assessment that the bankrupt likes a public platform and this fuels his varied allegations against a range of individuals. As you know initially the firm rebutted these and corresponded with the bankrupt, albeit when it became obvious the bankrupt would stop at nothing to get his message to as many people as possible the firm took the view that it would cease to respond and would instead adopt a monitoring policy. The purpose of this is to monitor the action that the bankrupt is likely to take and indeed takes. You have also chosen to monitor the bankrupt directly or through comments from other staff members in your office. The firm's view remains that we maintain a watching brief. Direct action would simply 'fuel' and provide the bankrupt with a further platform to make an increasing number of unproven allegations…

If you have any concerns about your personal safety similar to the ones you've mentioned in your email of 29 June then you should contact the authorities directly regarding this."

143. He then went on to explain that because he understood that if staff had read emails Facebook may well suggest them as friends to the bankrupt. Paul Barber had been told to advise staff not to log in to read the Facebook posts and they were considering making representations to Facebook. He ended up by saying:

"I think the position is for you Michael to confirm how you feel you need to take numbered items 4 and 5 above forward.

Kind regards

John Humphrey"

144. JH agreed in cross examination and panel questions that the claimant did not have to use the respondent's policy to whistle blow and that he could whistle blow and at the same time make a report to JH as a MLRO,(Money Laundering Reporting Officer) they were not mutually exclusive . He said he did make enquiries following this letter and understood that DS had been spoken to in 2009 about the matter and

was told not to contact any bankrupt without the authority of the insolvency practitioners. JH believed that this had covered the matters raised by the claimant.

145. It was the claimant's case that throughout the respondent had deliberately conflated the 2009 matter with the 2013 matter however we do not accept this. It was a confusing situation and in the context of many many allegations from the bankrupt which the claimant himself believed were untrue and potentially libellous it is not surprising that the respondent were not clear about the distinctions between the different 'revelations'. Mr Stanley throughout was of the opinion that the £300 accusation was as likely to be as unsubstantiated as the other allegations even if AW had supported it.

146. The claimant then replied on 13 July . The claimant repeated that:

> "(1) John Robinson attempted to introduce a lot of terms that no-one would ever believed I would have agreed to be bound by at age 27 when I agreed with Rick to return to Begbie's, and the incorporation of implied terms etc. is pretty simple contract law.
>
> (2) He said that silly stories had been given to Mr Humphrey to explain not having a full transcript and why it might be deleted from Mimecast. He said 'there is a tier of explanation by email about the corruption which would not need answering in reply to Rob, but you have to consider the implications to understand why you are being told tape's ran out, files have been deleted'.
>
> (3) I understood that the grievance procedure was to report it to HR. How can John sit in judgment upon his own actions? The people I appear to have been dealt with by head four departments in Head Office. Who will be independent in finding what they have done to the bankrupt/me is wrong? The four people he refers to were John Robinson, Paul Stanley, Paul Howarth and the investigator.
>
> (4) I am not confused. There was a plurality of issues raised in my previous email but its purpose was to explain to you why you have been presented with such an odd case to handle by your colleagues. Essentially I wish to keep the criminal reports inside the firm such that no-one can say that I am a whistle-blower so I have not yet told my lawyer of them, however it seems clear to me the reason you've been sent round the houses with allegations of tape running out etc. that you have been lied to internally by people who have conspired to force me out of the practice since my conversation with Paul Howarth on 11 October. I would have considered my explanation of the crimes to the Head of Compliance on 11 October/historical discussion with Paul Stanley/Steve Williams directing me that he was to deal in 2013 to be adequate by way of reporting. I am not sure what you mean by raising a grievance as again I cannot hope to have John Robinson impartially judge his own actions in a grievance process. The reason the **crimes** were not reported in 2009 was because we did not know at that time that the investigator had made dishonest representations to the bankrupt in order to blackmail him into paying a bribe. In 2010 all we

knew was that the investigator had been round to the bankrupt's house on his own initiative and told him confidential information that myself and Steve had confided in him. Steve Williams had a meeting with Rick Traynor, AD and JRe about it to which I was not invited. Steve called for the dismissal of the investigator, and the concession made by the other three was that Darren would be interviewed by Irwin Mitchell and do a witness statement for the trial (which the investigator lied in and never signed). It was not until 2013 that the bankrupt attended with his nurse and described the offences to us that we realised that the bankrupt/his nurse had been defrauded out of £300. I asked if he wanted me to be the person who raised it internally and he said he did not wish to delegate the problem and was to progress it himself. I did not realise before 11 October that no-one in Compliance had been made aware of it because, as you can see from the attached, there were lots of things sent to Compliance regarding it well before I explained it in detail on 11 October. Steve Williams was especially keen to deal with the matter delicately to make sure we would be covered by insurance. The attached pdf shows the consideration we were giving to these replies. Whilst it is correct that the bankrupt has emailed everyone lengthy emails, you will struggle to understand what any of them mean without knowledge of the case. Paul Howarth himself did not understand the innuendo until it was explained, such that I don't think the police taking no action is indicative of there being no offence. I am sure I could explain it to anyone within five minutes and have them identify the crimes. The conversation with Paul Howarth on 11 October was a follow-up to him spending a lot of time in my office reviewing every bankrupt's file for the purposes of an SAR…The conversation moved on to the barrage of emails we were receiving at the time and how Paul did not even know what the illusions were. I remember him asking me about the 'good drink' promised for information leading to the collapse of PL's claim, and me further explaining how the £300 figure kept coming up as a point of the investigator re paying the bankrupt. Paul was dismayed to hear what I told him and reasoned with me that the bankrupt was a liar who could not be trusted. I said that the actual money paid to the investigator was from the nurse/AW and in turn she had since been betrayed by the bankrupt and showed us evidence leading to the recovering of £245,000 into the estate after an injunction relying upon her evidence. I explained to Paul Howarth that it did not make sense for us to injunct based on her evidence and accept the proceeds and then in turn disbelieve her about the £300. I also pointed out that the son was said to have a covert recording of the interview with the investigator. As such Paul Howarth contact me, not me him. He asked me to explain the £300 'good drink' references, not me volunteering as some snitch trying to cause problems. I didn't grass anyone up. I thought I was explaining things already known to a colleague who we always did our money laundering stuff with. It was only two days later when I was put on notice of an attempt at a sham redundancy process that I thought anything of what I told Paul being connected to the facts after 20 years I was being forced out within two days of exposing the crimes. How can I raise whistleblowing to my line manager, HR, when it is my line

manager and the Head of HR who are running the sham redundancy process against me? This is like reporting corruption to the police office arresting you. You will note that I did actually do this anyway, twice during the 23 October meeting, that I am now told was destroyed, after someone pretended to you that the tape ran out. Can't you see the obvious here, John? For the avoidance of doubt I would repeat that neither myself nor Steve Williams were aware of a crime in 2009. We just thought the investigator was an idiot who breached confidence by going round to his friend's house to breach confidence with his employer. It was mentioned to MW but he in turn lied to us about the investigation and even then admitted to the lying. Now it probably an apposite time to mention that there was an annulment application made by the bankrupt while Paul Stanley was trustee…I saw a copy of the witness statement while attending court to support the petitioner. Essentially the investigator denied association with the bankrupt, which is why the bankrupt exposed calling him a perjurer, and sending photographs of the investigator at the bankrupt's birthday party with the investigator's mother. The investigator committed perjury in the annulment application as detailed by the bankrupt in countless emails…

(5) I am aware that the Bribery Act was not in effect until 2010 but the false representations about the investigator being able to stop men breaking into the bankrupt's house falls foul of sections 2 and 4 of the Fraud Act 2006. Furthermore, his inducement to take payment is blackmail as detailed in section 21 of the Theft Act 1968. The investigator's secret profit from the bribe that he should account to his employer for is more in nature of a civil matter but I think there is an ex turpi causa issue. Quite simply I specialise in fraud investigation and I know it when I see it. Your predecessor as MLRO told us we didn't have to have proof beyond reasonable doubt to report but suspicion. I would comfortably litigate this case if it was one of my bankruptcies because the evidence and the witnesses are overwhelming. I think I have explained to well beyond the balanced of probabilities that the investigator has committed a number of crimes and when I replied to Paul Harris enquiry regarding the bankruptcy emails on 11 October I was put into a sham redundancy process two days later.

(6) I am quite offended that you say I had an alleged incident outside my home. Do you truly think I would pretend to have heard a shotgun? I would appreciate you confirming that you are not implying I'm lying here."

147. He then went on to refer again to the Facebook evidence, explaining why he had copied the retained solicitors into it, and he explained why he had not reported to the police and that he understood Facebook had a full right to restrict a person's posts so how hard could it be to request this? He went on to say:

"I have queried with my team what Paul Barber's direction as trustee is regarding Facebook. People were not directed that they must not look at it until one of my staff spoke to Paul Howarth and he recommended it. In turn I

> have never heard from anyone who runs a BTG Facebook page for them to report the serious libels levelled against me. To whom do these people report if not the people libel? What else do they know is being written about me that they have not told me?
>
> With respect to your final point, for my own selfish purposes I guess it matters not if the firm was to look the other way and ignore the bankrupt's fraud, bribery, blackmail, perjury, so long as I have reported them and I am clear under criminal law. I understand from the guidance at this link that I can be confident I myself have no risk of prosecution under MLRL as long as you give me a 'receipt'. You choosing not to report the detailed information I gave you above is not my crime."

148. He went on to ask for the receipt and stated that the matters he had reported were:

> (1) The investigator's fraudulent misrepresentations and perjury;
>
> (2) Paul Howarth failing to report it upwards in 2017 when he must have been aware that offences had not previously been reported;
>
> (3) Paul Stanley failing to report his own knowledge of the above. (In fairness to Paul, he probably presumed like me that it was reported in 2013).

149. The claimant went on to make further complaints about Paul Stanley, going on to refer to:

> "Working to make me redundant after disclosure of offences to Paul Howarth. (Again, I do not understand these to necessarily be criminal but you must know of his regulatory implication.) John Robinson, conspiracy and sham redundancy following whistleblowing report to Paul Howarth. (I have to admit that I am not sure this is a crime but report it out of abundance of caution. I think it could technically be argued that he is accessory after the fact). A person is yet to be traced – however attempted to destroy evidence i.e. the recording of 23 October interview, deceived you about it being recorded on tape to assist in covering up the things the investigator has done/my mentioning it to Paul Howarth on 11 October.
>
> I am sorry to have to have written this email, John. It's horrible for me to write it and awful for you to have to deal with it, but I don't apologise for the content of it, which I am prepared to swear an affidavit that I believe it all to be accurate and true."

150. In June/July it was decided that an email would be sent round to the Preston office giving people guidance on the bankrupt and Facebook issue. The claimant believed this email was sent to undermine him. Mr Humphrey's evidence, which we accepted, was that Mr Howarth decided something further needed to be done, and that Mr Humphrey drafted it.

151. The claimant made much of the fact that Mr Humphrey does not say in his witness statement that he drafted it. His witness statement is ambiguous on this, it

simply says that "PS's email to the whole Preston office was drafted on the back of concerns raised from other members of the Preston office regarding SR's activities on social media", and it was put to Mr Humphrey after the draft to Paul Stanley had been disclosed that he did not want to disclose this because it showed a clear link at the beginning of the draft to the claimant's recent emails. Mr Humphrey said the recent email referred to the 29 June email which does mention Facebook posts and references the shotgun incident. There was no link to the 27 June email to which he replied separately. We accepted Mr Humphrey's evidence on this. It was clearly much more plausible that this was a response to matters raised by the claimant. The claimant was clearly concerned on 29 June regarding the Facebook situation, as were other members of staff, as we referred to earlier was evidenced in an email trail.

152. The claimant also suggested that the non disclosure of this was suspicious as it had been suddenly mentioned in cross examination by Paul Stanley that Mr Humphrey had sent him a draft the day before the email had gone out, as the claimant had originally believed that the email had gone out in response to his own email of 13 July, and therefore this would show that it was actually in train before 13 July, which indeed it did show. Accordingly, the claimant amended his claim to say the detriment was not stopping the email going out.

153. The actual email that went out on 13 July states as follows:

> "You will be aware that the bankrupt, subject to a bankruptcy which is being dealt with out of our Preston office, has over the past 18 months made multiple allegations against the firm concerning the conduct of his bankruptcy. All of these allegations are rejected and denied in their entirety. You will appreciate that the bankrupt is a complicated character and similar to some of the other difficult bankrupts that we are dealing with is seeking to gain oxygen to his baseless causes by seeking to make unsubstantiated allegations regarding the firm, its advisers and certain individuals within the firm including me. Be assured the Group takes such allegations seriously and save for the unique circumstances that apply in this case we would not hesitate to take appropriate and proportionate action to defend and protect its own name, reputation and that of the partners and staff.
>
> In respect of the bankrupt, he has made multiple allegations, some of which are likely of a defamatory and libellous nature against the firm and certain individuals within it. However, it is the firm's view that any action taken against the bankrupt would only result in fuelling the bankrupt and giving him a platform to continue to make his erroneous allegations…
>
> The bankrupt has lately reverted to social media and made various potentially libellous defamatory comments regarding me and other individuals. People viewing these posts are few. Notwithstanding the firm's view remains the same. Any action or response to the bankrupt will only result in more allegations being made and will add effective fuel to the fire rather than having effect of encouraging the bankrupt to stop his campaign. The firm is monitoring the social media posts made by the bankrupt through its central resources. If its views change in the light of the content of the posts which are

made by the bankrupt then it will not hesitate to take further action in the circumstances.

In the meantime I would encourage you not to log on to your relevant social media account to monitor the bankrupt's Facebook as there is a risk that he may, through friends' links, know that this is happening and this in our view would only fuel the position.

The matter is being kept under constant review and if the firm's view changes we'll advise you of this."

154. This was as drafted by Mr Humphrey and went out unchanged.

155. The claimant took exception to the reference to "unsubstantiated claims" and it was his belief that that was directed at him as a hidden message to tell him that the firm did not believe his allegations in relation to the £300. Further, the claimant believed that as everybody in the Preston office in his team knew about the £300 allegations, that this was telling them also in effect that the claimant was a fantasist. We have found this proposition fanciful. There was clearly an email trail and discussion within the firm about how to respond to this, the "fuelling the fire" notion being prevalent, but there was a concern about the way in which Facebook worked which had been raised by staff, and indeed in a different context raised by the claimant. Accordingly, as the respondent's witnesses testified, there was absolutely no link with the allegations the claimant was making and as the claimant through his representative pointed out, the bankrupt had not described the allegations in terms of the factual matrix in the same terms as the claimant had. The bankrupt had at various times, which we have not gone into detail here as we thought it was unnecessary, described the payment as a loan, and a loan to buy Take That tickets, and later more generally had referred to bribery and blackmail. Accordingly, given the onslaught of many other accusations against the firm and individuals as reflected in this email, including the claimant, it was the general view that his allegations were unsubstantiated. There was no implication that the matters the claimant was raising in relation to the £300 specifically were unsubstantiated allegations at this point.

156. Following this email and the claimant's belief as to what it represented, the claimant resigned on 17 July 2018, later citing this email as the 'final straw'.

157. He emailed Mr Traynor and headed it up with the bankrupt's name. He said:

"Hi Rick

It is with a lot of sadness I am writing this email. I don't know if you are on the All Press and email list but the below and attached email causes me massive problems. Following an ongoing series of breaches by the company described below my position has now become untenable. I have been wrestling with this in my mind for some time now. Different people who work here have urged me to contact you directly about it, but last year in dealings with Paul Stanley regarding my employment I mentioned to him that I presumed you were aware of what was going on because the other people involved with the matter would not dare act in such a fashion without your express blessing, and he said Rick knows everything, so I kind of gave up after that point.

Essentially, the investigator made false representations to blackmail a bankrupt into paying him a bribe and has since committed perjury in court about his relationship with the bankrupt. It is this behaviour that led to us all receiving abusive emails from the bankrupt. I have never lied to anyone about this or concealed it but when Paul Howarth asked me about it on 11 October last year I told him what I knew. Two days later I was put into a sham redundancy process. I didn't understand that I was whistleblowing at the time because I had understood everything to have already been reported by Steve Williams given that our letters to the bankrupt had to be shown to the insurers via Paul. I brought up this at the time as well as a number of other things and the fake redundancy went away but the legal position argued at that time on behalf of the firm was unacceptable (the contract I was provided with has me being liable for negligence). I am told that Begbie's recording of the redundancy meeting has been destroyed but I retained a copy (and have provided it back to the person who told me it was destroyed).

Since October I have been living in a strange world where I'm not being dealt with according to the law despite my regular remonstrations. I believe that the way I have been treated by the company during this period has been a direct consequence of the discussion on 11 October which I now know to be a whistleblowing disclosure.

After several months of unlawful actions I told Paul Stanley I had been advised by lawyers that my only route to compel the firm to treat me in line with statute was to resign and apply to court which I thought would be enough to get correct behaviour from HR. Paul told me that my resigning and going to court was no problem for him, such that I employed a lawyer to contact Begbie's, who has received a number of odd letters wherein John Humphrey has just repeated the things told to him by others that are incorrect and never provided me with a contract reflecting my terms here.

I did not tell my own solicitors about the origins of my redundancy to be my conversation with the Head of Compliance about criminal activity because I did not want to have our dirty washing done in public, but that led to months of correspondence without movement.

I contacted John directly the other week out of frustration, providing all the evidence anyone needed to understand, the blackmail etc. I did it directly to avoid putting my lawyer on notice I'm becoming a whistle-blower. John's response is attached but the only substantive way he deals with the crimes is to point out that we didn't have an anti-bribery policy at the time/the police haven't followed up the bankrupt's own report, ignoring the fraud, blackmail and perjury. I think the statutory response is blow the standard to be expected of a qualified lawyer and MLRO. John hasn't even provided me with the relevant receipt for MLRO purposes to confirm that my obligations under statute are concluded and that I do not need to further act.

As stressful as it was to be put in the position I was in Paul Stanley's below email to all my colleagues denying the truth puts me in an impossible position here. In fairness to Paul, he was not in the 2013 meeting when the blackmail was uncovered and has never met the nurse who supplied the evidence, but

> he has been happy to rely on my knowledge and integrity for court action on other cases to recover millions of pounds, so it makes no sense for him to now ignore that and contradict me, except to conceal the crimes of his colleagues.
>
> I don't see how it's possible for me to keep working in a place that has avoided giving me terms of employment in nine months I've asked for it, with my line manager sending emails to the office effectively calling me a liar.
>
> I don't know who else to email to give notice of my immediate resignation, but as above it is a very sad day for me to write this. The first time I came into this building John Major was still the Prime Minister and I have given the best part of my working life to this firm. It feels tragic that some minor blackmail from a different decade has destroyed my position of trust here when the only proof I ever got of my contract with you was your handshake. A number of different people have pleaded with me to come to you and help you uncover everything internally, but I cannot imagine this is something you would want because I would be viewed to have my own agenda in doing so. I am quite happy to offer to offer to deal with all of this for you if you wished or even sit down and prove every detail of it to you, but I believe you're best getting some independent external person to sort the issues to put the house in order.
>
> I very deeply regret how this matter has turned out, both for the firm and my own career.
>
> Thanks again for the many years of fun I've had during my time here and best wishes for the future. We work in such a small industry it's inevitable I will bump into everyone again and wish to leave on the best possible understanding."

158. After the resignation the claimant went into work but was advised by JH to leave, as he had thought the claimant was resigning with immediate effect. Meanwhile JR had his IT connections and mobile phone disconnected. The claimant was then told to attend work which he did for several days. The claimant was then asked to go home and work from home on work as authorised and had his IT and mobile phone connections restored. The reasoning behind this was to protect the respondent's business and their clients. There was an ongoing discussion regarding what work he was doing.

159. JH corresponded with the claimant about this as PS was on holiday. In the absence of a contract it was not clear what the claimants notice period would be and any other relevant requirements. One month's notice was agreed. It was agreed no restrictive covenants applied which annoyed the claimant as this was a matter he had sought to have agreed in the contract. However it is easily explained, the respondent would have had an uphill task trying to establish any restrictive covenants in the absence of a signed contract but had in the course of negotiations sought to agree a 12 month period, this was simply a process of negotiation. In the claimant's position restrictive covenants were something an employer would want and of course the lawyers would know if too long a period is agreed they can be voided.

The Law

Constructive Unfair Dismissal

160. An employee may lawfully resign employment with or without notice if the employer commits a repudiatory breach. Resignation can be interpreted as an election by the employee to treat himself as discharged from his contractual obligations by reason of the employer's breach. This is known as constructive dismissal and is a species of statutory unfair dismissal by virtue of section 95(1)(c) Employment Rights Act 1996.

161. It was described in **Western Excavating (ECC) Limited v Sharpe [1978]** by Lord Denning as follows: "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 be 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".

162. An employee must act reasonably quickly in responding to a repudiatory breach of contract otherwise s/he may be taken to have accepted the continuation of the employment contract and affirmed the contract. However, mere acceptance of salary without the performance of any duties by the employee will not necessarily be regarded as an affirmation of the contract following an employer's repudiation. In **W E Cox Toner (International) Ltd v Crook 1981 EAT** it was said that delay by itself was not enough there either had to be an additional factor(s) or continued delay. An employee can work 'under protest' but must make it clear that he or she is reserving their right to accept the repudiation of the contract.

163. The EAT also considered this matter in **Chindove v William Morrison Supermarkets Limited [2004]** which said that:

> "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, that the issue is essentially one of conduct and not of time. The reference to time is because if, in the usual case the employee is at work then by continuing to work for a time longer than the time in which he might reasonably be expected to exercise his right he is demonstrating by his conduct that he does not wish to do so. But there is no automatic time, all depends upon the context. "

164. A claimant can rely on implied or express terms of the contact. Express terms can be written or oral. The claimant relied on the breach of the implied term of trust and confidence in this case as well as the duty to provide a safe working environment and to investigate a grievance.

165. In **Wood v WM Car Services (Peterborough) Limited [1982]** the Court of Appeal approved the development of the implied term of trust and confidence. It was finally given House of Lords' approval in **Malik v BCCI** in 1997 where Lord Stein stated that the question was whether the employer's conduct so impacted on the employee that viewed objectively the employee could properly conclude the employer was repudiating the contract. It is not necessary to show that the employer

intended to damage or destroy the relationship of trust and confidence. The court said the Tribunal should "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 an employee cannot be expected to put up with it".

166. In **Malik** the formulation is that the employer "must not conduct itself in a manner calculated and likely to destroy confidence and trust" and it is relevant to consider whether the employer's conduct in question was "without reasonable and proper cause". This is not the same as the range of reasonable responses test. However clearly if there was proper cause the claim will fail.

167. In proving breach an employee may pray in aid evidence of past repudiatory breaches even though he waived his right to object to them at the time. **Lewis v Motorworld Garages Limited [1985]**.

168. The particular incident which causes the employee to leave may in itself be insufficient to justify resignation but may amount to constructive dismissal if it is the last straw in a deteriorating relationship. This means that the final episode itself need not be a repudiatory breach of contract although there remains the causative requirement that the alleged last straw must itself contribute to the previous continuing breaches by the employer, **Waltham Forest Borough Council v Omilaju [2004] CA),** and not be an unjustified sense of grievance.

169. In **Kaur vs Leeds Teaching Hospitals NHS Trust [2018] CA** an unjustified act contributing to a course of conduct or a breach of contract can revive early affirmed repudiatory breaches but the tribunal's decision was upheld that the application to the claimant of a properly followed and justified disciplinary procedure could not be a repudiatory breach or an unjustified act.

170. Therefore, the claimant has to show that the matters he relies on either individually or cumulatively amounted to a breach of the implied term of trust and confidence. He then has to establish that that breach played a part in his decision to resign (here a resignation letter maybe of evidential value but it is not determinative of what was the effective cause for the resignation) and he has to show that he has not unduly delayed or affirmed the contract.

171. A claimant can also rely on specific breaches without a continuing course of conduct however if they are in the past an argument maybe made that the claimant has either affirmed by not doing anything about it or it may find as a fact that the claimant has not resigned because of that breach given the passage of time.

172. The respondent can argue that there was a fair dismissal if constructive dismissal is found. Here the respondent relied on the cumulative performance/conduct issues evidenced in respect of the claimant.

<u>Protected Disclosure/Whistleblowing</u>

173. In order for a whistleblowing disclosure to be a protected disclosure there are three requirements:

(1) There must be a disclosure;

(2) It must be a qualifying disclosure; and

(3) It must be made in a manner which accords with the scheme set out in sections 93C-93H Employment Rights Act 1996

174. The sections of the Employment Rights Act state as follows:

Section 43A:

"In this Act a 'protected disclosure' means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of the sections 43C to 43H".

Section 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 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."

(2) ….

Section 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 in good faith:

(a) To his employer."

175. There is no dispute that the claimant had a locus standi to make a complaint and that the disclosure was made to the respondent.

176. It is also important to note that the disclosure does not have to be the first time that information is brought to somebody's attention: it can be a disclosure even if the person it is disclosed to is already aware of it.

177. Case law developed to establish that there had to be a disclosure of information which was first established in **Cavendish Munro Professional Risks Management Ltd v Geduld [2010]** where it was said that:

"The ordinary meaning of giving information is conveying facts. In the course of the hearing before us a hypothetical was advanced regarding communicating information about the state of a hospital. Communicating

> information would be 'the wards have not been cleaned for the past two weeks, yesterday sharps were left lying around'. Contrasted with that would be the statement that 'you are not complying with health and safety requirements'. In our view that would be an allegation not information."

178. This guidance has been considered in other cases where in effect it has been "watered down", for example in **Western Union Payment Services UK Limited v Anastasiou EAT [2013]** it was said that:

> "The distinction can be a fine one to draw and one can envisage circumstances in which the statement of a position could involve a disclosure of information and vice versa. The assessment as to whether there has been a disclosure of information in a particular case will always be fact sensitive."

179. In **Kilraine v The London Borough of Wandsworth [2018]** the EAT stated that:

> "I would caution with some care in the application of the principle arising our of Cavendish Munro...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 other when reality and experience suggest that very often and allegation are intertwined. The decision is not decided by whether a given phrase or paragraph is one or rather the other but is to be determined in the light of the statute itself. The question is simply whether it is a disclosure of information. If it is also an allegation there is nothing to the point."

180. The Court of Appeal added further guidance, saying the question was whether there was sufficient information for it to be a disclosure of information.

181. In **Easwaran v St George's University of London [2010]** EAT there was a suggestion that the test could be broken down into three key elements:

(1) Did the worker disclose any information?

(2) If so, did the worker believe the information tended to show at least one of the relevant failures?

(3) If so, was this belief reasonable?

182. Further authoritative guidance was provided in **Black Bay Ventures Limited v Gahir [2014] Court of Appeal**, which states that:

(1) Each disclosure should be identified by reference to date and content.

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

(3) The basis on which the disclosure is said to be protected and qualifying should be addressed.

(4) Each failure or likely failure should be separately identified.

(5) It is not sufficient for the Employment Tribunal to simply lump together a number of complaints. Unless the Employment Tribunal undertakes this exercise it is impossible to know which failures…attracted the act or omission said to be the detriment suffered. It is of course proper for an Employment Tribunal to have regard to the cumulative effect of a number of complaints providing always they have identified them as protected disclosures.

(6) The Tribunal must then determine whether or not the claimant had a reasonable belief referred to in section 43B(1) and under the 'old law' whether each disclosure was made in good faith, and under the 'new' law whether it was made in the public interest.

(7) Where it is alleged that the claimant has suffered a detriment short of dismissal it is necessary to identify the detriment in question and where relevant the date of the act or deliberate failure to act relied on by the claimant."

183. This decision was recently affirmed in **City of London Corporation v McDonnell [2019] EAT**.

Reasonable Belief

184. The statutory test is a subjective one. This is because the Act states there must be a reasonable belief of the worker making the disclosure. It follows that the individual characteristics of the worker should be taken into account and not an objective test as to whether a hypothetical reasonable worker would have held such a belief.

185. In **Korashi v Abertawe Bro Morgannwg University Local Health Board [2012] EAT** Judge McMullan made two points:

(1) That where there are a considerable number of disclosures there must be a reasonable belief in each disclosure, not in the general gist of them;

(2) That the Tribunal ought to factor in the specialist knowledge of the person making the disclosure, however mistaken it was that in the context of their insider knowledge it could have been reasonable.

186. In addition, of course, it does not have to be true and if it is proved later to be untrue this does not undermine the reasonable belief argument if, at the time the disclosures were made and what was known to the worker, the belief was reasonable.

187. In 2013 the Employment Rights Act whistleblowing provisions were amended to include at 43B(1), that a qualifying disclosure was "any disclosure of information which, in the reasonable belief of the worker, *is made in the public interest and* tends to show one or more of the following". This was essentially to prevent whistleblowing claims being based on matters which only affected the worker personally. A leading case on this is **Chesterton Global Limited v Nurmohamed**

[2017] Court of Appeal. In that case the claimant was concerned that the employer had improperly calculated certain financial information which affected the bonuses of himself and about 100 other employees across several branches. However, the Tribunal took into account that it affected other managers and anyone else who sought to rely on the allegedly defective figures. Ultimately the Court of Appeal upheld the Tribunal's finding, and it was said that there were no absolute rules, therefore it may be a disclosure in breach of a worker's contract which although only affecting that worker may be in the public interest if a sufficiently large number of other employees share the same interest. This was also the case in the private sector: cases in the public sector are broadly more likely to be found in the public interest.

188. Other relevant matters set out in this Judgment was that the mental element of public interest imposes a two stage test:

(1) Did the claimant have a genuine belief at the time that the disclosure was in the public interest?

(2) If so, did he or she have reasonable grounds for so believing?

189. The claimant motivation is not part of the test.

190. It is also important that in relation to reasonable belief that if a worker reasonable believed a criminal offence had been committed, was being committed or was likely to be committed, and providing his belief was found by the Tribunal to be objectively reasonable, neither the fact that the belief turned out to be wrong nor the fact that the information which he believed to be true did not in law amount to a criminal offence, was sufficient of itself to render the belief unreasonable.

Burden of Proof

191. In **Kuzel v Roche Products Limited [2007]** the EAT stated that the proper approach to the burden of proof was:

(1) Has the claimant shown that there is a real issue as to whether the reason put forward by the respondent, some other substantial reason, was not the true reason, as she raised some doubt as to that reason by advancing the section 103A reason?

(2) If so, has the employer proved his reason for dismissal?

(3) If not, has the employer disproved the 103A reason advanced by the claimant?

(4) If not, dismissal is for the 103A reason.

192. In answering those questions, it follows:

(1) That a failure by the respondent to prove the potentially fair reason relied on does not automatically result in a finding of unfair dismissal under section 103A;

(2) However, rejection of the employer's reason coupled with the claimant having raised a prima facie case that the reason is a 103A reason entitles the Tribunal to infer that the section 103A reason is the true reason for dismissal; but

(3) It remains open to the respondent to satisfy the Tribunal that the making of a protected disclosure was not the reason or principal reason for the dismissal even if the real reason as found by the Tribunal is not that advanced by the respondent;

(4) It is not at any stage for the employee to prove the section 103A reason.

Detriment due to Whistleblowing

193. Section 97B(1) provides that:

> "A worker has the right not to be subject 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."

194. In addition, a whistle-blower can bring a claim against a co-worker or agent of an employer who subjects them to a detriment because they have made a protected disclosure (section 47B(1)(a)).

195. Any detriment which is in fact a dismissal of an employee must be brought as an unfair dismissal claim.

196. In an unfair constructive dismissal claim an employee is entitled to rely on the statutory protections related to detriment right up to the effective of termination when the dismissal in question became effective (**Melia v Magna Kansei Limited [2005] Court of Appeal**).

197. In addition the claimant relied on **London Borough of Harrow vs Knight (2002) EAT (para 20)** referred to in International Petroleum Ltd vs Osipo EAT (2017) to establish that where a respondent fails to explain an action the tribunal can draw inferences that the true reason for their actions was the whistleblowing. We were not convinced that this case is authority for that proposition having considered it after the hearing (it appears to be a submission on behalf of the claimant which the EAT decided they did not have to rely on) but we did not raise it with the claimant at the hearing or after as we decided we could make our decision without further discussion. In any event, a failure to explain anything would be a potential reason for raising an inference as is clear from discrimination law.

Definition of Detriment

198. In **Jesudason v Alder Hey Children's NHS Foundation Trust [2020]** the Court of Appeal said that:

> "In order to bring a claim under section 47B the worker must have suffered a detriment. It is now well established the concept is very broad and must be judged from the viewpoint of the worker. There is a detriment if a reasonable employee might consider the relevant treatment to constitute a detriment.

> This concept is well established in discrimination law and it has the same meaning in whistleblowing cases."

199. In **Derbyshire v St Helens MBC [2007]** UK House of Lords the position was described as:

> "A detriment exists if a reasonable worker would or might take the view that the treatment was in all the circumstances to his detriment…An unjustified sense of grievance cannot amount to a detriment. However, if in the victim's opinion that treatment was to his or her detriment is a reasonable one to hold, that ought in my opinion to suffice. (Quoting from **Shamoon v Chief Constable of The Royal Ulster Constabulary [2003] House of Lords**)

200. They went on to say:

> "Some workers may not consider that a particular treatment amounts to a detriment. They may be unconcerned about it and not consider themselves to be prejudiced or disadvantaged in any way, but if a reasonable worker might do so and the claimant genuinely does so then that is enough to amount to a detriment. The test is not therefore 'wholly subjective'."

201. There need not be a physical or economic consequence flowing from the matters complained of.

Automatically unfair whistleblowing dismissal

202. Section 103A of the Employment Rights Act 1996 provides that:

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

203. This means that the dismissal is automatically unfair.

204. The burden of proving the reason or principal reason remains on the employer.

205. It was clarified in **Fecitt v NHS Manchester [2011]** that the test is whether the detriment was "on the ground that the worker has made a protected disclosure", which has been interpreted as meaning that the disclosure must have been a material factor. However, in a dismissal case the test is more stringent: whistleblowing must be the reason for it, or if more than one reason the principal reason for the dismissal.

Closing Submissions

Claimant

The claimant's closing submissions were forensic and detailed, and it is not possible to summarise them save as below. We have incorporated the claimant's submissions into our conclusions as far as possible and not referred to those in relation to whether the disclosures were protected as we have agreed with this..

1 Broadly that the tribunal should draw inferences that the reason for the treatment complained of was the whistleblowing were no or no adequate explanation had been put forward

2.that the respondent's conflation of the 2009 allegations and the ones which came out in 2013 was deliberate in order to either confuse matters or present a case that the allegations had been investigated

3. that a number of the respondent's witnesses were unsatisfactory and had been inconsistent

Respondent

1 The respondent relied on the email of 16 August 2017 to show that the claimant was himself advising the respondent his work was bound to dry up and that he wouldn't mislead people by saying he wasn't leaving and that he raised the possibility of constructive dismissal before any of the disclosures

2.that he wanted to either stay with a better package or have grounds for a claim which exceed the statutory maximum and therefore has overegged the whistleblowing.

3 He did not do anything between the 11and 23 October 2017 and 27 June when his third disclosure was allegedly made

4 that the email trail showed there were genuine reasons for the redundancy

5 he fact that there was no discernible reason for the recording to be stop was not a reason for finding that it had been deliberately tampered with

6 That there was a genuine effort to resolve the contractual issues by the respondent but the claimant was simply rude and unreasonable

7.that the allegations had been around for a long time , many things had been described as bribery and blackmail by the bankrupt, he was totally discredited and unreliable

Conclusions

Protected Disclosures

(a) *11 October 2017 to Paul Howarth*

206. We have found as a matter of fact that the claimant did raise the matters he refers to in his witness statement to Mr Howarth on 11 October 2017, save for the reporting matter and given reasons why we have found this. Having found this we had to decide whether the disclosure is a qualifying disclosure within the meaning of the 1996 Act in that: did the claimant reasonably believe the information he was imparting had been committed. In respect of the various elements the claimant also has to show that there was a public interest in this disclosure.

207. The claimant's case is that he made disclosures of bribery and blackmail in relation to the £300 issue, and that he reasonably believed this information tended to show that a criminal offence had been committed, and that he also referred to the failure of the respondent to report it under the Proceeds of Crime Act which is says is a breach of a legal obligation.

208. We find that the claimant was imparting information to Mr Howarth in respect of the facts surrounding the £300 issue, and that he had a reasonable belief that that information tended to show a criminal offence had been committed. The claimant here relies on the information received from AW that the money was provided to avoid a raid on the bankrupt's property. Whilst Mr Howarth was adamant that he had heard these allegations before, following Mr Mitchell's forensic examination of the correspondence from the bankrupt it was clear that the bankrupt had alleged various things but not this specifically. Accordingly, when Mr Howarth said that he knew of these facts we find that Mr Howarth was not approaching the matter as forensically as Mr Mitchell did in the Employment Tribunal. We do not criticise him for that but it is clear that the circumstances surrounding the £300 as known to the claimant, and as we have found were imparted to Mr Howarth, were different from what Mr Howarth had read to date. Nevertheless, it is not a requirement that the information not be known to the individual in any event.

209. We find that subjectively the claimant reasonably believed that this tended to show a criminal offence had been committed, and that it was objectively reasonably for him to believe that. While someone else would not have seen the situation as significant as the claimant did, it would certainly on an objective view suggest that a criminal offence had been committed. Broadly, money had been received for preventing legitimate and legal action by the respondent in a bankruptcy case (albeit the "raid" situation was untrue, but then that was part of the wrongdoing). Whilst others may not have believed it for equally valid reasons - the fact the bankrupt and described the money in various different ways including a loan, that it was said he himself had 'lent' the money, that AW had previously been on the bankrupt's "side",that other bribery had been referred to in other contexts for eg the claimant was accused of bribing AW to provide the evidence relating to the recovery of £24500, we do not find that invalidates the claimant's view..

210. In respect of whether the claimant imparted information that there had been a beach of a legal obligation, we are not convinced that in that phone call the claimant did raise this as an issue. All the corroboration points to the claimant having raised issues regarding Angie Ward's version of events rather than a conversation about the fact that it had not been reported as the claimant believed to Mr Howarth.

211. If the claimant had imparted this information to Mr Howarth or come to a mutual understanding that the matter had not been reported, then we would accept

that the claimant was imparting information which tended to show a legal obligation potentially had been broken. Subjectively he certainly believed this, and his belief was reasonable objectively as in order to ascertain whether or not anything had been broken it would need a considerable amount of legal analysis as to the relevant statute in place at the time. The claimant was sensitive to the respondent's reporting obligations in such situations and had some knowledge of it, and although it may be a matter that ultimately would not have been reported we find it was objectively reasonable of the claimant to believe the matter should have been reported at least one stage further.

212. Both matters are in the public interest, as it is clearly in the public interest for a large organisation not to employ or be associated with individuals who allegedly take bribes to avoid legitimate legal actions, and also in the public interest for such large organisations to report potential wrongdoing under the relevant statute to which they are engaged.

(b) 23 October 2017 to John Robinson and Paul Stanley – the "sham redundancy meeting"

213. The disclosures relied on here are:

(1) The original £300 alleged blackmail and bribery – that a criminal offence had been committed;

(2) A breach of a legal obligation in that this matter had not been reported; and

(3) The respondents undertaking a sham redundancy in response to the 11 October 2017 disclosure, which would be a breach of a legal obligation.

214. We have considered the first two disclosures already and therefore rely on our previous findings. In respect of the third issue about the sham redundancy, we find that the claimant did have a reasonable belief that the sham redundancy had been set in process because of his disclosure on 11 October 2017, as the timing fitted with this. Whilst it might be suggested this showed a high level of paranoia, the closeness of it to that event was reasonably relied by the claimant, who was oblivious that any other considerations may apply or that anything he said may have alarmed the respondent. (including his 16 August 2017 email) The main issue in respect of this is whether it was in the public interest and it is a matter just affecting the claimant. However, we find it is in the public interest that a respondent does not victimise a whistle-blower where the respondent is a large PLC.

(c) 27 June 2018 to John Humphrey

215. There are three protected disclosures here:

(1) The £300 blackmail and bribery;

(2) The failure to report; and

(3) The alleged sham redundancy.

216. There can be no doubt the claimant was imparting information as he wrote an extremely detailed email to Mr Humphrey and he also attached a transcript of the meeting. We find he had a reasonable belief and in was in the public interest.

(d) 13 July 2018 to John Humphries

217. We find there was a further protected disclosure here, based on our findings above.

Detriments

218. We have examined each of the claimant's detriments and decided whether or not any of them were detriments before addressing causation.

(i) The claimant being placed at risk of redundancy

219. Whilst Mr Robinson doubted this was a detriment as he saw this as just part of a process, we are satisfied that being placed at risk of redundancy is a detriment and can see no reasonable argument that it was not.

(ii) Despite assurances the claimant remained at risk of redundancy until 25 January 2018

220. We find this was not a detriment as the claimant was told on his own evidence that the redundancy would be extinguished if he did a number of steps. Even though he did not complete all those steps the respondent still confirmed on 25 January that the redundancy process was no longer in train.

(iii) The claimant not provided with a contract properly reflecting terms and conditions

221. We find this was not a detriment. It was impossible to provide the claimant with a contract reflecting his terms and conditions for the reasons we have cited above, and in any contract negotiations there will be toing and froing, and whilst the claimant was concerned particularly about the disbursement clause, had the negotiations over the contract been undertaken in a sensible manner this would have been cleared up, explained and the parties able to reach some agreement. However, we do not believe this was done in a timely fashion, but the claimant does not complain about that. Many of the contractual terms were fairly common and to be expected and would have been matters which would have been agreed had the parties put their mind to it when the claimant was made a non-appointment director.

(iv) Failing to respond to the claimant's concerns about draft contracts applied to him

222. Again we find this was not a detriment as in fact there was only a very short delay after Mr Robinson returned from his holidays at the end of March, when it was taken over by Mr Humphrey who engaged in correspondence with the claimant's solicitors. However, matters were not progressed because we agree with Mr Humphrey that the legal advisers were obstructive.

(v) *Refusing to provide a copy of the full transcript of the 23 October 2017 meeting*

223. Whilst it was not possible ultimately to come to a firm conclusion as to why the Dictaphone did not continue to run throughout the meeting, there is no detriment as the respondents were unable to provide a transcript of the full meeting as they did not have it.

224. Further, the claimant had a full transcript/full recording of the meeting, and it is not clear how it can be argued it was a detriment.

225. Whilst it was suggested that it was important to the respondent that this matter was not disclosable hence they had an interest in their recording being corrupted, we find this was fanciful.

(vi) *Misleading the claimant as to why it could not provide a full transcript, saying it was deleted, then not to have provided it as it did not satisfy GDPR*

226. We have found above that the respondents provided explanations which they genuinely understood to be true at the relevant time. Therefore, as there was no intentional misleading of the claimant, we find there is no detriment.

(vii) *Mr Humphrey dismissing the claimant's concerns and/or failure to respond reasonably between 27 June 2018 and 13 July 2018*

227. We find that there was some detriment in this letter, and we are surprised that a careful solicitor was slightly sloppy in his response, particularly where he says that Paul Howarth says there was definitely no whistleblowing, as that is really a matter that needs determining once Mr Humphrey has the full facts and he was at pains to try and obtain the full facts in terms of the legal framework the claimant felt the matter arose under in this letter. Otherwise we accept that Mr Humphrey was making genuine enquiries to try and establish that there was a real disclosure being made here, and under what auspices that disclosure should be pursued, and he was bearing in mind the tests in his mind that would be needed for reporting the matter on to any other authority in his role as MLRO.

228. Therefore, we agree that parts of this letter constituted a detriment to the claimant.

(viii) *Paul Stanley being alerted to the claimant's emails between 27 June 2018 and 13 July 2018 to Mr Humphrey, leading to Mr Stanley emailing the Press Office on 13 July 2018*

229. Again we find this was not a detriment as the claimant had an unjustified sense of grievance in relation to this: it was simply advice to the office to protect them from the bankrupt engaging with them on social media, and had no connection whatsoever with the claimant.

(ix) *Failing to investigate/report on the claimant's allegations made on 23 October 2017*

230. Again, we find no detriment arises from this as the individuals involved in this meeting were genuinely oblivious to the points the claimant was making, and it was reasonable of them to be oblivious to this. The real issue is: what action should have been taken after the matter was reported to Mr Humphrey? There was a very short timeframe after Mr Humphrey was made aware of the full facts before the claimant resigned, and therefore we cannot see that the claimant could have expected a full investigation to take place until the matter had been explored more fully with Mr Humphrey.

(x) Loss of trust and confidence caused by the above, resulting in the claimant's resignation

231. We will deal with this under the claimant's constructive unfair dismissal claim.

(xi) The claimant suspended from work after handing in his notice, and thereafter being told he should not return to work and to work from home

232. This is not factually correct as the claimant was not suspended from work, neither was he put on garden leave. He was required to work from home save for a number of matters which he was asked to deal with, which did not involve just working from home.

233. In relation to working from home, that is a reasonable management instruction and not putting the claimant on garden leave.

234. In our view the respondent does not need a contractual right to do it.

(xii) The claimant's dismissal

235. That will be dealt with elsewhere.

236. Did any of these matters arise because of the claimant's disclosures? In respect of our findings above, we have gone through each detriment and we provide our findings below on causation.

Causation

Detriment 1

237. Clearly the telephone conversation with PH was only two days before the redundancy matter was raised, therefore it is not surprising that the claimant relies on this as evidence of causation. However, by itself it is not enough and quite rightly the claimant raised other matters which supported a causal link.

238. Firstly, we find there was no evidence that Paul Howarth spoke to Paul Stanley or John Robinson about the conversation he had with Paul Howarth on 11 October.

239. The claimant understandably relies on his view that there was a paucity of evidence to justify putting him into a redundancy process. However, we accept the respondent's case on this. It was clear that the claimant had intimated that he would not be getting work for the foreseeable future from clients as they were aware that he

was looking to leave the firm and they would not want him to take on a case which he could not see to fruition . In addition, the claimant sent Mr Stanley an email saying he had no work to do. Whilst he later says this was because he was working from home and there was only a certain amount of work he could take home (the supervising the plumber issue), Mr Stanley reasonably had no idea this was the reason, given that the claimant had full autonomy and that he did not say this. Further, the actual words he used suggests a long-term situation, not an immediate situation. Accordingly, we find it was a real issue that the claimant's caseload would start to diminish as it became known he was looking for other work.

240. The claimant also relies on the respondent's failure to look at the evidence he produced about how much work he had, but Mr Robinson and Mr Stanley were united in that it was not the issue about the amount of work the claimant had but that going forward, after what he had told them, the work was likely to drop off significantly. The claimant's work was niche and would fall to Mr Stanley and another colleague Paul Barber to undertake his work if he did leave. Therefore, they were happy to accept the claimant had a substantial amount of work at that point in time.

241. The claimant also relies on the fact that they failed to ask him what he had actually said to Paul Howarth. However, there was no reason to, and we accept Mr Robinson's evidence that he thought the claimant was referring to Mr Howarth knowing that the claimant was seeking another job. In addition, this was an extremely lengthy meeting which rather went round in circles at times and Mr Stanley gave evidence (we accept it was his genuine belief) that the claimant was raising other issues in order to deflect the issue and would not concentrate on the matter in hand, which needed to be discussed in order to qualify as consultation.

242. Accordingly, we find that although the timing in addition might suggest a connection, and we understand why the claimant may have thought this, we have accepted the respondent's evidence that it was actually because of their fear that the claimant's work would stop flowing in. In reaching this conclusion we also rely on the claimant's own email of 16 August 2017 to the respondent's finance director where he clearly refers to the fact that he is looking for work and this will have/has had a detrimental impact on the work he will receive going forward.

243. We find that the email between the PS and JR of 13 October supports this. Whilst the claimant criticises this as only referring to one email exchange, we do not find anything strange about this – the claimant's email was clear and it was an exchange between colleagues. If the professional HR did not require more PS entitled to rely on that.

Detriment 2 – Remaining at risk of redundancy to 25 January

244. It is clear from the email correspondence and the evidence of the respondent that the respondent wanted the claimant to take three steps and then they would withdraw the risk of redundancy. Whilst they could have said this earlier to the claimant, the issue was that the claimant had not completed all the matters because the contract had not been agreed. Nevertheless, they did still confirm it on 25 January prior to the contract being concluded, as it never was, and this does show good faith on the part of the respondent.

245. Accordingly, there was no connection between the protected disclosures and the length of time it took to confirm the redundancy was not going ahead. It is clear that there were three conditions that had to be fulfilled for the redundancy to be withdrawn and they were not fulfilled, although at the end of the day John Robinson was satisfied that enough had been done to withdraw the redundancy process.

Detriment 3

246. We find there was nothing unusual about the contract the respondents put to the claimant. Whilst at times the content was clumsy, the respondents did have an uphill task attempting to reconstruct what would have been agreed at the relevant time and then update it in the light of what had happened since then. The claimant, of course, had legitimate arguments that he should not be subject to any terms he did not have when he was made a non-appointment director, although of course this might work against him where there had been improvements to the contract since that time.

247. Other than the disbursements issue we saw nothing unusual in the contract and found that the claimant and his solicitors did not work in an objective way to resolve the issues. The claimant insisted on dealing with matters himself, and whilst he has some legal knowledge he reacted very emotionally to the matters in the contract. We often hear the term “dealbreaker” – if any of the issues had been a “dealbreaker” he could have walked out and said, “If you insist on that disbursements clause I’m leaving”, and whilst it is speculation then either the respondents would have capitulated or the claimant would have left and claimed constructive dismissal on that point.

248. We certainly find the disbursement issue was something that was not in the claimant's contract, but then if you go back and think well if the parties had thought about this would they have put it in, and it is likely that such a consideration may have arisen, however we are not 100% convinced as it had only occurred to Mr Stanley because he had come across a case that the claimant had taken on where there was no prospect whatsoever of recovering any money, and they had incurred counsel’s fees up to £10,000. This was to come off the claimant's profit before commission was calculated: it was not to come directly off the claimant's commission. Had a proper dialogue been entered into these matters would have been made clear and we have no doubt the matter could have been agreed. In any event it would probably have been covered by the negligence clause which the claimant had considered was potentially justified.

249. Having heard Mr Stanley’s evidence and Mr Robinson’s evidence, nothing they did was tainted by the fact that the claimant had made allegations to Paul Howarth or on 23 October 2017, and there was no evidence of any changes once Mr Humphrey took over dealing with the contract. The respondents wanted to get the matter resolved, and it appeared to us that the claimant was being difficult about doing this. As Mr Humphry said, he felt that the whole matter was getting “silly”.

Detriment 4

250. This really falls under above. We have found that there was not such a great delay in dealing with this given Mr Robinson’s absence on holiday and then the matter that solicitors intervened and Mr Humphrey tried to grapple with the fact that

the claimant was running with the issues when conventionally his solicitors should have been raising the issues, and no doubt Mr Humphrey would have preferred that rather than dealing with the emotional onslaught from the claimant. It was argued for the claimant that the fact solicitors had been engaged was not a reason not to respond to the claimant. We have to disagree it is a well known principle of professional practice that once a person has legal representation communication should be with the legal representatives. Accordingly, we are satisfied at the explanation given for the hiatus in the contract process. Whilst the claimant relied on the *Knight* case it is clear we find there was an explanation for what happened.

251. We cannot see why there was any connection with the protected disclosures: if the treatment was detrimental it was simply how the matter panned out with the different emails and the stances everyone took, and whilst the respondents may not have acted quickly at times, there is nothing to suggest that was because of the protected disclosures rather, as we heard from Mr Robinson, he was somewhat affronted by the way the claimant had "talked to him in the emails", and no doubt that affected how he reacted to the claimant.

Detriment 5 – Transcript of 23 October

252. If there was a detriment then we do not find in connection with the whistleblowing as we reject the matters the claimant relies on to in effect draw an inference because of the different explanations given and the fact that batteries were referred to when it was a digital system, and that there was no logical explanation for why the recording did not run throughout the whole of the meeting.

253. We find it implausible that the respondents would have deleted the recording up to the point before the claimant makes any of his disclosures, as it would simply have been far too time consuming for the respondents to do that.

254. Whilst there was a conflict in the evidence, it was not significant enough for us to draw an inference on the basis of that alone, that there had been some deliberate tampering with the recording. Further the witnesses did not understand how Olympus worked and therefore on the balance of probabilities we find they would not have known how to erase the recording.

255. Again the claimant relies on the Knight case to say that where there is no explanation an inference maybe drawn against a respondent. We decline to draw that inference, things go wrong, particularly technical hardware and software.

Detriment 6 – The respondents misleading the claimant as to the reasons why they could not provide a full transcript

256. We have found that the different reasons provided were genuinely put forward by the respondents in their belief at the time. We found in Tribunal there was a woeful lack of understanding about how Olympus worked, which was quite surprising given that solicitors and professional HR and counsel were involved in this case. However, having established that there was such a misunderstanding it is not unsurprising that different explanations were given, and in any event the explanations were not so different.

Detriment 7 – Dismissing the claimant's concerns or failing to respond reasonably between 27 June and 13 July

257. In respect of the claimant's first disclosure to Mr Humphrey, whilst it was voluminous it was not absolutely clear when the £300 incident had occurred, although a very careful and forensic reading would show that the claimant referred to some time later. However, we find that the respondents had confused 2009 with 2013, and indeed Mr Humphrey did not even know that anything had occurred in 2013 at this stage as the claimant does not make it clear in his email when this incident occurred. JH genuinely believes that this occurred in 2009, some nine years earlier, so it is unsurprising that he sought to explore in much more detail what exactly the claimant was raising, and to ascertain whether indeed it had been already reported and dealt with in 2009.

Detriment 8 JH not preventing PS emailing the office on 13 July 2018.

258. This was actually amended as a result of Mr Humphrey's draft email being shown to have taken place before the claimant's disclosure. The claimant sought to argue that this was a deliberate ambush, however the way this arose and the fact that our initial view was that it did not reflect well on the respondents that this had not been disclosed and it seemed particularly odd when solicitors were involved as witnesses and that the document would be extremely helpful to the respondent.. We accept it was spontaneously referred to by Mr Stanley, who responded to questions in a robust and candid way and was adept at thinking on his feet, and therefore worked out that if he had received it beforehand it would be helpful to the respondent's case. Whilst obviously this would have been much better in his witness statement, we do not believe that this was something planted to happen as he could not know he would be asked about this in such detail, and it was an embarrassment to the respondents that it had not been disclosed.

259. We have also rejected that the reference to the claimant's email was to his "whistleblowing" email, rather it was to the "shotgun" email, and we totally accept that that was the reason this was sent out and there was absolutely no reason why Mr Humphrey should recall this message after hearing from the claimant in respect of whistleblowing, as to the reasonable and impartial observer there was no connection between the two matters and no reasonable observer reading that email sent in respect of social media would link the reference to unsubstantiated allegations with the claimant and take the view that this was humiliating the claimant as the matters the claimant was raising were relatively obscure and not as well known as the claimant seems to assume. The unsubstantiated allegations were a reference to the bankrupt. The fact that the claimant's position was that one or two of those of those allegations regarding DS were true was unknown to most staff and it is severely twisting the meaning of the email to suggest it was written with the intention of smearing the claimant because he believed some of the DS allegations were true.

Detriment 9

260. We find it was reasonable of Mr Humphrey to explore the matter further with the claimant and to ascertain what route he wished to take to have the matter investigated. Whilst it could have been investigated under a number of different routes, it is hardly surprising that a lawyer or indeed someone in HR would seek to

narrow down the route and the issues before embarking on an investigation. The claimant left relatively soon after this incident and therefore there was insufficient time for the matter to be explored to the point where an investigation would be undertaken.

Detriment 10

261. We deal with this under constructive unfair dismissal.

Detriment 11

262. If there was a detriment here, which we have found there was not, it was the respondents' view, as an employer, that it was in their better interests for the claimant to be working from home and not to be in the office every day as they were concerned as to whether or not he may damage their business. This was totally reasonable.

Detriment 12 – The claimant's dismissal

263. As we have found that none of the detriments were caused by the whistleblowing, and that apart from two matters there was no detriment, we find that the claimant's constructive dismissal was not as a result of his protected disclosures.

Automatic Unfair Dismissal

264. Accordingly, we find that the claimant's claim of automatic unfair dismissal under section 103A of the Employment Rights Act 1996 is not well-founded and is dismissed.

Constructive Dismissal

265. We have examined all the claimant's detriments.

266. The claimant's claim was put succinctly: that there was a loss in trust and confidence caused by the respondents' conduct in respect of the whistleblowing, and that the failure to address the claimant's concerns about his contract, including the failure to provide one which accurately recorded the terms and conditions, was an enduring breach which, together with the failure to properly respond to his disclosures, resulted in the claimant considering that the respondent and its senior operatives were repudiating a fundamental term of his contract of employment – that of trust and confidence.

267. As we have examined the detriments and causation above, we have not found that the respondents acted in a manner to destroy trust and confidence. We have noted that we found Mr Humphrey's letter slightly more robust than it needed to be, but we have examined the claimant's response to it and it appears that he had not lost trust and confidence in Mr Humphrey at that point as he continued to engage with him and provide him with more information regarding his disclosures.

268. Neither do we find that the respondents intended to undermine trust and confidence so that the claimant would leave. It was evident from the evidence that

the respondents wished to keep the claimant. Although obviously that is not the legal test, it does refute the claimant's assertion on that point.

269. In relation to the contract of employment, we find there was some delay but there was a genuine wish to try and resolve the issues, some of which could only be resolved by one party compromising, and the claimant was not prepared to compromise. The respondents had not reached the point in their thinking where they believed they needed to compromise. If the matter had not been agreed then the claimant would have actually obtained an advantage – he would have had no restrictive covenants, there would have been no disbursements against his profit, and he would have continued to be paid on the same terms as had been agreed many years ago and as confirmed by Mr Robinson. It was indeed to the claimant's advantage that this contract was never actually confirmed, and with his legal knowledge the claimant must have been aware that the respondents could only impose a contract on him if they were willing to risk him leaving and claiming constructive unfair dismissal. We saw absolutely no evidence that that was the respondents' intention.

270. In relation to the 13 July email which prompted the claimant's resignation, the claimant read this entirely wrongly and there was no reference to any allegations he had made at all. It was as it says within in attempting warn staff off becoming involved on Facebook with the bankrupt. It was an innocuous act and it led to the claimant harbouring an unjustified sense of grievance. It cannot be a last straw.

271. We find the respondents had just and proper cause for all the actions they took which are described as detriments in this case, and therefore there was no fundamental breach of contract, either singly or as a course of conduct.

272. Accordingly, the claimant's claim of unfair dismissal fails and is dismissed.

Employment Judge Feeney
Date: 1 February 2022

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON
15 February 2022

FOR THE TRIBUNAL OFFICE