EMPLOYMENT TRIBUNALS

Claimant		**Respondents**
Mr Syed Furquan Ahmed	**v**	**(1) EngineF Holding Ltd** **(2) EngineF Operating Ltd** **(3) Mr Mark Allcock**

Heard at: London Central
On: 25 – 28 and 31 January and 1 – 3 February 2022

Before: Employment Judge Hodgson
Ms C Buckland
Mr M Baber

Representation

For the Claimant: **Mr Jake Davies, counsel**
For the Respondent: **Mr Sami Rahman, counsel**

JUDGMENT

1. **At all material times the claimant's employer was the second respondent, EngineF Operating Limited.**
2. **All claims against the first respondent are dismissed.**
3. **The claim of unfair dismissal fails and is dismissed.**
4. **The claim of automatic unfair dismissal contrary to sec. 103A Employment Rights Act 1996 fails and is dismissed.**
5. **The claims of detrimental treatment contrary to section 47B Employment Rights Act fail and are dismissed.**
6. **The claim of indirect discrimination fails and is dismissed.**
7. **To the extent that any claim is brought against the third respondent, each claim fails and is dismissed.**

REASONS

Introduction

1.1 On 20 May 2020, the claimant brought a number of claims which included the following: ordinary unfair dismissal, automatic unfair dismissal contrary to section 103 Employment Rights Act 1996, indirect discrimination, and detrimental treatment for whistleblowing.

The Issues

Breach of contract/failure to pay wages

2.1 On day one it was confirmed there was no claim of breach of contract or failure to pay wages.

The employer

2.2 On day one the claimant alleged his employer was EngineF Holding Ltd, the first respondent. The identity of the employer must be demonstrated by relevant evidence.

Indirect discrimination

2.3 For these purposes the claimant defines his race as being a Pakistani national.

2.4 The provision criterion or practice relied on was clarified at the hearing. It is said to be by requiring the claimant to move to India as a condition of being given alternative employment. The group and personal disadvantage is said to be that it was "extremely difficult to obtain a work visa to work in India as a Pakistani national." To the extent it is necessary to rely on a justification defence, this revolves around the respondent's need to reorganise for financial reasons.

Ordinary unfair dismissal

2.5 It is the claimant's case that there was no redundancy situation. He states the alleged reason is a sham. Further, he alleges the respondent acted unfairly in dismissing him in any event.

Automatic unfair dismissal contrary to section 103A Employment Rights Act 1996

2.6 The claimant alleges the sole or principal reason for his dismissal was the making of protected disclosures.

2.7 Detriment for whistleblowing. The claimant relies on section 47B(1) and (1A).

2.8 The claimant relies on eight alleged disclosures of information. To the extent it appears in the claim form that the claimant has specified what the alleged disclosure tended to show having regard to section 43B (1) (a) – (f). The following are the alleged disclosures:

2.8.1 Disclosure 1 - in or around September and November 2018 by the claimant protesting to the third respondent that he had changed a legal opinion from Keystone Law and should not do so, this being repeated on 12 November 2018 by WhatsApp.

2.8.2 Disclosure 2 - in July 2019, following a request from the third respondent to transfer £70,000 to his personal bank account, by resisting the instruction and stating it was not permitted and can only be classified as a business expense, it being his assertion the transaction was impermissible and "sums could only be paid to the third respondent if they were to be set off against future income entitlements." It being his claim that this was a tax fraud.

2.8.3 Disclosure 3 – in September 2019, by the claimant raising verbal concerns repeated in a subsequent email (17 September 2019) noting the third respondent's involvement in Wired World Ltd and an alleged lack of transparency.

2.8.4 Disclosure 4 – following a request from the third respondent on 9 January 2020 via a WhatsApp message for the claimant to the third respondent’s handwritten notes of costs as reimbursable expenses by the claimant objecting and stating he could not perform it without evidential documents. It being his case that the third respondent action would have been a tax fraud.

2.8.5 Disclosure 5 – on 21 January 2020, when the third respondent instructed the claimant to place bids to purchase Neyber’s distressed assets without performing due diligence or informing shareholders and investors, by the claimant informing the third respondent that the first respondent’s shareholders and investors must be informed, as the circumstances would indicate Neyber could not pay the first respondent's invoices.

2.8.6 Disclosure 6 – on 23 January 2020, by the third respondent instructing the claimant to prepare and submit a bid to acquire Neyber, by the claimant objecting to the value, given the absence of due diligence reports.

2.8.7 Disclosure 7 – on a date around the end of January 2020, following the claimant transferring £9,400 to the third respondent’s account classified as a director’s loan, by informing the third respondent that it would amount to a violation of the first respondent's shareholder agreement and requesting the third respondent to obtain shareholder approval for the "salary" payment.

2.8.8 Disclosure 8 - by the claimant stating the third respondent's classification of historical payments as a debt to AIP was "not appropriate or fair."

2.9 The claimant alleges the following 26 detriments.

2.9.1 Detriments 1 and 2 - in mid-November 2018 by removing the claimant from negotiations with Mobeus, and thereafter blaming him for the deal failing.

2.9.2 Detriment 3 - by the respondent on 9 December 2018 informing him that his role would be made redundant.

2.9.3 Detriment 4 - by the respondent failing to approve the claimant's annual leave request and closing the office for 20 days.

2.9.4 Detriment 5 - by failing to pay to the claimant on or around 3 September 2019 a bonus of £100,000 following the successful completion of the Neyber deal.

2.9.5 Detriment 6 – missing from the claim form (the claim form appears to go directly from 5 to 6 for ease, I will keep the original numbering.

2.9.6 Detriment 7 – by the claimant making annual leave requests in October – December 2019 which, despite repeated requests were ignored.

2.9.7 Detriment 8– by the third respondent, on 13 January 2020, informing the claimant by email of an internal reorganisation and thereafter failing to give a substantive response to the claimant's request[1] for clarification of the effect on his role.

2.9.8 Detriment 9 – on 18 January 2020, by the respondent emailing the claimant admonishing him for not diverting his full attention to the first respondent's fundraising activities and stating the fundraising goal had not been achieved.

2.9.9 Detriment 10 – following disclosure five by the third respondent informing the claimant he would appoint another person to take over the claimant's directorship if the claimant did not understand steps for placing a bid.

2.9.10 Detriment 11 – on 29 January 2020, by the third respondent notifying the claimant by email he would be made redundant if the Neyber bid was not successful.

[1] No particulars of the request were given.

2.9.11 Detriment 12 – by not paying commission of £60,000 on 7 February 2020.

2.9.12 Detriment 13 – on 20 February 2020, by serving the claimant with a letter informing him "he had been made redundant."

2.9.13 Detriment 14 – on 21 February 2020 by suspending the claimant's email account and commencing an investigation into the claimant's transfer of data from the first respondent to the claimant's personal account.[2]

2.9.14 Detriment 15 – on 24 February 2021, by the respondent stating that there was an initial intention to make the claimant's role redundant.

2.9.15 Detriment 16 – on 26 February 2020, by inviting the claimant to the redundancy consultation meeting on 3 March 2020 and referring to a job offer in India and the constraints on visa requirements.

2.9.16 Detriment 17 - on 3 March 2020, by not proceeding with the consultation meeting on 3 March 2020 via email.

2.9.17 Detriment 18 – on 10 March 2020 by the claimant believing the third respondent would not independently investigate protected disclosures.

2.9.18 Detriment 19 – on 17 March 2020, by the third respondent confirming the final decision to make the claimant redundant and place him on garden leave.

2.9.19 Detriment 20 – by the respondent giving details of gross misconduct and investigation. [3]

2.9.20 Detriment 21 – by the claimant feeling his inability to access emails placed him at a disadvantage in the investigation.[4]

2.9.21 Detriment 22 – by an email (undated) notifying the claimant he was suspended.

2.9.22 Detriment 23 – by the third respondent's email (undated) referring to an unapproved employee handbook. It being the claimant's case the document was altered by the third respondent in a manner unspecified.

2.9.23 Detriment 24 – by being required to perform tasks whilst on garden leave.

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[2] Withdrawn on day 5.
[3] The date is not given. The email is not identified.
[4] Detriments 21, 22, and 23 were withdrawn on day 5.

2.9.24 Detriment 25 – by the respondent failing to respond to a data subject access request filed 30 March 2020.[5]

2.9.25 Detriment 26– the claimant initially alleged dismissals of detriment but accepts this can only proceed pursuant to section 103A.[6]

Evidence

3.1 We heard from the claimant.

3.2 The third respondent gave evidence. In addition, the respondent called the evidence of a HR consultant, Mr Heath Buck.

3.3 We received a bundle of documents. A supplementary bundle was filed, which was largely agreed.

3.4 We received various opening statements. Both parties gave written and oral submissions. The respondent's submissions were consolidated after the hearing.

Concessions/Applications

4.1 At the commencement of the hearing, we considered whether there were any outstanding applications. There had been applications by the claimant for strike out and specific disclosure. There had been applications by the respondent for strike out a deposit order.

4.2 The tribunal noted that questions of strike out remained open, even at the final hearing, but if the original applications were to be considered, as originally envisaged, by way of a preliminary hearing, it would be necessary to adjourn the final hearing and relist the matter.

4.3 The parties elected to abandon all previous applications.

4.4 The claimant confirmed that he had brought neither a claim for damages for breach of contract nor a claim for unlawful deduction from wages.

4.5 The claimant confirmed there was no claim of direct discrimination. The only discrimination claim was of indirect race discrimination. For that purpose, he relied on the fact that he was a Pakistani national. For the purposes of the claim of indirect discrimination, he alleged there was a requirement that he move to India, as a condition of alternative employment. The group disadvantage and personal disadvantage relied on was that it was extremely difficult to obtain a work Visa in India for a Pakistani national.

[5] Withdrawn on day 3.
[6] Withdrawn on day 1.

4.6 The claimant pursues an allegation that he was unfairly dismissed and automatically unfairly dismissed (section 103A Employment Rights Act 1996).

4.7 In addition, he alleged that he suffered direct detriment by reason of whistleblowing.

4.8 The claimant acknowledged a number of claims are out of time, but alleged that the 25 allegations of detriment were part of a series of similar acts or failures. He acknowledged that the dismissal, pleaded as detriment 26, cannot proceed under section 48 Employment Rights Act 1996.

4.9 The claimant alleged eight separate alleged protected disclosures.

4.10 On day one of the hearing, the claimant confirmed that his employer was alleged to be respondent one (EngineF Holding Ltd). Mr Davies was unable to clarify whether it was alleged the second respondent was an employer, and if so, on what basis.

4.11 By email of 25 January 2022, Mr Davies stated the following:

> **I write to confirm that the Claimant's case is that his employer for the purposes of the claims is R1 [ENGINEF HOLDING LIMITED]. The Claimant accepts that his employment with R1 included carrying out some duties for R2 (as set out at paragraph 4 of the Grounds of Resistance) but that he was not employed by R2.**

4.12 The claimant alleged that there was no redundancy situation. In addition, he alleges that the process was unfair. The sole or principal reason for dismissal was said to be making protected disclosures.

4.13 On day one, we agreed that two days would be reserved for the tribunal to make its decision. What remained of the first day was used by the tribunal to read the documents. The parties were to confirm whether they could agree a timetable for evidence and submissions to be completed within three days, and if not, whether they wished to apply for an adjournment.

4.14 On day three, we received applications from both parties to amend their pleadings. Both amendments were allowed. The effect is the claimant withdrew an allegation that he was employed by both the first and second respondent. His primary case became he was employed by the first respondent, and in the alternative by the second respondent. The effect of the joint application of all three respondents was that they alleged only the second respondent was the employer, having previously alleged it was the first.

4.15 Before Mr Allcock gave evidence, there was an application to rely on a second supplemental statement. This sought to give further evidence on the identity of the employer. This statement was made after the claimant had given evidence. The status of the employer was an issue. There was

no reason why the evidence could not have been given earlier. In any event, it was likely that the matters raised in that supplemental statement would have to be considered during cross examination. We refused permission to rely on it.

4.16 On day three, an amended supplemental bundle was filed. Several pages appeared to have been generated solely for the purpose of these proceedings. Further, some of the emails appeared to advance evidence given by witnesses who had not been called. We refused permission to rely on several pages. We do not need to record the detail. We confirmed the respondents may seek leave to adduce in evidence, as witness statements, those emails which appear to give evidence. No application was made to adduce that evidence.

4.17 On day three, it was noted, during Mr Allcock's evidence, that he appeared to be referring to wage slips which were not in the bundle. We ordered their disclosure. Further wage slips were sent on day four.

4.18 On day 4, 28 January 2022, the tribunal sent the parties the draft list of issues and requested comments. One question was raised about the issues. It concerned disclosure 8, but during submissions on day five, it was agreed that the tribunal's list of the issues was accurate.[7]

4.19 On day 5, detriments 14, 21, 22, and 23 were withdrawn

The Facts

5.1 The claimant has worked in the finance sector for 14 years, with experience in retail banking, private equity, and investment space banking. He has two postgraduate degrees in business related studies. Before employment with the respondent, he was a senior associate in the investment banking arm at Allied Investor Partner PJSC (AIP) in Dubai.

5.2 The first respondent is a holding company. The second respondent is a wholly owned subsidiary of the first respondent. The first respondent does not trade; the second respondent does, in that it enters into specific contracts with third parties and is the entity which has a bank account.

5.3 The third respondent, Mr Allcock, is the founder of the first and second respondents and was at all material times majority shareholder through his own finance company.

5.4 Mr Allcock has particular expertise in computer software. EngineF Operating's business was concerned with supplying complicated software packages for various businesses, particularly in the fields of investment and banking. This is the sort of software which underpins the use of apps on telephones for banking and the like. The business model involves

[7] Set out in these reasons with typographical amendments.

identifying customers, identifying need, and thereafter the development, production, and implementation of software. The contracts are high value. For example, in 2016, Mr Allcock secured full-time employment in 10X technologies. Thereafter, EngineF Operating secured a contract with 10X technologies valued at around £5 million.

5.5 At all material times the claimant was aware that Mr Allcock worked for 10X, and that he placed a contract with the company in which he had a majority shareholding. There is no suggestion that this action of Mr Allcock lacked integrity or transparency. There is no suggestion that any relevant party was not fully apprised of the relevant circumstances.

5.6 For the reasons we will come to, we have concluded that the claimant was employed by the second respondent, EngineF Operating, only. He was employed as a finance director and was a statutory director from 1 October 2017 until he was dismissed on 17 April 2020.

5.7 The claimant is a national of Pakistan. He required a work Visa. Mr Allcock worked with the claimant to obtain the visa, including funding legal advice. To secure the visa, Mr Allcock agreed to a salary of £160,000, being a larger salaried than initially envisaged. The certificate of sponsorship records the sponsor's name as EngineF Operating Ltd. The claimant's role would be corporate finance director. The salary provided an exemption pursuant to paragraph 78C of appendix a of the immigration rules.

5.8 There was an initial offer of employment on 12 February 2017 with EngineF Holding Ltd. This was supported by terms and conditions signed by Mr Allcock on 12 February 2017 and countersigned by Mr Ahmed on 13 February 2017.

5.9 On 30 July 2017, there was a further offer letter, but this time in the name of EngineF Operating Ltd. This referred to the commencement salary of £160,000. The letter contained a section for acceptance and was signed by the claimant on 31 July 2017. It referred to an enclosed director's service agreement. That service agreement was the same as the one previously signed, and the name of the employer was not modified to be consistent with the offer letter of 30 July 2017.

5.10 A significant part of the claimant's role was to raise finance capital. Further, EngineF Operating's income depended on maintaining and securing relevant contracts.

5.11 Many of the individuals who worked for EngineF Operating were not employed but were engaged as contractors. The claimant was employed, Mr Allcock's wife was employed. For most of the relevant period, Mr Allcock was employed by other entities. Mr Allcock was managing director of both Engine F Holding and EngineF Operating. He was employed for two relatively brief periods first, during September 2018 and second, from 1 January 2019 to 31 March 2019.

5.12 There was a shareholder's agreement between Allcock Family Office Ltd and Allied Investment Partners PJSC (AIP). It records that Allcock Family Office Ltd is the majority shareholder of EngineF Holding and intends to sell a 40% stake. Paragraph 2 records that Mr Allcock will be appointed, in his personal capacity, as managing director of the company, he would be exclusively vested with total management responsibility, to include all things incidental or conducive thereto. There is provision for obtaining approval of the executive committee, then the board of directors, and finally the shareholders in certain circumstances. These include proposed significant capital expenditure exceeding £50,000. He may authorise employment of individuals where the "total annual remuneration will not exceed" £150,000. The agreement does not appear to expressly deal with his role in relation to EngineF Operating Ltd, but nothing turns on this, and we need consider it no further.

5.13 The second respondent faced financial difficulties at various times. We accept that there was a consistent, and open, dialogue between Mr Allcock and the claimant concerning the financial situation and viability of the business. This continued throughout his employment. For the purposes of this hearing, it appears the claimant maintains that the business was, at all material times, in a stronger financial position than that perceived by Mr Allcock. However, Mr Allcock had, at all times, proper evidence on which he could form a view that the company faced difficulties.

5.14 On 9 December 2018, following discussions about reorganisation, Mr Allcock sent an email to the claimant confirming that fundraising has not been successful and the situation with 10X was at best uncertain. The outlook for EngineF Operating was uncertain. He proposed that the head office and subsidiary functions should be outsourced and software development resources adjusted to reflect demand, certainty, and cost. The role of in-house finance would become redundant. He proposed to discuss the matter with the claimant. It is clear the claimant was being given notice of potential redundancy. The communication is consistent with the claimant's seniority, and background knowledge and understanding.

5.15 The reorganisation did not go ahead at that time. Although the financial difficulties continued, Mr Allcock felt responsibility for the claimant, having brought him from Dubai and promised him work. He believed that the claimant's residency was dependent on the job. Contrary to what he considered the better business option, he decided to keep the claimant employed.

5.16 The claimant has suggested that the real reason the redundancy did not proceed is because he raised "outstanding payments owed" which he alleges amounted to around £30,000. We accept the raising of those outstanding payments had nothing to do with Mr Allcock's decision. It is

extremely unlikely that a businessman faced with a salary of £160,000 a year would delay redundancy because of a debt of £30,000.

5.17 We also note the claimant refers to requesting annual leave in December 2018. He suggests that he was not allowed to take annual leave because the business was closed. We do not accept his evidence on this point. We accept Mr Allcock's evidence, which was to the effect that the claimant, given his seniority, simply stated when he wished to take annual leave. Taking annual leave over the Christmas period was sensible, given the nature of the contracts. The business effectively shut down for several weeks. The claimant was paid for his leave. Before us, the claimant stated that he should have been given, as paid holiday, the total period of shut down in addition to his contractual holiday. This is a surprising position for the claimant to take. The reality is, at all material times, he took his holiday when he wanted, and he was paid for it.

5.18 There are various matters raised, as alleged disclosures and detriments, by the claimant, relating to specific requests for payments of loans, salary, and expenses. We will consider the relevant findings of fact when we consider those matters in our conclusions.

5.19 The business continued to experience difficulty. Leading up to 2020, a company, Neyber for whom Mr Allcock worked, was in difficulty. Mr Allcock was open about this. Neyber faced closure and administration. It used software developed by the second respondent which was valuable, and worth in the region of £3 million. As is common in these situations, there were various attempts to save Neyber, and ultimately administrators were appointed. We do not need to consider the detail.

5.20 Mr Allcock saw the difficulties as both an opportunity and a significant threat. Closure of Neyber fundamentally undermined the viability of EngineF Operating. On the other hand, there was potential to purchase assets and move EngineF Operating in a new direction. One clear potential outcome for EngineF Operating was the need to make significant savings, which could result in redundancies.

5.21 As part of that process, Mr Allcock wanted to make a bid for software rights owned by Neyber. These were worth several million. He wanted to put in a bid for £50,000.

5.22 Mr Allcock knew what he was buying. He had been involved in the programme’s development; he knew it worked; he knew it was valuable. Acquiring the asset for £50,000 would have been, as he put it, “a steal.” He asked the claimant to prepare bids. The claimant was resistant. Before us, the claimant suggested there had been no due diligence, but what he envisaged by due diligence, and over what period, remains unclear. The reality is that due diligence would have revolved around analysing, and valuing, the potential asset. This would have taken time. It would have involved expense, which may have been a significant

proportion of the actual proposed purchase value. Given the impending administration, delay may have been fatal.

5.23 It remains unclear why the claimant was so resistant. The correspondence reveals Mr Ahmed's response caused Mr Allcock some frustration. Eventually, the claimant agreed the bid, which was within Mr Allcock's ostensible authority, should be put forward.

5.24 We do not need to record all of the documents we have been taken to demonstrating how Mr Allcock kept the claimant informed of the developing situation. The reality is there were emails and discussions. The claimant fully understood, or he should have fully understood, the financial position. We accept Mr Allcock's evidence that the company was in difficulty. We accept his evidence about Neyber's difficulties, and the need for immediate action in order to secure what he considered to be the best outcome.

5.25 On 13 January 2020, Mr Allcock confirmed that a sales process for Neyber was underway, and that he had made a decision to reorganise EngineF Operating. This is clear warning of the potential changes, which could include redundancy. He confirmed that he would discuss the changes. It is clear the claimant understood there would be changes. In his email of 13 January 2020, he asked for Mr Allcock's "thoughts over the changes."

5.26 By 18 January 2020, matters had moved forward. The claimant's contributions were becoming increasingly difficult and contentious. The claimant's resistance is illustrated by his email of 18 January 2021. This email follows a request that he should focus 100% on fundraising. In his email of response, he states that he had achieved a fundraising goal of 500K. In this email, he accuses Mr Allcock of "clear acts of bullying." He appears to site three matters. First is the requirement to produce documents for the Neyber bid. Second is a general allegation he was forced to record business expenses without receipts (we will consider this further below). Third was pressurising him to send a "letter to acquire Neyber" without the consent of the other shareholder. The latter is difficult to understand. He was being asked to make a bid for an asset, not a company. There are some further complaints of alleged historical incidents. Nevertheless, his email acknowledges that he should attempt to create a " war chest" to assist in acquiring Neyber.

5.27 The claimant's resistance is illustrated by Mr Allcock's email of 23 January 2020. Of the Neyber assets, he states "I'm an expert in this space and of tech you don't need to look at balance sheets etc 50 K is a steal and would enable a business to be launched once a lending facility is found." The email goes on to explain why delay is inappropriate. In addition, Mr Allcock noted that if Neyber could not continue, and needed run-off, EngineF Operating was in a position to provide services, for which it would be paid. This would lead to a revenue stream. He proposed this as the second part of the bid.

5.28 The bids were eventually made ready on 23 January 2020.

5.29 It follows that the claimant was fully aware of the difficulties facing EngineF Operating. He understood the significance of the potential sale of Neyber. He had been told there may be a reorganisation. He was aware that reorganisation may involve a reduction of staff. We have no doubt that he was aware that his job, and his role, were at risk. Mr Allcock had been clear and transparent about the difficulties, the potential outcomes, and his strategies. There is no suggestion that the claimant came up with any alternative viable strategies.

5.30 In his evidence, the claimant says, "I was able to successfully renegotiate the contract with Neyber." We do not accept that evidence.

5.31 The Neyber bids failed. Mr Allcock decided to proceed with the reorganisation. He recruited the assistance of Mr Heath Buck, an experienced HR manager, who was working for Neyber at the time.

5.32 At a meeting on 20 February 2020, Mr Buck gave the claimant a letter stating the formal risk of redundancy. The claimant read the letter and indicated that it was inaccurate, in that his period of continuous employment was not recorded. The letter was not read to him verbatim. Mr Buck, who gave evidence, stated that he explained that it was likely the claimant's employment would not continue. There has been significant dispute about this letter. We do not have the original. It is Mr Buck's case that no copy was saved when it was amended.

5.33 A letter was sent on 24 February 2020. That letter refers to the consultation meeting on 20 February. It states, "I met with you to announced the intention to make your role redundant." He recorded the rationale for the role being made redundant, and the proposal to move to an India-based low-cost business model. It stated, "The role of finance director is no longer required to be based in the UK and therefore it is proposed the role will be made redundant."

5.34 In his evidence, the claimant does not specify what he says were the words used at the meeting on 20 February 2020. The statement says, "I was extremely surprised when Mark and Keith Buck, proceeded to serve me a letter dated 20 February 2020 in person informing me that I had been made redundant." His evidence goes on to say that the letter was withdrawn on 20 February when he noted the letter was inaccurate and that he had accumulated two years of continuous employment.

5.35 We find on the balance of probability that the original letter did refer to the finance director would no longer be required to be based in the UK and that it was proposed that the role would be made redundant. The claimant’s evidence is consistent with the content of the second letter. It is perhaps understandable that the claimant took the wording to mean that his job no longer existed. However, it is also clear that there was

discussion about the potential for him to relocate to India. That is inconsistent with there being any final intention to dismiss the claimant.

5.36 We accept Mr Allcock had not formed the view that the claimant could not work in India because he was a national of Pakistan. Further, the claimant has produced no evidence that it would have been impossible for him to work in India. On the contrary, it is his case that it would have been difficult. When securing a visa to work in the UK, Mr Allcock had gone to considerable effort, and increased the salary. There is no reason to believe that he was disingenuous in suggesting to the claimant he may be able to work in India.

5.37 After the meeting on 20 February 2020, the claimant never engaged with the consultation process. In his email of 25 February 2020, he stated that the redundancy was a “sham.” He referred to the process as “shambolic.” He alleged there had been protected disclosures and that the dismissal was dressed up as a redundancy because of protected disclosures. He resisted all attempts to proceed with any consultation meeting. He gave various excuses including the suggestion that his union representative was not available. This is a surprising comment given that he now states that he had no union representation or membership. He asked that his legal representative should be able to attend, and that was refused, reasonably, by the respondent. To the extent the claimant suggested there should be consultation by email, this was a disingenuous suggestion. The reality is, as has been accepted by the claimant in evidence, he refused to cooperate with the consultation.

5.38 The claimant's email of 25 February 2020 complained about the suspension of his email account. This is difficult to understand. On or around 20 February 2020, the claimant started to email himself over a thousand emails, some of which contained sensitive information, including the passport details of employees and consultants. Some of it was sensitive commercial information. He suggested before us that there was some proper reason in relation to the performance of his duties. However, his own statement acknowledges that at the time he specifically stated that he needed "to preserve evidence." There is no doubt that he was abusing his position and, without proper authority or purpose, by emailing sensitive confidential information to his own personal email account, purely for the purpose of building a case against the respondents. Mr Allcock was justified in suspending the claimant's email account.

5.39 The claimant was invited to a consultation meeting on 26 February 2020. This was suspended until 3 March 2020, as the claimant alleged his trade union representative would be "unavailable."

5.40 The claimant instructed solicitors and on 2 March 2020 a representative contacted the respondents. The letter stated the claimant would not be subject to a sham process and asserted that he had raised protected disclosures.

5.41 Mr Allcock responded on the morning of 3 March 2020 confirming that consultation is an internal process. He rescheduled the meeting for the following day. The response from Mr Newell stated, "Rather than put my client through a shambolic process, I suggest you come forward with a sensible proposal." Mr Allcock responded by giving the claimant a further opportunity to attend the following week on 13 March. The claimant failed to acknowledge this; however, despite further emails, the claimant did not engage further. It follows that the claimant never cooperated with the process of consultation.

5.42 Further, Mr Allcock requested the claimant meet with him to discuss the alleged protected disclosures and alleged bullying. On 17 March 2020, the claimant respondent stated "As for meeting to discuss my protected disclosures, you have already been told that I see no benefit discussing this with you when you are the person directly the of those matters. To think that you can investigate yourself is foolish."

5.43 Mr Allcock responded on 17 March 2020 with an email setting out the relevant chronology. The email confirmed that the process could not be deferred any further and stated, "Having considered all options I regret to inform you that unfortunately you will be leaving for reason of redundancy." The claimant was advised of his right of appeal.

5.44 On 20 March 2020, the claimant appealed against the dismissal.

5.45 On 23 March 2020, the country went into lockdown.

5.46 On 12 April 2020, Mr Allcock sent an email to the claimant stating he was prepared to hear the appeal. Bearing in mind the rules about lockdown, he suggested a video conference. He asked the claimant to revert to him with two dates starting in the week commencing 19 April. Mr Allcock stated he preferred the appeal to be heard by Mr Tony Leigh, a former employee of the company.

5.47 The claimant did not respond.

The law

6.1 In **Safeway Stores Plc v Burrell [1997] ICR 523** the EAT set out a simple three stage test when considering redundancy: (1) was the employee dismissed, (2) if so, had the requirements of the employer's business for employees to carry out work of a particular kind ceased or diminished or were they expected to cease or diminish, (3) if so, was the dismissal of the employee caused wholly or mainly by the cessation or diminution?

6.2 The only question to be asked when determining stage 2 is whether there was diminution in the employer's requirements for employees (rather than the individual claimant) to carry out work of a particular kind. It is irrelevant at this stage to consider the terms of the claimant's contract.

The terms of the contract are only relevant at stage 3 when determining as a matter of causation whether the redundancy situation was the operative reason for the employee's dismissal. The test set out in **Burrell** was subsequently endorsed by the House of Lords in **Murray & Another v Foyle Meats Ltd [1999] ICR 827**. Lord Irvine LC (with whom Lords Jauncey, Slynn and Hoffmann agreed) said this:

> **My Lords, the language of paragraph (*b*) is in my view simplicity itself. It asks two questions of fact. The first is whether one or other of various states of economic affairs exists. In this case, the relevant one is whether the requirements of the business for employees to carry out work of a particular kind have diminished. The second question is whether the dismissal is attributable, wholly or mainly, to that state of affairs. In the present case, the tribunal found as a fact that the requirements of the business for employees to work in the slaughter hall had diminished. Secondly they found that that state of affairs had led to the appellants being dismissed. That, in my opinion, is the end of the matter."**
> **The main significance of *Murray v Foyle Meats* was that it rejected the heresy that the expression, 'work of a particular kind', in s 139 meant *the work for which the employee was employed*: that is, the work as defined by his contract of employment. The heretical interpretation can be traced back to the case of *Haden Ltd v Cowen [1982] IRLR 314*, *[1983] ICR 1, CA*. The actual judgments in that case were enigmatic, but the case was taken to have decided that the relevant 'work' was the employee's work as defined by his contract (*Pink v White [1985] IRLR 489, EAT*). This novel 'contract test' became the rule for over a decade until it was (controversially) rejected by another division of the EAT in *Safeway Stores v Burrell [1997] IRLR 200, EAT*, and then condemned by the House of Lords in *Murray v Foyle Meats*.**

6.3 In considering the fairness of the dismissal the tribunal must apply section 98(4) Employment Rights Act 1996, applying that section we must consider the reasonableness of the employer's conduct not whether the Tribunal considers the dismissal to be fair. In judging the reasonableness of the employer's conduct, the tribunal must not substitute its own decision as to what was the right course to adopt for that of the employer. There may be, although not in all cases, a band of reasonable responses where one employer might reasonably take one view and another quite reasonably take another view. The function of the tribunal as an industrial jury is to determine whether in a particular circumstances of each case the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might adopt.

6.4 Under section 43A Employment Rights Act 1996, a worker makes a protected disclosure in certain circumstances. To be a protected disclosure, it must be a qualifying disclosure. Qualifying disclosures are identified in section 43B Employment Rights Act 1996.

6.5 **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,**
> **(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,**
> **(d) that the health or safety of any individual has been, is being or is likely to be endangered,**
> **(e) that the environment has been, is being or is likely to be damaged, or**
> **(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed.**[8]
>
> **(2) For the purposes of subsection (1), it is immaterial whether the relevant failure occurred, occurs or would occur in the United Kingdom or elsewhere, and whether the law applying to it is that of the United Kingdom or of any other country or territory.**
>
> **…**
>
> **(5) In this Part 'the relevant failure', in relation to a qualifying disclosure, means the matter falling within paragraphs (a) to (f) of subsection (1).**

6.6 The following questions must be addressed: first, is there a disclosure of information; second, does the disclosure of that information tend to show one of the matters referred to in section 43B(1)(a)-(e); third, what was the belief of the employer making the disclosure; and forth, was the belief that there was a public interest reasonably held. All of these elements must be satisfied if the claim is to succeed.

6.7 Disclosure of information should be given its ordinary meaning, which revolves around conveying facts. Mere allegations may not be a 'disclosure' for these purposes (see **Cavendish Munro Professional Risks Management Ltd v Geduld** [2010] IRLR 38). It should be recognised that the distinction between allegation and information may not be clear-cut. Any argument based on this alleged distinction should be viewed with caution. It is possible an allegation may contain information, whether expressly or impliedly (see **Kilraine v Wandsworth LBC** [2018] EWCA Civ1 1436). Each case will turn on its own facts. It will be necessary to consider the full context.

6.8 It may be possible to aggregate disclosures, but the scope is not unlimited, and is a question of fact for the tribunal.

6.9 It may be necessary to indicate the legal obligation on which the claimant is relying, but there may be cases when the legal obligation is obvious to all and need not be spelled-out (see **Bolton School v Evans** [2006] IRLR 500 EAT). However, where the breach is not obvious, the claimant may be called upon to identify the breach of obligation that was contemplated when the disclosure was made. It may be necessary to identify a legal

[8] We will refer to these collectively as the relevant failure(s).

obligation (even if mistaken), as opposed to a moral or lesser obligation (see **Eiger Securities LLP v Korshunova** [2017] IRLR 115, EAT.)

6.10 The reasonable belief of the worker must be considered. The test is whether the claimant reasonably believed that the information 'tended to show' that one of (a) to (f) existed; the truth of disclosure may reflect on the reasonableness of the belief.

6.11 'Reasonable belief' is to be considered by reference to the personal circumstances of the individual. It may be that an individual with specialist or professional knowledge of the matters being disclosed may not have a reasonable belief whereas a less informed, but mistaken individual might. Each case must be considered on its facts.

6.12 The public interest element was added in 2013 in order to reverse the decision in **Parkins v Sodexho Ltd** [2002] IRLR 109, EAT. This has been considered by the CA in **Chesterton Global Ltd v Nurmohamed** [2017] EWCA Civ979. Underhill LJ gave the lead judgment in the Court of Appeal and addressed whether a disclosure made in the private interest of the worker may also be in the public interest, because it serves the interests of other workers as well (see Underhill LJ, paragraph 32). Underhill LJ declined to interfere with the tribunal's decision and set out his reasons at paragraph 37.

> **… the correct approach is as follows. In a whistleblower case where the disclosure relates to a breach of the worker's own contract of employment (or some other matter under section 43B (1) where the interest in question is personal in character), there may nevertheless be features of the case that make it reasonable to regard disclosure as being in the public interest as well as in the personal interest of the worker… The question is one to be answered by the Tribunal on a consideration of all the circumstances of the particular case, but Mr Laddie's fourfold classification of relevant factors which I have reproduced at para. 34 above may be a useful tool… but that is subject to the strong note of caution which I have sounded in the previous paragraph.**

6.13 In paragraph 34, Underhill. LJ accepted, subject to his note of caution as set out above, the following may be relevant: the numbers in the group who share the interests; the nature of the interest affected – how important is the interest; the nature of the wrongdoing (intention may be important); and the identity of the wrongdoer and its position in the community. Whilst he identified that these matters may be among those to be considered, he made it plain that it is for the tribunal to consider all the facts.

6.14 Underhill LJ also gave some general guidance. Starting at paragraph 26, he dealt with some "preliminaries." He reiterated that the tribunal must first ask whether the worker believed, at the time he was making the disclosure that it was in the public interest and if so, whether that belief was reasonably held. At paragraph 27 he stated:

> **First, and at the risk of stating the obvious, the words added by the 2013 Act fit into the structure of section 43B as expounded in *Babula* (see para. 8 above). The tribunal thus has to ask (a) whether the worker believed, at**

> **the time that he was making it, that the disclosure was in the public interest and (b) whether, if so, that belief was reasonable.**

6.15 Underhill LJ reiterated the need to consider what was actually believed at the time of the disclosure. He says at paragraph 29

> **… a disclosure does not cease to qualify simply because the worker seeks, as not uncommonly happens, to justify it after the event by reference to specific matters which the tribunal finds were not in his head at the time he made it. Of course, if he cannot give credible reasons for why he thought at the time that the disclosure was in the public interest, that may cast doubt on whether he really thought so at all…**

6.16 At paragraph 28 he noted that it was not for the tribunal to substitute its own view but stated that importing tests from other areas of law may not be helpful.

> **…I do not believe that resort to tests formulated in different contexts is helpful. All that matters is that the tribunal should be careful not to substitute its own view of whether the disclosure was in the public interest for that of the worker. That does not mean that it is illegitimate for the tribunal to form its own view on that question, as part of its thinking…**

6.17 'Likely' requires more than a possibility or risk that an employer may fail to comply with a relevant legal obligation. – see **Kraus v Penna plc.** 2004 IRLR 260.

6.18 It is not necessary for the information to be actually true (see **Darlington v University of Surrey 2003** IRLR133, EAT.

6.19 When considering the ground on which any act, or deliberate failure to act was done, it is necessary to consider the mental processes (conscious or unconscious) of the decision maker (see **Harrow London Borough v Knight** 2003 IRLR 140, EAT.

6.20 In **Ibrahim v HCA International** 2019 EWCA civ 207 the Court of Appeal suggest the mental element imposes a two stage test: (i) did the claimant have a genuine belief at the time that the disclosure was in the public interest, then (ii) if so, did he or she have reasonable grounds for so believing. It is necessary to consider the individual circumstances of that individual, including any expertise or knowledge.

6.21 As it is for the employer to show the ground on which any act or deliberate failure to act was done (section 48 (2) Employment Rights Act 1996). The employer must prove, on the balance of probability, that it was not on the grounds of the protected disclosure, meaning that the disclosure did not materially influence, in the sense of it being more than trivial, the employer's treatment of the whistleblower (see **Fecitt v NHS Manchester** 2011 EWCA civ 1190)

6.22 Section 19 Equality Act 2010 defines Indirect discrimination.

> **(1) A person (A) discriminates against another (B) if A applies a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.**
> **(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if –**
> **(a) A applies, or would apply, it to persons with whom B does not share the characteristic,**
> **it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,**
> **(c) it puts, or would put, B at that disadvantage, and**
> **(d) A cannot show it to be a proportionate means of achieving a legitimate aim.**

6.23 With regard to justification, the classic test was set out in **Bilka-Kaufhas GmbH v Weber Von Hartz** (Case 170/84) [1984] IRLR 317 in the context of indirect sex discrimination. The ECJ said that the court or tribunal must be satisfied that the measures must "correspond to a real need … are appropriate with a view to achieving the objectives pursued and are necessary to that end" (para 36). This involves the application of the proportionality principle, which is the language used in regulation 3 itself. It has subsequently been emphasised that the reference to "necessary" means "reasonably necessary": see **Rainey v Greater Glasgow Health Board (HL)** [1987] ICR 129 per Lord Keith of Kinkel at pp 142-143.

6.24 The principle of proportionality requires an objective balance to be struck between the discriminatory effect of the measure and the needs of the undertaking. The more serious the disparate adverse impact, the more cogent must be the justification for it: **Hardys & Hansons plc v Lax** [2005] IRLR 726 per Pill LJ at paras 19-34, Thomas LJ at 54-55 and Gage LJ at 60.

6.25 It is for the employment tribunal to weigh the reasonable needs of the undertaking against the discriminatory effect of the employer's measure and to make its own assessment of whether the former outweigh the latter. There is no 'range of reasonable response' test in this context: **Hardys & Hansons plc v Lax** [2005] IRLR 726, CA.

6.26 The following paragraphs from the judgment of Pill LJ in the **Hardys and Hansons** case (which concerned sex discrimination) are of assistance (paras 32-34):

> **Section 1(2)(b)(ii) requires the employer to show that the proposal is justifiable irrespective of the sex of the person to whom it is applied. It must be objectively justifiable (*Barry*) and I accept that the word 'necessary' used in *Bilka* is to be qualified by the word 'reasonably'. That qualification does not, however, permit the margin of discretion or range of reasonable responses for which the appellants contend. The presence of the word 'reasonably' reflects the presence and applicability of the principle of proportionality. The employer does not have to demonstrate that no other proposal is possible. The employer has to show that the proposal, in this case for a full-time appointment, is justified objectively notwithstanding its discriminatory effect. The principle of proportionality requires the tribunal to take into account**

> **the reasonable needs of the business. But it has to make its own judgment, upon a fair and detailed analysis of the working practices and business considerations involved, as to whether the proposal is reasonably necessary. I reject the appellants' submission (apparently accepted by the EAT) that, when reaching its conclusion, the employment tribunal needs to consider only whether or not it is satisfied that the employer's views are within the range of views reasonable in the particular circumstances.**
>
> **The statute requires the employment tribunal to make judgments upon systems of work, their feasibility or otherwise, the practical problems which may or may not arise from job sharing in a particular business, and the economic impact, in a competitive world, which the restrictions impose upon the employer's freedom of action. The effect of the judgment of the employment tribunal may be profound both for the business and for the employees involved. This is an appraisal requiring considerable skill and insight. As this court has recognised in *Allonby* and in *Cadman*, a critical evaluation is required and is required to be demonstrated in the reasoning of the tribunal. In considering whether the employment tribunal has adequately performed its duty, appellate courts must keep in mind, as did this court in *Allonby* and in *Cadman*, the respect due to the conclusions of the fact finding tribunal and the importance of not overturning a sound decision because there are imperfections in presentation. Equally, the statutory task is such that, just as the employment tribunal must conduct a critical evaluation of the scheme in question, so must the appellate court consider critically whether the employment tribunal has understood and applied the evidence and has assessed fairly the employer's attempts at justification.**
>
> **The power and duty of the employment tribunal to pass judgment on the employer's attempt at justification must be accompanied by a power and duty in the appellate courts to scrutinise carefully the manner in which its decision has been reached. The risk of superficiality is revealed in the cases cited and, in this field, a broader understanding of the needs of business will be required than in most other situations in which tribunals are called upon to make decisions.**

Conclusions

The employer

7.1 It is first necessary to decide who is the employer. It is accepted the claimant was an employee, but with whom did he contract? The first contract and offer appeared to be with the holding company, respondent one. However, that was modified by the letter of 30 July 2017, signed on 31 July 2017. This recorded the employer as respondent two. It is arguable that the contract attached to the letter of 30 July 2017, referred to the first respondent, and therefore is in conflict. We have no doubt the failure to amend the appended contract was an oversight. Since the first contract was signed, the claimant had sought a visa. The sponsoring company was the second respondent. It was confirmed he would be paid £160,000 by the second respondent. The failure to update the document attached to the letter of 30 July was a mistake. The intention was that he should be employed by EngineF Operating Ltd. EngineF Operating Limited had a bank account. It employed other individuals. It paid for the services of contractors. It held the relevant trading contracts. Respondent

one did no trading. It is difficult to see how a non-trading company would need a financial director. The claimant's role was dynamic. He had an overview of all things financial. He was required to generate funds. He did this for respondent two. It is not unusual for a company's shares to be held by another holding company. However, the companies are different legal entities. There can be no doubt that he was working for the second respondent.

7.2 The fact that Mr Allcock was employed only by the second respondent, and for a short period, is irrelevant. He was the managing director of both companies. In his capacity as managing director of the second respondent, whether during periods of employment or otherwise, he exercised control, and gave directions to the claimant. There is no necessity for him to be an employee. There was no doubt that he managed the claimant. Requests for holiday were made to Mr Allcock. Discussions about any financial matters were with Mr Allcock. The alleged protected disclosures were all made to Mr Allcock. This even though the claimant new, at all material times, the exact employment status of Mr Allcock.

<u>The alleged protected disclosures</u>

7.3 As already observed, there are matters which need to be considered when deciding whether there has been a protected disclosure. There must be a disclosure of information. That information must in the reasonable belief of the worker tend to show a relevant failure as defined in section 43B (1)(a-f) Employment Rights Act 1996. It must be made in the reasonable belief of the worker in the public interest. Whether it is made in the public interest may have both subjective and objective elements. It is relevant to ask whether the claimant subjectively believed it was made in the public interest. It is relevant to consider whether any alleged belief was objectively justified.

7.4 The disclosure must be to a responsible person. We discussed this during submissions. It is accepted by all parties that for the purposes of section 43C, any alleged disclosure was made to his employer, as Mr Allcock was his manager.

Disclosure 1 - in or around September and November 2018 by the claimant protesting to the third respondent that he had changed a legal opinion from Keystone Law and should not do so, this being repeated on 12 November 2018 by WhatsApp.

7.5 This alleged disclosure concerns negotiations with Mobeus an investment company. The investment was worth up to £3 million. As an independent company considering a legal transaction, Mobeus was able to obtain its own advice. As part of negotiations, some legal opinion was obtained from Keystone Law by the second respondent for its own purposes. The opinion was appended to the contract. The purpose of this is unclear. In his statement, the claimant alleges there were changes to the opinion,

albeit he fails to identify what those changes were, which caused him concern. Instead, he points generally to two versions of the contract. He does not say exactly what he had in mind at the time. The contemporaneous documentation does nothing to assist. The height of his written protest at the time is a WhatsApp message of 12 November 2018 which says hie is "not comfortable sharing the contract with the legal opinion in its current form." It is unclear what that means.

7.6 He does allege that there was a conversation. However, he does not set out any detail of that conversation. He fails to say what information was disclosed. Whatever the alleged disclosure, he alleges it was a repeated WhatsApp statement. But the WhatsApp statement discloses no information at all. In Mr Davies' written submissions, it is alleged that the third respondent's action with regard to the Keystone's legal opinion was some form of fraud or misrepresentation. That is not supported by the contemporaneous documentation. The claimant says nothing of the sort and there is no documentation from which it could be inferred that potential fraud was his concern.

7.7 The claimant's evidence fails, in relation to this, and every other alleged protected disclosure, to say anything about the public interest at all. His statement never refers to the concept of public interest. Public interest is referred to once in the particulars of claim and then as a bare assertion, It is not attached to the relevant circumstances relating to any disclosure.

7.8 We find there was no information disclosed. There is insufficient evidence to find that there was any conversation where it was suggested that there was any form of fraud or other breach of legal obligation. The allegation itself suggest that the conversation came before the WhatsApp message, and the WhatsApp message reflected the conversation. If that is the case, the most the claimant could have said was that he was uncomfortable. That is not information. The context does not establish his concern envisaged specific information. There is no evidence to say what caused the discomfort. He has failed to prove there was information disclosed.

7.9 When considering the reasonableness of his opinion, it is necessary to have in mind that he was a highly paid employee, with two postgraduate degrees, and well over a decade's experience. He had access to accounting advice. He had access to legal advice. He was used to negotiating at a high level, and should have had, at least, a rudimentary understanding of contract law. He should have appreciated the need for parties to obtain and rely on their own investigations and legal opinions. One of his subsequent alleged disclosures involve the need for Mr Allcock to undergo due diligence. He must have appreciated the need for other companies to undertake their own due diligence, and this must extend to gaining advice on contracts which may be worth millions of pounds. It is in that context that we must consider whether he reasonably believed there would be a failure. The submissions fail to set out which relevant failure he is relying on. It may be supposed that it is either a criminal offence, or a broad failure of legal obligation. He should, at least in general terms,

give evidence about what he believed to be the legal obligation. He fails to do this. We remind ourselves we must consider what he thought at the time. He gives no evidence on it.

7.10 The claimant accepted in evidence that it was for Mobeus to obtain its own opinion. He should have understood that the second respondent was never under an obligation to disclose its own legal advice. If he had been truly concerned about the nature of the advice disclosed, it would have been open to him to suggest that Keystone were consulted, or to consult them himself. His failure to do this demonstrates that he did not reasonably believe that there was any failure. Moreover, there is not the slightest evidence that he believed that there was a public interest at all, or that the public interest was in his mind. It is difficult to see where the public interest would be in this matter. At its highest, the second respondent disclosing a legal advice is a private matter. It may be arguable that if any advice is disclosed, legal privilege is waived. However, the concept of legal privilege has never been mentioned by the claimant and there is no evidence that it was in his mind. That said, this was a private transaction between two well-resourced organisations that were quite capable of entering into a contract, deciding how they want to obtain advice, and deciding what advice they need to obtain themselves. There is no reason to believe that Mobeus was in such a difficult position that a partial disclosure of legal advice, which may or may not mislead, was a matter which concerned the public.

7.11 We find the reality is that he was uncomfortable for reasons which remain obscure. There was no disclosure of information. He did not believe that there had been or was likely to be a failure. Any concern about the public interest was not his mind at all. This was not a protected disclosure.

Disclosure two- in July 2019, following a request from the third respondent to transfer £70,000 to his personal bank account, resisting the instruction and stating it was not permitted and can only be classified as a business expense it being his assertion the transaction was impermissible and "sums could only be paid to the third respondent if they were to be set off against future income entitlements." It being his claim that this was a tax fraud.

7.12 This relates to an email instruction from Mr Allcock of 10 July 2019 requesting transfer of £70,000 to his own bank account. The claimant's response on 10 July 2019 was as follows: "The fund transfer will have to be over four days. As my transfer limit for online traction transaction is 20,000/– per day. Could you please specify the account the fund should be transferred to."

7.13 In his evidence, he suggests that he believed that Mr Allcock was, in some manner, seeking to avoid paying personal tax. It is alleged he immediately raised this with Mr Allcock and stated the payment could only be classified as a business expense. It is alleged that Mr Allcock was angry. He says that it could be treated as a loan to be offset against future business expenses. He alleges he believed Mr Allcock was acting

dishonestly and in breach of his fiduciary duties at the expensive of AIP, the other shareholder in respondent one. He alleges he recorded it as a loan, contrary to instruction. To the extent it is alleged there is information, it appears to revolve around the assertion that the withdrawal could be a tax fraud.

7.14 The written evidence suggests a lengthy conversation concerning the possibility of fraud. There is no hint of that in the documents. The claimant's email is a matter of nineteen minutes after the request. There is nothing in the documentation which indicates the Mr Allcock was unhappy with the way the payment would be treated in the accounts. On the balance of probability, the conversation, as described by the claimant did not take place.

7.15 Even if he had said to Mr Allcock that he believed his actions may amount to fraud, or words to that effect, and even if this were a disclosure of information, we would still need to consider whether the information, in the reasonable belief of the worker making disclosure, was made in the public interest and tends to show one of the relevant failures.

7.16 The reality is there was no failure. The claimant could never believe there would be a failure. He was responsible for ensuring it was recorded appropriately. He did so. The fact that he may have given some advice as to how it should be treated for the purposes of tax does not mean that he could ever believe there was going to be a failure. The remedy was in his hands. When questioned about this, he indicated that he believed that when the accounts were prepared and ready for approval, rather than allowing the claimant to approve them, Mr Allcock would have overridden him and wrongly signed the accounts off. Such a notion is in objectively fanciful. We do not accept that he ever subjectively believed it.

7.17 It follows that, at the time of the alleged disclosure, there had been no failure. Moreover, there was no possibility of a failure. It is not enough to say that, in some manner, if the treatment had been different, there may be a tax fraud. There was no possibility of that. The claimant knew that at the time. Further, he says nothing, at any time, about public interest. We find that he never believed there would be a failure. We find that he never believed any alleged disclosure was made in the public interest.

Disclosure three -– in September 2019, by the claimant raising verbal concerns repeated in a subsequent email (17 September 2019) noting the third respondent's involvement in Wired World Ltd and an alleged lack of transparency.

7.18 The claimant relies on the email of 17 September 2019. In this email, the claimant states, “I am really uncomfortable with proposals from Wired World Ltd as you are involved as investors in both companies." There is then referenced to work which had been undertaken previously, but we have no evidence explaining the meaning of that. In submissions it is said

that the legal obligation was to be transparent in respect of any interest with the shareholders of respondent one.

7.19 It is accepted that Mr Allcock was involved with Wired World Ltd. It is his case that his involvement was transparent and was known to the shareholders. The claimant's position is difficult to understand. Mr Allcock was involved in several businesses, including Neyber with whom he was an employee. His involvement with those companies was largely about introducing them to respondent two in order to produce the contracts with respondent two. Servicing those contracts would ultimately create profit for respondent from which Mr Allcock, and the shareholders in respondent one, may benefit. Why this particular company, or this particular, transaction caused the claimant any concern is not explained. The height of his written objection is again one of being uncomfortable. His witness evidence suggests this was to do with the granting of a contract. Whilst his witness evidence also refers to an historical payment to another employee, it does not appear to form part of the alleged disclosure.

7.20 The reality is that the claimant knew of Mr Allcock's involvement with Wired World. He had no reason to believe that it had been hidden from the shareholders. He had no reason to believe that Mr Allcock would attempt to withhold it from any shareholder.

7.21 It is arguable there was a disclosure of information. However, when considering whether there was a relevant failure, the height of the claimant's argument is that there was a lack of transparency. That is not made out factually. Moreover, it is an enormous leap from discomfort, and the need to ensure full disclosure, to a belief that there had been a failure or would be a failure. He had no grounds for believing that there had been a failure, as Mr Allcock had always been clear about his involvement with other companies. He had no reason to believe that the shareholders did not know of his involvement. It is not sufficient for a person in the claimant's position to make assumptions leading to wild allegations. He had the ability to check. If he had undertaken checks and had some reason to believe, in this case, that there was a deliberate attempt to conceal information, he may have been on stronger ground. But no such attempt was made. Moreover, the possibility that the shareholders had not been told at a particular point is not enough either subjectively or objectively to engage public interest. This was a private matter. There were no grounds for believing there had been a failure. There were no grounds for believing there would be a failure. There was no ground for believing that the public had any interest. Even in his oral evidence, when questioned, the claimant limited the public to the shareholders.

7.22 This was not a protected disclosure.

Disclosure 4 - following a request from the third respondent on 9 January 2020 via a WhatsApp message for the claimant to the third respondent's handwritten notes of costs as reimbursable expenses by the claimant objecting and stating he

could not perform it without evidential documents. It being his case that the third respondent action would have been a tax fraud.

7.23 This concerns Mr Allcock's request that the claimant book expenses against information provided. This request was made by WhatsApp around 9 January 2020. Mr Allcock set out Monthly expenses going back to around January 2019. The total for what appears to be a nine-month period is around £20,740.

7.24 Mr Allcock accepts there was no supporting documentation provided but maintains that the information was on his credit card and that it would have been supplied. The claimant's case appears to be that he believed these were not legitimate expense. Exactly what the claimant alleges he said to Mr Allcock is unclear. This statement appears to suggest there was some form of discussion whereby the claimant explained that only allowable expenses could be registered, and they would need to be classed as directors' loans. He alleges that there was some conversation about fraud. The detail is not set out adequately or at all in his statement.

7.25 The documents reveal that the claimant processed expenses on 9 January 2020. His email states: "As per Mark instruction can you please put the following as business expenses repayable to him. He will later provide receipt/bank statement confirming the same." His statement suggests that he instructed "the accountant as a temporary measure to mark the payment as an expense." That is not supported by the email.

7.26 It is unclear what the claimant said. We do not accept that he indicated to Mr Allcock that he had doubts or believed that Mr Allcock's request could amount to fraud. Had such a conversation taken place, on the balance of probability, his email to the accountant would have been more guarded, as envisaged by his statement. However, his statement is contradicted by the contemporaneous documentation.

7.27 In any event, even if there were a disclosure of information, we do not accept that he had a reasonable belief that it tended to show one or more of the relevant failings. Even on his own evidence, he remained in control. Mr Allcock represented that he would produce documentation. If the documents were not produced, the accounting entry would be changed, and the possibility of the revenue being misled would be avoided. Therefore, he had no grounds for believing there had been a failure. He had no grounds for believing there would be a failure. The fact there was a theoretical possibility of failure is neither enough to demonstrate a reasonable belief there would be a failure or engage the public interest either subjectively for the claimant or objectively.

Disclosure five– on 21 January 2020, when the third respondent instructed the claimant to place bids to purchase Neyber's distressed assets without performing due diligence or informing shareholders and investors by the claimant informing the third respondent that the first respondent's shareholders and investors must

be informed as the circumstances would indicate Neyber could not pay the first respondent's invoices.

7.28 We have already considered the relevant facts. At no time was the claimant instructed to place bids to purchase Neyber. Mr Allcock proposed a limited payment, which was within his authority, for assets which were worth millions of pounds. We accept his evidence that there was no need for due diligence, as he knew what the product was, and understood its value. The claimant had no rational ground for believing that the bid was outside Mr Allcock's authority or, given Mr Allcock's knowledge of the product, there was a need for further due diligence.

7.29 In his evidence, he states he objected to the value of the bid given the absence of a due diligence report. He alleges the failure to carry out that due diligence and inform other shareholders was a contravention of the shareholders agreement. It is alleged he told Mr Allcock he would be breaching his fiduciary duty.

7.30 We have considered the documents. Mr Allcock was very clear as to his intention and the reason why he did not need any due diligence. The claimant had no reasonable ground for believing it was outside Mr Allcock’s authority, which was up to £50,000. The claimant had no grounds for believing that further due diligence was necessary.

7.31 To the extent any of the claimant's objections amounted to disclosure of information, there was no reasonable ground for believing there had been, or would be a relevant failure. Again, it is necessary to keep in mind the claimant's position, his education, and his access to advice. Mr Allcock was doing what he could to secure assets and ultimately the future viability of the second respondent. There was no rational ground for believing that he was acting inappropriately at all.

7.32 The claimant fails, in relation to this and every other alleged protected disclosure, to address what he believed was the public interest. There is no evidence he had the public interest in mind at all subjectively. He had no objective reason to believe there was a public interest.

Disclosure six - on 23 January 2020, by the third respondent instructing the claimant to prepare and submit a bid to acquire Neyber by the claimant objecting to the value, given the absence of due diligence reports.

7.33 Disclosure six specifically refers to obtaining Neyber’s assets. We have dealt with this above. We should note, that to the extent the allegation underpinning disclosure five has become an instruction to acquire the entirety of Neyber, that was never an instruction given, and the claimant had no grounds for believing he been given an instruction.

7.34 There is nothing further to add.

Disclosure seven - on a date around the end of January 2020, following the claimant transferring £9,400 to the third respondent account classified as a directors' loan, by informing the third respondent that it would amount to a violation of the first respondent's shareholder agreement and requesting the third respondent to obtain shareholder approval for the "salary" payment.

7.35 This concerns Mr Allcock drawing salary. There is no suggestion that there was any objection in September to his salary.

7.36 It is the claimant's case that in January 2020, when asked to transfer net salary of £9,400 to Mr Allcock's account, he had an oral conversation and stated that the salary would amount to a breach of the shareholder agreement as the total yearly amount, as projected, would be more than the £150,000.

7.37 We find on the balance of probability that no such conversation took place, as it would contradict the available documentary evidence. The claimant's email of 29 January 2020 states, "Mark – payment has been made to your account once you are inducted onto payroll and NI and tax is paid the amount be classified as a directory salary in the accounts." His email of 6 February appears to approve the payment and states, "Andrew – been asked to work out NI and tax on this and once he does the amount will be paid."

7.38 There is no suggestion that he had any concerns. Even if such a conversation had taken place, given the immediate instruction to action the payment, there is no ground for finding that he held a reasonable belief that any disclosure tended to show there had been or would be a failure or that it was made in the public interest. It is possible that his first email indicates it was initially put as a loan, but the intention was always to record it as a salary.

7.39 In any event, as it was put through as salary, there can be no tax fraud implication. The only possibility would be a dispute with the other shareholders. However, there was no reason to believe the other shareholders would not be told, and even if there was some sort of obligation, which the claimant refers to as "transparency," there was no reason to believe that there would be a failure. This was not a protected disclosure.

Disclosure eight - on a date around the end of January 2020, following the claimant transferring £9,400 to the third respondent account classified as a director's loan, by informing the third respondent that it would amount to a violation of the first respondent's shareholder agreement and requesting the third respondent to obtain shareholder approval for the "salary" payment.

7.40 The claimant's evidence on this was extremely poor. Mr Allcock explained, in evidence, that there had been a promise from AIP to pay funds, presumably to be received by or on behalf of respondent two, but

payment had not been made. That promise was not reflected in the accounts.

7.41 The claimant's position is surprising. The promise by an investor to pay funds may legitimately be seen as a debt. It is certainly how Mr Allcock saw it. The debt in this context would be an asset. It would be the responsibility of the finance director to ensure that the asset was identified and recorded correctly in the accounts. It may have been that the claimant was confused or misunderstood. However, when considering the reasonableness of his belief in relation to any disclosure, we must have regard to his expertise. A simple discussion should have clarified the matter.

7.42 In the circumstances, he had no reasonable belief that there had been a failure or would be a failure. Objectively, there appear to be no grounds for suggesting that Mr Allcock was failing in his duty. It is possible that the claimant was, but we do not need to finally decide that.

7.43 It is difficult to see how public interest can be engaged either subjectively or objectively by the claimant making assertions based on a misunderstanding, particularly when he should have checked the position.

7.44 Disclosure eight is not protected disclosure.

7.45 It follows that there were no protected disclosures.

7.46 It follows that the section 103A claim fails. It follows that all section 47B claims fail. He was neither dismissed nor subject to any detriment by reason of making a protected disclosure.

7.47 Lest we be wrong, we should consider the detriments. Moreover, as some of the detriments overlap with the issues related to the alleged unfair dismissal, it may be convenient to consider them separately.

Detriment 1 and 2 -- in mid-November 2018 by removing the claimant from negotiations with Mobeus, and thereafter blaming him for the deal failing.

7.48 The claimant was removed from the Mobeus negotiation. The claimant has produced no proper evidence to say why he should have remained involved. He was not blamed for the subsequent failure of the contract. We find the claimant has an unjustified sense of grievance.

Detriment 3 - by the respondent on 9 December 2018 informing him that his role would be made redundant.

7.49 The proposed redundancy in December 2018 came about because of financial difficulties. There were proper and legitimate reasons for starting the redundancy process. Mr Allcock was acting fairly. The suggestion that the redundancy did not proceed because the claimant indicated he

was owed money is unsustainable. The reality is that Mr Allcock placed his personal obligation to the claimant above his rationalisation of the business situation. There was a proper basis for potential reorganisation, and the treatment was ultimately generous.

Detriment 4 - by the respondent failing to approve the claimant's annual leave request and closing the office for 20 days.

7.50 Whilst this claim was withdrawn, we should record the facts. There was never a failure to approve the claimant's annual leave. Instead, the claimant believes he was treated poorly because he was allowed to take his annual leave when he wanted and was paid for it but was not given additional leave to represent the period the company shut down.

Detriment five - by failing to pay to the claimant on or around 3 September 2019 a bonus of £100,000 following the successful completion of the Neyber deal.

7.51 The claimant has failed to set out any contractual basis on which he was ever owed bonus of £100,000. It is difficult to see how non-payment could be a detriment of any form.

Detriment 6

7.52 This is missing from the claim form. The numbering has been retained for ease of reference.

Detriment 7 – by the claimant making annual leave requests in October – December 2019 which, despite repeated requests were ignored.

7.53 The claimant sought leave by email of 30 October 2019 to be taken on 13 November and 16 December 2019. There is no indication the claimant did not take leave. Mr Allcock's evidence was that he treated these more as notification than a request. There is no suggestion the claimant was not paid. The claimant sent a reminder on 9 December 2019. There is no suggestion that his request was refused. At worst, this was an oversight on the part of Mr Allcock by not responding.

Detriment 8 - – by the third respondent, on 13 January 2020, informing the claimant by email of an internal reorganisation and thereafter failing to give a substantive response to the claimant's request[9] for clarification of the effect on his role.

7.54 As noted in our finding of fact, Mr Allcock kept the claimant fully apprised of the financial developments. The claimant understood the nature of the financial difficulty. There were numerous conversations about reorganisation. We do not accept the claimant was confused as to the

[9] No particulars of the request are given.

potential effect on his role. Moreover, he was in a position to suggest how the business should be reorganised, given he was the financial director.

7.55 It has been part of his case before us that he understood the situation sufficiently to assert that the redundancy itself was a sham. In that context complaining about not receiving a specific response to a single email cannot be seen as a detriment.

Detriment 9 - on 18 January 2020, by the respondent emailing the claimant admonishing him for not diverging his full attention to the first respondent's fundraising activities and stating the fundraising goal had not been achieved.

7.56 We have considered the alleged admonishment. We do not view it as an admonishment. This was a legitimate request by an employer for an employee to focus on a key part of his function given the financial difficulties faced by the firm.

Detriment 10 – following disclosure five by the third respondent informing the claimant he would appoint another person to take over the claimant's directorship if the claimant did not understand steps for placing a bid.

7.57 We do not accept that the claimant was told his directorship would be taken over. We do accept that he was told that Mr Allcock would find someone else to prepare the bid, if the claimant was not prepared to do it. It was part of the claimant's role to prepare the bid. For the reasons we have already given, it was time sensitive. The amount involved was modest compared to the potential gain. There was no reason to delay. The claimant's delaying, particularly by asserting that there should be due diligence when none was necessary, was inappropriate. It was reasonable for Mr Allcock to indicate that he would take action to ensure that the bid was put forward.

Detriment 11 – on 29 January 2020, by the third respondent notifying the claimant by email he would be made redundant if the Neyber bid was not successful.

7.58 Mr Allcock indicating that redundancy would be likely if Neyber was lost as a client. This was reasonable and understandable. It was not detrimental treatment.

Detriment 12 – by not paying commission of £60,000 on 7 February 2020.

7.59 This allegation is not made out on the facts. The commission had not been agreed.

Detriment 13 – on 20 February 2020, by serving the claimant with a letter informing him "he had been made redundant."

7.60 We have considered the detail of this. This was a meeting confirming the proposed redundancy. It was part of a proper consultation. The claimant was already aware of the surrounding financial difficulties. He was aware that his role was at risk, and had said as much himself. We find this was a routine meeting and whilst the claimant may have found it unpleasant, it was reasonable and justified.

Detriment 14 – on 21 February 2020 by suspending the claimant's email account and commencing an investigation into the claimant's transfer of data from the first respondent to the claimant's personal account.[10]

7.61 This was withdrawn. The claimant was suspended because he had used his position to send sensitive emails to his personal address for his own use in attempting to build a case. That was an abuse of his position. The suspension was reasonable.

Detriment 15 – on 24 February 2021, by the respondent stating that there was an initial intention to meet the claimant's role redundant.

7.62 He letter of 24 February 2020 was part of a reasonable and legitimate consultation procedure necessitated by a redundancy situation. There can be no doubt the claimant objected to being made redundant, but the respondent action was reasonable.

Detriment 16 – on 26 February 2020, by inviting the claimant to the redundancy consultation meeting on 3 March 2020 and referring to a job offer in India and the constraints on visa requirements.

7.63 This complaint is that the third respondent referred to a potential job in India. It is difficult to see what the claimant envisages the respondent should have done. A refusal to offer him a possible position because he was a Pakistani national would have amounted to direct discrimination.

7.64 Further, his own case falls short of saying that it would have been impossible for him to obtain a work permit. Offering him the possibility was not detrimental.

7.65 In cross-examination, the claimant stated that his true objection was that the third respondent should have simply kept the office open and maintained his employment in this country.

Detriment 17 - on 3 March 2020, by not proceeding with the consultation meeting on 3 March 2020 via email.

7.66 It is difficult to understand this allegation. The consultation did not proceed because the claimant refused to participate or cooperate.

[10] Withdrawn on day 5.

Instead, he alleged that there was a sham process and that he had been the victim of detrimental treatment by reason of making protected disclosures. Neither allegation was sustainable.

18 Detriment 18 – on 10 March 2020 by the claimant believing the third respondent would not independently investigate protected disclosures.

7.67 It is difficult to understand this allegation. Mr Allcock offered to meet with the claimant in attempt to understand what were alleged to be his disclosures. He was reasonable in so doing, as the alleged disclosures were unclear.

7.68 In any event, there is no specific obligation on an employer to investigate alleged protected disclosures. As regards the worker who makes a disclosure, the obligation is not to treat that worker detrimentally. In general, a whistleblower does not have a right to be involved in an investigation, or even necessarily to know the outcome when an investigation has taken place.

Detriment 19 – on 17 March 2020, by the third respondent confirming the final decision to make the claimant redundant and place him on garden leave.

7.69 It is difficult to see what else the respondent could have done. It is for the respondent to make a business decision as to how to organise its resources. The decision was to move the operation to India. There was no obligation to maintain an office presence in the UK. The possibility of the claimant moving, or being involved further by way of investment, was clearly floated. It was the claimant who failed to engage. In the circumstances, the respondent was reasonable in progressing to dismissal.

Detriment 20 – by the respondent giving details of gross misconduct and investigation.

7.70 This allegation was not withdrawn. The details of gross misconduct concerned the unauthorised forwarding of sensitive emails to the claimant's personal account. There is an obligation under the ACAS Code of Practice on disciplinary and grievance procedures 2015 to carry out investigations (paragraph 5). Thereafter, the individual must be informed of any alleged misconduct (paragraph 9). Given that good practice requires the respondent to give details of the alleged misconduct, it is difficult to see how this could be a detriment.

Detriment 21 – by the claimant feeling his inability to access emails place them at a disadvantage in the investigation.

7.71 Detriments 21, 22, and 23 were withdrawn. However, they are relevant in the context of the overall fairness of the dismissal, and we will consider them here.

7.72 This appears to be an allegation that the claimant could not defend the allegations against him, which revolved around the unauthorised sending of private and confidential information to his own account, unless he saw the actual emails. This in a context where he had admitted wrongdoing. It is difficult to understand what is alleged to be the detriment.

Detriment 22 – by an email (undated) notifying the claimant he was suspended.

7.73 As noted, there were proper grounds for suspending the claimant. He now accepts this.

Detriment 23 – by the third respondent email (undated) referring to an unapproved employee handbook. It being the claimant's case document and altered by the third respondent in a manner unspecified.

7.74 It may be that the handbook was not fully completed. The claimant fails to set out what was the alleged amendment, or why it was detrimental.

Detriment 24 – by being required to perform tasks whilst on garden leave.

7.75 The claimant was a financial director. He remained a director. He had duties. Asking him to perform limited tasks whilst on garden leave, and still employed and drawing salary, was reasonable.

7.76 We do not need to consider detriments 25 and 26.

Indirect discrimination

7.77 It is arguable that the provision criterion or practice is made out. The proposal was to move all employees to India. The possibility arose that those who were employed in the UK may also move. Strictly, the PCP as framed, fails. He was never required to move to India. However, viewed more broadly, if he were to take up alternative employment, he would have to move to India.

7.78 The disadvantage is said to be that it is extremely difficult to obtain a work visa. However, it is not impossible. Whilst it may be argued, statistically, that Pakistani nationals may find difficulty obtaining work visas in India, it cannot be assumed that the claimant would have suffered that disadvantage. Mr Allcock had already demonstrated his commitment to the claimant by providing legal assistance when applying for a work permit in this country, and by increasing his salary to £160,000. It may have been possible for the claimant to secure a work visa for India.

7.79 In any event, we have to consider whether the provision criterion or practice was a reasonable means of achieving a legitimate aim.

7.80 It is clear the aim revolved around securing the long-term viability of the company in circumstances where the client base had been lost or severely eroded. That aim is legitimate. The means adopted was by relocating to India with a lower cost base. In addition, it was perceived that this would bring its own opportunities given the location and the economy in that location.

7.81 There has been no suggestion that Mr Allcock was wrong in his business assessment. The means adopted could achieve the aim. The only argument put against all of this is that the claimant should have been kept on in the UK and/or that the business should not have moved to India because it should have been kept in this country for the benefit of the claimant. It is the claimant's approach which is not reasonable. We accept that the position adopted by the respondent was a reasonable response and one which may have secured the aim. It was a proportionate means of achieving a legitimate aim.

Unfair dismissal

7.82 The claimant alleges the respondent has not made out its reason. Section 139 Employment Rights Act 1996 envisages that a decision to cease to carry out the business in the place the employee is employed can be a redundancy. In addition, if there is a reduced need for employees to undertake a particular sort of work, or to undertake work in a particular place, there can be a redundancy. The claimant's dismissal must be wholly or mainly attributable to those circumstances.

7.83 There is clear evidence that the income of the business was dramatically reduced. It is for the employer to decide how to take the business forward. For the reasons we have given, deciding to relocate in India was an option open to Mr Allcock; there was no obligation to maintain a presence in the UK. It is difficult to see how a financial director would have operated effectively in relation to business in India when located in the UK. The respondent was entitled to take the view that all workers should be based in India.

7.84 It follows that there was first a decision to cease business in the place the claimant was employed. Second, there was the diminished need for employees generally and a diminished need for employees in a particular place. On all counts, there are proper grounds for saying there was a redundancy situation.

7.85 Was the claimant’s dismissal wholly or mainly attributable to the redundancy situation? His argument is that he was dismissed for making protected disclosure. He was not. We accept the second respondent’s reason.

7.86 The next question is whether the respondent acted fairly. Much of the case law on consultation concerns the process applicable when there are

numerous employees and union involvement. This is not one of those cases.

7.87 The employer must make business decisions. It is not obliged to discuss all the possibilities with employees before coming to conclusions as to how to take the business forward. Some decisions have obvious consequences. It should still warn, if possible, and consult individually. The main focus of the consultation may be about avoiding a dismissal. This will often revolve around alternative roles.

7.88 The reality in this case is that the claimant was warned at a stage when there were various possibilities depending on the outcomes of various negotiations. The potential for the business failing in this country, and options such as relocation, should have been, and we find was, obvious to the claimant. This is not a case of an individual who works on a factory line and is remote from the decision-making process. The claimant was a finance director. He had access to all the relevant information. He was intimately involved in discussing strategy with Mr Allcock. In January 2020, the claimant was already acknowledging in correspondence that his position may be at risk.

7.89 It is in that context that the meeting occurred on 20 February 2020. We do not accept that the claimant was told that he definitely would be made redundant. However, dismissal for redundancy was a natural consequence of closing the UK office. That was made clear in the letter which he initially read and was made clear at the meeting itself. The point was reiterated by the letter 24 February 2020.

7.90 When considering individual consultation, the key point from the employer's perspective is to maintain an open mind. In that context, the claimant had been invited to consider whether he would wish to invest and make proposals, or whether he wished to be considered for a role in India. There is no reason to believe that those potential avenues were not open to him or that they were not put forward genuinely.

7.91 The claimant gave no proposals which would have allowed the business to stay open in the UK. He now asserts that a presence should have been kept purely so that he could remain employed. He did not put that forward at the time.

7.92 The reality is that the respondent attempted to engage in consultation. That consultation was primarily focused on identifying whether there were any other positions that he could have applied for. The claimant took a negative view. At an early stage he said the process was a sham. He made it clear he would not engage. He did not engage. Mr Allcock tried on several occasions to progress the consultation. He postponed the consultation meeting. When it became clear that the claimant simply would not cooperate, he brought the consultation to an end and proceeded with the redundancy. It is the claimant who was not acting reasonably. The respondent's approach was reasonable.

7.93 Mr Allcock gave the claimant an opportunity to appeal. He identified an individual who could do the appeal. The claimant then failed to engage. There can be no criticism of the employer. The employer's action was reasonable.

7.94 It follows that the employer establish its reason. The dismissal was by reason of redundancy. The respondent acted reasonably in treating that as a sufficient reason to dismiss. The claim of unfair dismissal is not well-founded and fails.

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Employment Judge Hodgson

Dated: 23 March 2022

Sent to the parties on:

24/03/2022.....

For the Tribunal Office